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

HOPE NETWORK BEHAVIORAL HEALTH SERVICES

Employer

and **Case GR-7-UC-614**

LOCAL 459, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (OPEIU), AFL-CIO

Petitioner

APPEARANCES:
Jeffrey J. Fraser, Attorney, of Grand Rapids, Michigan, for the Employer
Eric Frankie, Attorney, of Detroit, Michigan, for the Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(b) 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,[1] the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are 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.

[1] The Petitioner filed a prior UC petition, GR-7-UC-596, seeking to accrete case aides employed by the Employer. On April 13, 2006, the Petitioner withdrew its petition during the hearing in that matter, assertedly because the position pre-existed the collective bargaining agreement at that time and the petition was untimely. The hearing officer in the instant matter took administrative notice of this prior record, which is hereby incorporated by reference. The Employer and Union filed briefs in connection with the current petition, which have been carefully considered.

3. The Petitioner seeks to accrete the nurse case aide position to the existing bargaining unit.

Overview

On June 18, 1997, the Petitioner became certified as the representative of employees of the Employer[2] in the following unit, as set forth in Article I, Recognition, of the parties' current collective bargaining agreement,[3] effective March 15, 2007 through March 31, 2008:

> Section 1. The Agency agrees to recognize the Union [Petitioner] as the sole collective bargaining agent on all matters of wages, hours of work and conditions of employment for the following full-time and regular part-time employees at all programs operated by the agency:
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> > Advanced Kalamazoo Crisis Specialist, Advanced Residential Instructor, Cook, Day Program Instructor, Dietary Aide, Grounds Maintenance Technician, Health & Activity Coordinator, Housekeeper, Kalamazoo Crisis Stabilization Specialist, Kalamazoo Dietary Coordinator, Kalamazoo Elderly Program Residential Care Staff, Lead Cook, Licensed Practical Nurse (LPN), Maintenance Technician & Flooring & Tile Specialist, Medical Assistant, Muskegon Residential Care Staff, Overnight Relief, Painter, Residential Instructor, Transitional Housing Specialist
>
> But excluding the following: on-call employees (Status 9), temporary employees, per diem employees, contract employees, administrative employees, clerical employees, managerial employees, confidential employees, consumer employees, and supervisors (Assistant Program Managers, Program Managers, Program Directors, Resident Managers, Resident Assistants,

[2] The name of the Employer at that time was "Residential Treatment of West Michigan." According to the website for the State of Michigan, Department of Labor and Economic Growth, Corporate Entity Details, of which the hearing officer took administrative notice, about October 20, 1999, the Employer changed its name to "Horizons of Michigan." About June 7, 2002, the Employer adopted its current name of Hope Network Behavioral Health Services.

[3] Apparently the parties have been parties to three prior collective bargaining agreements. The only known previous contracts covered durations from April 1, 2003 to March 31, 2006, and from July 1, 2000 to March 31, 2003.

> Nursing Supervisor – RNs, Program / Nursing Manager, Shift Supervisors – LPN, Director of Dietary Services, Program/ Activities Manager, and Lead Residential Instructors), professional employees (Program Nurse - RNs, Kalamazoo Crisis RNs, Case Managers, Behavioral Specialists, Therapists) and guards as defined in the Act.

The Petitioner seeks to clarify the existing bargaining unit of approximately 250 employees to include the position of nurse case aide for the clinical department. The nurse case aide position was created by the Employer in September 2007 to perform tasks that previously were performed primarily by a unit secretary and registered nurse, both nonbargaining unit positions. The Employer issued a new position description and considered the job to be outside the bargaining unit as an administrative and clerical support position to the registered nurses (RNs). There is currently only one nurse case aide, employed at the Employer's Grandview Campus, located in the Grand Rapids, Michigan area.

The Petitioner argues that the bargaining unit should be clarified to include the nurse case aide position based on a shared community of interest with the existing bargaining unit, especially the residential instructor position. The Petitioner contends that the nurse case aide and residential instructor work next to each other, share common supervision, earn hourly wages within the same pay range, interchange through internal transfers, and perform integrated tasks regarding medical records. The Petitioner argues that the nurse case aide is "essentially the clerk" for the residential instructors. The Petitioner presented no witnesses.

The Employer contends that the bargaining unit should be clarified to exclude the nurse case aide position due to an absence of community of interest with bargaining unit employees. The Employer argues that the nurse case aide performs distinctly dissimilar job functions from the residential instructor who provides direct care to residents, while the nurse case aide spends most of her work day in her office working with consumer medical information paperwork. While the Employer concedes that some of the forms that the nurse case aide completes and files may utilize medical data obtained by residential instructors, the Employer urges that the residential instructor and nurse case aide have minimal daily interaction, and the tasks currently performed by the nurse case aide were formerly performed by the unit secretary or the RNs themselves. Contrary to the Petitioner, the Employer notes that residential instructors and the nurse case aide do not share common supervision. The Employer submits that the nurse case aide primarily interacts with nonunit employees, providing administrative and clerical support for the RNs, and should not be accreted into the unit as administrative and clerical employees are both specifically excluded classifications.

The recognition language of the contract is silent as to nurse case aides, and the parties have been unable to agree on the appropriate placement of this newly created position. I find that the nurse case aide does not share an overwhelming community of interest with the bargaining unit. The nurse case aide provides administrative and clerical support primarily to nonunit RNs. Administrative and clerical employees are both specifically excluded from the unit. The nurse case aide also possesses a greater identity to other nonunit classifications, including the unrepresented position of case aide.[4] Accordingly, I deny the Petitioner's requested clarification of the existing bargaining unit.

The Employer's Operations

The Employer is a charitable corporation engaged in the operation of residential treatment facilities for persons with mental and emotional illnesses at various locations in Western Michigan, mostly in the Grand Rapids area.[5] Although the bargaining unit represented by the Petitioner is scattered among multiple, geographically dispersed buildings in which the Employer conducts its operations, the nurse case aide works only at the Grandview Campus and has no dealings with any other location.

The Grandview Campus is located at 719 N. Center Street in Walker, Michigan. The Grandview Campus consists of four buildings in a row: Alpine Grove; the Lodge; and Haven I and II. Each of these four facilities is essentially a one-story, ranch home where the program participants live and receive treatment.[6] Residents have their own bedrooms. Alpine Grove is a 12 bed, "lock-down" facility for men aged 30-45 years. The Lodge is a 16-bed facility for individuals aged 30-50, considered to be a stepping stone to a community program. Haven I and II are each 16-bed facilities for individuals who are mostly frail and elderly. Each building constitutes a separate treatment program with a separate program manager.

In addition to the nurse case aide and program manager, there are also residential instructors, cooks/dietary aides, program nurses – RNs, case managers, unit secretaries, a

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[4] The current collective bargaining agreement, entered into March 15, 2007, does not specifically reference the case aide, which also appears to be an administrative and clerical support position.

[5] As of April 13, 2006, the Employer identified the homes that it operates and indicated that the Petitioner represents employees at the following of its locations in Western Michigan: Adams Park (Grand Rapids); Brook Home (Kalamazoo County); Creston Ridge (Leonard); Grandview Campus, including Alpine Grove, the Lodge, and Haven I and II (Walker); Hillcrest (Grand Rapids); Howard Crisis (Kalamazoo); Lawndale (Grand Rapids); Northridge (Muskegon); Parker House (Kalamazoo); Ridgeway (Grand Rapids); River Valley Crisis (Grand Rapids); River Valley Long Term (Grand Rapids); Walker Valley (located in the Family Life Center in Grand Rapids); and Westwynde (Grand Rapids). The Employer also indicated that it operated facilities at which there are no unit employees at the following locations: Family Life Center and the Side by Side Adult Day Services located in the Family Life Center (Grand Rapids); Children's Institute for Neurodevelopment Differences (Kentwood); North Ottawa II (Nunica); West Lake Cottages 1 – 6 and West Lake Administration Building (Lowell).

[6] Referred to herein as residents, and sometimes referred to by the Employer as "consumers."

case aide, and licensed practical nurses (LPNs - at Haven) employed at the Grandview Campus. The residential instructors, cooks/dietary aides, and LPNs are unit employees.

Each facility has an entrance that opens to a common living area, where residents gather. There is a kitchen in each home off the common area, in which a cook/dietary aide works. At Alpine Grove and Haven I there is a staff office off the living area, shared by residential instructors. At the Lodge and Haven II, there are staff offices located next to the office used by the nurse case aide. The nurse case aide has an enclosed office at each of the facilities, located various distances down the hallway off the common living areas at each facility, shared with other nonunit employees.

Nurse Case Aide

There is currently only one nurse case aide, Kelley Darin, the first person to hold the position. At the time Darin applied internally for the new position as a nurse case aide in about October 2007, she was a residential instructor assigned to Alpine Grove. As a residential instructor, she was a bargaining unit employee. Upon application, Darin interviewed with two of the three Grandview Campus RNs, Diane Johnston and Rebecca Spence. She was hired and began working as a nurse case aide on December 29, 2007. Darin now works at each of the four homes located at the Employer's Grandview Campus. She assists each of the RNs, but is supervised directly by Diane Johnston.[7] As a residential instructor, Darin was supervised by the program manager at Alpine Grove; she now does not report at all to any program manager.

Upon becoming a nurse case aide, Darin received a wage increase. She earned $8.75 per hour as a residential instructor. She currently earns $10 per hour as a nurse case aide. Her payday is unchanged. Her benefits are also largely unchanged, although she now pays for her vision and dental insurance coverage, and pays a higher premium for her health insurance. Darin punches a time clock as do unit employees. She works full-time, 40 hours a week, Monday through Friday. She generally works no overtime or weekends. She is permitted to flex her work schedule to work 8 a.m. - 4 p.m. or 9 a.m. - 5 p.m., with a one-half hour lunch. Although she generally stays in one of her offices during her lunch break, she is permitted to punch out and leave the building for lunch. She otherwise generally follows the same work rules applicable to bargaining unit employees.

On a typical day, Darin arrives at Alpine Grove, where she works about two days a week. She unlocks the door, enters the facility, and walks through the common living area where she greets any residents and residential instructors who may be present. The

[7] Darin did not know, and the record is silent, as to whether the RNs supervise any unit employees at any of the Employer's facilities.

common living area connects to the kitchen. Darin then punches the time clock and goes down a hallway to her office where she spends most of her day working. She also works at the Lodge about two days a week, and Haven I and II the remaining day, following a similar daily routine.

Darin works within an enclosed office at each of the four facilities. Within her office at Alpine Grove and the Lodge, Darin has a desk and chair, computer and printer, telephone, shredder, and usual office supplies. She has a similar arrangement in her office at Haven I. Her office desk at Haven II is more of a table, and her computer is located in the day programming room. At Alpine Grove, Darin shares her office with a case manager and program manager. Resident medical records and files are maintained in that office, which has a locking door. Residential instructors are not free to access that office. Her office at Alpine Grove is at the end of a hallway, 30 feet from the main living area. As a residential instructor at Alpine Grove, Darin shared a staff office adjacent to the main living area. At the Lodge, Darin shares her office with a case aide, case manager, and a unit secretary. Closed resident charts are kept in the office. Current consumer files and medical reports are maintained in the RN's office. The staff office for residential instructors at the Lodge is next to this office. At Haven I and II, Darin shares her office with the RN and program manager. The location of her office at Haven I is about 25 feet from the main living area. The staff office for residential instructors at Haven I is adjacent to the living area and also functions as the "med room." The location of her office at Haven II is at the end of the hall, next door to the staff office for residential instructors. Although Darin testified that her office doors are usually closed, she noted that from her offices she has no visual sight of unit employees or residents.

Darin characterized her duties as a nurse case aide as mostly clerical and administrative, helping the RNs to implement treatments for the residents by generating, completing and reviewing various forms, and performing other duties as requested of her by the RNs. She affirmed that as a residential instructor, other than handling medical and treatment records of residents, she did not perform the duties she currently performs as a nurse case aide. She estimated that she spends as much as four to five hours a day working with the program RNs, attending meetings, going over paperwork, and performing tasks as they may request of her. She estimated that she spends about two to three hours working on the computer within one of her offices filling out forms and medical paperwork related to resident care and typing memos for the RNs. Her position description requires an associates degree in human services or the medical field and a proficiency in using MS Word and Excel, which were not required of her as a residential instructor. She spends about one-half hour a day on the telephone on behalf of residents: calling doctors' offices to make appointments or to obtain treatment orders, calling pharmacies, or calling governmental agencies, such as the Department of Health and Human Services regarding Medicaid coverage.

Darin described at some length the primary medical forms used at the Grandview Campus facilities that she works with as a nurse case aide, including the Medication Administration Record, Treatment Record, Medication Use Profile, Nursing Service Activity Log, Physician Consult Sheet, Haven Medical Profile Sheet, Haven Quarterly Weight and Vital Review, and Lodge Monthly Vital Review. Most of the work she performs regarding these medical forms was previously done by nonunit employees.

The Medication Administration Record is a record of medication administered to a resident, completed by a residential instructor when a medication is dispensed. When the form is complete at the end of the month, Darin receives the form and reviews it to insure proper completion and to note any changes necessary to correct the record. The Treatment Record is a record of prescribed treatments administered to a resident. It is completed by a residential instructor, reviewed by a program manager, and given to Darin at the end of the month to verify that the information is correct. Darin or the unit secretary then files these forms in the resident's chart. Prior to the creation of the nurse case aide position, the unit secretary filed these forms.

The Physician Consult Sheet provides basic medical information about a resident that a residential instructor takes when accompanying a resident to a medical appointment. The nurse case aide completes the top part of the form for residents of Alpine Grove and Haven I. Either the nurse case aide or RN completes the top part of the form for residents of the Lodge. The RN or "day programmer" completes the top part of the form for residents of Haven II. The physician consulted completes the bottom portion of the form. When the residential instructor returns, the form is placed in the nurse's box, and the nurse case aide or unit secretary files the form. Prior to the creation of the nurse case aide position, the RN filed these forms.

The Medication Use Profile tracks the medications given a resident that have proved ineffective. Darin completes this form, which she implemented at Alpine Grove and the Lodge, although it was already in use at the time at Haven I and II. At the Haven facilities an LPN may also record information as to antibiotics. Darin files this form in a binder for reference by the RNs.

Darin or an RN completes a Medical Profile Sheet on which medical information is maintained for each resident at Haven I and II. The completed form is maintained in Darin's Haven offices. Prior to the creation of the nurse case aide position, the RN completed and maintained these forms. RNs complete the Nursing Service Activity Log to document, for billing purposes, the time they spend with residents in all facilities. Darin files these completed forms in a binder she maintains within her office at each facility. RNs previously filed these forms in the binder. Also, newly implemented at the Haven facilities are Quarterly Weight and Vital Review forms to audit the stability of a resident's weight and vitals over a three month period. Darin extracts the information from the vitals book and transcribes it into this quarterly report that she presents to the

RN for review. Darin similarly transcribes such data at the Lodge in a Monthly Vital Review form presented to the RN for review, a task previously done by the RN.

Darin also creates any other forms RNs may request and performs other duties during the day coordinating medical care for residents. For example, at Alpine Grove she maintains stock and medication levels by completing purchase orders and, upon approval, ordering medical supplies. She also orders routine lab tests and tracks the results.

The only unit employees at the Grandview Campus facilities are the residential instructors, cooks/dietary aides, and LPNs (at the Haven facilities). Darin testified that she only sporadically interacts with unit employees at the facilities. She averages about 15 minutes a day of contact with residential instructors. About 5 minutes of that time is devoted to social pleasantries upon arriving and departing a facility, and about 10 minutes is work-related regarding random questions that may arise as to minor illness guidelines, clarification of a medication or prescribed treatment order, whether a medication ordered from the pharmacy has arrived, verification that a prescribed treatment is being followed, or a possible question pertaining to facility licensing requirements. Cooks/dietary aides spend their time working in the kitchen or getting supplies from an outdoor shed. Before a resident is to have certain laboratory work performed the nurse case aide may inform the cook of dietary restrictions in connection with the lab work, or a cook may infrequently inquire about a treatment or dietary restriction for a resident. LPNs spend their time in the "med room" at Haven I and II, passing medications to residents. Darin deals with the LPNs no more than five minutes a day, if at all, and does not know the exact extent of their duties.[8] There are no LPNs at Alpine Grove or the Lodge.

Darin spends only about six to seven minutes a day dealing directly with residents, with only about five of those minutes pertaining to work-related matters such as having a resident sign a form or to gather some information requested by an RN.

Residential Instructor

Residential instructors are assigned to each of the four homes on the Grandview Campus.[9] Residential instructors work 3 shifts, 24-four hours a day, year round, providing direct, "hands-on" care and supervision of residents to help them perform their daily activities of living, such as personal hygiene and cleaning their rooms. In the course of providing this assistance, residential instructors are teaching life skills to the residents.

[8] There was minimal testimony regarding the LPNs' duties.
[9] The number of residential instructors is not reflected in the record.

Residential instructors share offices located off the main living areas, but are expected to maintain a line of sight to the residents. Residential instructors do not have their own computers. Their primary interactions are with the residents. They pass medications, take residents to their medical appointments, track a resident's compliance with his or her medication and treatment regimen, track residents' daily performance toward meeting their annual person-centered plans, and may run treatment groups. The residential instructor eats lunch with the residents and is not permitted to leave the building for lunch. A residential instructor needs only a high school diploma or GED to qualify for hire, but must be able to lift 50 pounds.

Residential instructors are supervised directly by the program manager at each facility. When not providing direct care, residential instructors attend person-centered planning, crisis and staff meetings. The residential instructor participates in the orientation and training of new staff. The residential instructor also reviews resident behavioral support plans. The residential instructor is further expected to perform general housekeeping and routine maintenance and repairs for the home. The nurse case aide does none of these, although Darin attended one staff meeting, at the request of an RN. When she was a residential instructor, Darin interacted with the RN at Alpine Grove only about one-half hour per week.

Residential instructors are unit employees, and their terms and conditions of employment, though similar to the nurse case aide, are governed by the parties' collective bargaining agreement. Although the contractual hourly wage range for the residential instructor encompasses Darin's current hourly rate, her wages increased when she became a nurse case aide. Residential instructors punch a time clock, work weekends,[10] and may work overtime.

Other Classifications at the Grandview Campus

Darin shares her office at each facility with one or more of the following nonunit employees: the program manager, case manager, case aide, and unit secretary, depending on the facility. There is no evidence of any appreciable interaction with any of these employees, however, except for the unit secretary, with whom she shares considerable filing duties.

Although Darin does not interact appreciably with the case aide with whom she shares an office at the Lodge, the case aide performs paperwork functions on her computer similar to those of the nurse case aide. The case aide has considerably more interaction with residents than Darin. The case aide primarily prepares paperwork for

[10] Darin testified that when she was a residential instructor she worked every other weekend.

each resident's annual person-centered planning (PCP) meeting with a case manager. In the course of preparing the paperwork, the case aide interviews the resident for about an hour to obtain necessary information and signatures on various forms. The case aide then prepares and forwards the paperwork to the case manager for the meeting. There are about two to four such meetings a month. After the PCP meeting, the case aide transcribes the resident's goals articulated during the meeting and the residential instructor records the data regarding the resident's progress toward meeting the goals. From this database the case aide creates a Monthly Progress Report, and subsequently creates a Quarterly Progress Report for the case manager, who supervises the case aide. Case aides also obtain information for residents regarding bus passes and possible vocational placement, may take a resident on a tour of an adult foster care home, and contact guardians when requested by the case manager to do so. Yet, the case aide is not a unit position.

Analysis

A contract's unit description may be clarified mid-term where a classification is newly created, has undergone recent changes, or was otherwise not clearly contemplated when the contract was executed. ***Edison Sault Electric Co***., 313 NLRB 753 (1994); ***Union Electric Co***., 217 NLRB 666, 667 (1975). The Board's clarification procedure is available to both certified and noncertified, but recognized, bargaining representatives. ***Manitowac Shipbuilding, Inc.***, 191 NLRB 786 (1971). The placement issue raised by the instant petition involves a position newly created by the Employer during the term of the parties' current collective bargaining agreement. The position at issue is neither specifically included nor specifically excluded by the recognition language of the parties' current labor contract, and a placement dispute exists. The petition thus is timely and appropriate. ***Bethlehem Steel Corp.***, 329 NLRB 245 (1999) (union sought negotiations regarding the inclusion of a recently transferred group of employees five months after the transfer); cf. ***Wallace-Murray Corp***., 192 NLRB 1090 (1971) (petition not timely where it was filed during a contract term and sought to exclude a contractually included classification).

The Board follows a restrictive policy in determining accretions to existing units as employees accreted to the unit are not accorded a self-determination election. ***Towne Ford Sales***, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9th Cir. 1985); see also ***Archer Daniels Midland Co.***, 333 NLRB 673, 675 (2001). Thus, the Board will find accretion only when the employee sought to be added to an existing bargaining unit has little or no separate identity and shares an overwhelming community of interest with the pre-existing unit to which accretion is sought. ***E.I. Du Pont de Nemours, Inc.***, 341 NLRB 607, 608 (2004); ***Compact Video Services, Inc.***, 284 NLRB 117, 119 (1987). In determining under this standard whether an employee in a newly created position shares an overwhelming community of interest with employees of an existing bargaining unit, the Board weighs various factors, including interchange and contact among employees,

degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. ***E.I. Du Pont de Nemours, Inc.***, supra at 608; ***Archer Daniels Midland Co***., supra at 675. Cases in which every factor favors accretion are rare, and the Board has noted that "the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary." ***E.I. Du Pont de Nemours, Inc.***, supra at 608, quoting ***Great A & P Tea Co***., 140 NLRB 1011, 1021 (1963).

The two most important factors determining unit placement are employee interchange and common day-to-day supervision. ***E.I. Du Pont de Nemours, Inc.***, supra at 608; ***Archer Daniels Midland Co.,*** supra at 675. Where there is no actual interchange of employees, and particularly where there is no common day-to-day supervision, the daily concerns and problems among employees at one location may not necessarily be shared by employees located elsewhere. ***Towne Ford Sales***, supra at 311-312; ***Renzetti's Market, Inc.***, 238 NLRB 174, 175 (1978).

In the instant case, there is no collective-bargaining history as the nurse case aide position was created after the parties' entered into their current collective bargaining agreement.

Although there may be some general similarity of working conditions between the nurse case aide and unit employees such as the residential instructor, in that both have similar wages and benefits and work within the same facilities at the Grandview Campus, there also exist significant differences. Former residential instructor Darin received a wage increase when she became a nurse case aide. She now pays a premium for her dental and vision coverage and a higher premium for her health insurance. The residential instructor works three shifts, around the clock, and is expected to work some weekends. The nurse case aide essentially works office hours, Monday through Friday. A residential instructor is assigned to only one facility, while the nurse case aide works at all four facilities at the Grandview Campus.

While the nurse case aide may have some geographic proximity to those unit employees who work at the Grandview Campus facilities, to wit, the residential instructor, cook/dietary aide, and LPN (Haven) classifications, in that all may function within the same facility, the nurse case aide has little daily interaction and no interchange of duties whatsoever with those unit positions. At each facility, the nurse case aide shares a separate, enclosed office with a door with other nonunit employees, where she performs most of her assigned duties, removed from the resident living area. The residential instructors share a staff office off the common living areas of the residents to keep them within their line of sight.

Moreover, although both the nurse case aide and the residential instructor may work within the clinical department, the duties of the residential instructor and nurse case aide are distinctly dissimilar. The nurse case aide performs clerical and administrative functions, primarily working with forms and other papers related to resident care, or assisting the RNs as needed. The position requires some college or appropriate experience and word processing skills. The duties performed by this newly created position were previously done by RNs or a secretary. The residential instructor provides direct care to residents, teaching life skills. The position requires only a high school diploma, and the work is often physical, requiring lifting to 50 pounds, and general housekeeping and maintenance of the home. Although there is some minimal functional integration, e.g., the residential instructor compiles simple medical data regarding residents on some medical and treatment forms that are reviewed and further transcribed by the nurse case aide, the extent is insignificant to the overall duties of the nurse case aide.

There is no evidence that the work being done by the nurse case aide was ever performed by any bargaining unit employee. The record shows no interchange of duties and insignificant work interaction by the nurse case aide with any unit employees. The nurse case aide interacts primarily with the RNs and interchanges filing functions with a nonunit secretary. Her skills and functions appear to be similar to the nonunit case aide. Moreover, the evidence is directly contrary to the Petitioner's argument that the nurse case aide and the residential instructor are both supervised by RNs. The record establishes that there is no common supervision. The residential instructor is supervised by the program manager of the respective facility, and the nurse case aide is supervised by RN Diane Johnston. Although the RNs may well also supervise others, the record does not establish that the RNs supervise any unit position.

Thus, the two most important factors in the community of interest analysis used to determine whether a newly created classification should be accreted to an existing unit, employee interchange and common day-to-day supervision, are substantially absent. Accordingly, nurse case aide Kelley Darin lacks an overwhelming community of interest with the bargaining unit and, in fact, possesses a greater identity with nonunit employees. As such, she should be excluded from the unit. ***E.I. Du Pont de Nemours, Inc.***, supra at 608-609.

Conclusion

Based upon the foregoing and the record as a whole, I conclude that the new position of nurse case aide does not share an overwhelming community of interest with the existing bargaining unit represented by the Petitioner.

Accordingly, **IT IS ORDERED** that the existing collective bargaining unit be clarified not to include the position of nurse case aide.[11]

Dated at Detroit, Michigan, this 11th day of April 2008.

(SEAL) *\/s/ Stephen M. Glasser*

Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
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[11] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th St., N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **April 25, 2008**. The request may be filed electronically through E-Gov on the Board's website, **www.nlrb.gov**, but may **not** be filed by facsimile. To file the request for review electronically, go to **www.nlrb.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlrb.gov**.