

SODAT, Inc., Employer/Petitioner and American Federation of State, County and Municipal Employees Council 29, AFL-CIO. Cases 7-RM-1002 and 7-RM-1003

June 30, 1975

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on December 30 and 31, 1974, at Flint, Michigan, before Hearing Officer Kenneth D. Meadows. After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 7 issued an order transferring the case to the Board for decision. Thereafter, the Employer and the Union filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, SODAT, Inc. (Services To Overcome Drug Abuses Among Teenagers), is a Michigan nonprofit private corporation, organized to rehabilitate drug abusers. It provides free counseling at three locations as an out-patient therapy service to individuals suffering from drug and alcohol abuse. Its clients, ranging in age from teenagers to persons in their fifties, come from the Greater Metropolitan Flint, Michigan, area and are referred by the criminal justice system or through a social agency or institution, or are voluntary "walk-ins."

The Employer's counseling services are carried out by a staff of unit directors, therapists, counselors (sometimes referred to as cocounselors or paraprofessionals), and a clinical administrative assistant who is a clinical psychologist. Counseling consists of individual and group therapy sessions lasting from a few weeks to 2 years. Excepting x-rays, urinalyses, and blood tests which are donated by county health services or by private doctors, the Employer does not provide any medical services as such.

The Employer contends that it is a "health care institution" under the new Section 2(14) of the National Labor Relations Act, which was amended effective August 25, 1974, to enlarge the Board's jurisdiction in the health care field to include:¹

Any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

An examination of this legislation and its legislative history shows clearly that Congress intended that the National Labor Relations Act and its underlying policies be extended to medical care facilities whose activities have a substantial impact on commerce.

The facts in the instant case show that most of the Employer's income comes from a Federal grant from the Department of Health, Education and Welfare (National Institute of Mental Health) which provides funds over an 8-year period which began in 1971 and extends through 1979. In each year of the grant's existence, the Employer prepares a proposed budget which is submitted to HEW. The budget is then approved and an amount of money is awarded the Employer for its use during the next fiscal year. The Employer then draws against this fund throughout the year. Any moneys appropriated and not used during a particular fiscal year are set aside to accumulate, with the possibility of extending the grant for a ninth year. Each Federal grant is conditioned upon the applicant's matching contribution, in a proportionate amount, of donated local funds or services.

Thus, the record shows that in fiscal year 1973-74 SODAT was awarded approximately \$500,000, of which it utilized approximately \$300,000. During this period it also received some \$11,000 of local money in the form of private contributions. The record also shows that at the same time SODAT had out-of-state expenditures totaling approximately \$9,000. These expenditures were for insurance, office equipment, and travel. Up to the date of the hearing, SODAT had received \$275,000 from HEW for the current fiscal year. As the Employer's annual gross income exceeds the discretionary standard we have set for health care institutions, we find that the impact of the Employer's operations on commerce is sufficient to warrant assertion of jurisdiction herein and it will effectuate the purposes of the Act to do so.²

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

NLRB 1270 (1975) (Member Fanning concurring and dissenting in part). He would apply a \$100,000 standard to all health care facilities, except hospitals.

¹ Public Law 93-360, July 26, 1974

² SODAT's gross income exceeds the \$250,000 jurisdictional standard set for employers under Sec 2(14), other than nursing homes and visiting nurses associations *East Oakland Community Health Alliance, Inc.*, 218

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

4. As to the appropriate unit, there were two separate petitions filed by the Employer, one for a professional unit consisting of therapists and counselors and the other for a nonprofessional unit (clericals). The Union contends, however, that only an overall unit of therapists, counselors, unit directors, and clericals is appropriate. Both parties agree that any appropriate unit or units should encompass all three of the Employer's locations.

The Employer employs approximately 20 employees in various job classifications. Besides the clinical staff positions listed above, the Employer also employs a project director, an administrative assistant manager, an executive secretary, and several secretaries and a receptionist.³

All full-time employees enjoy the same fringe benefits including unemployment insurance, workmen's compensation, retirement annuity plan, and health insurance, and are covered by the same sick leave and vacation policy. There is daily contact among all employees at each location, some shifting of employees from one location to another as may be needed, and it appears that the existence of the three locations is primarily for the convenience of the Employer's patients. The record shows not only that all employees work closely together in performing their own jobs, but also that they share various maintenance duties, which tasks are expected to be performed by clerical and clinical staff alike. In view of the above, and as no union seeks to represent any of the employees in a different unit, we find that a single unit of all employees at the three locations of the Employer is appropriate.

There remains for consideration the issue of whether unit directors, therapists, and counselors are professional employees as contended by the Employer.

The facts show that counselors are generally former patients who are hired on the basis of their ability to be empathetic to the problems of drug users. They receive no other special training and are usually working in the program as part of their own rehabilitation. Such employees are not considered technicals, much less professionals.⁴

With respect to the therapists, we note that the Employer's job description lists counselors and therapists together as to qualifications and functions.

³ The parties stipulated, and we find, that the project director and administrative assistant manager should be excluded from any unit found appropriate as managerial employees, and that the executive secretary should be excluded as a confidential employee.

⁴ *Mount Airy Foundation, d/b/a Mount Airy Psychiatric Center*, 217 NLRB No 137 (1975).

According to this document therapists are only required to have a B.A. degree and/or 2 years of related experience, plus an ability to relate well to people, especially drug users, and to communicate well both verbally and in writing. Although testimony in the record indicates that the Employer does, in fact, require therapists to have a college degree, the evidence does not otherwise support a finding that they qualify as professionals under the criteria established in Section 2(12) of the Act. Thus, therapists function mainly as representatives of the clinical staff in group therapy sessions and as liaisons between clients and outside groups such as schools, businesses, and the various agencies of the criminal justice system. It appears from the record that the unit directors⁵ are primarily responsible, on the staff level, for planning and design of therapy programs, as well as their evaluation; whereas therapists function as group leaders and monitors of a group's progress.

Therefore, although the work of a therapist is basically mental, we find that it is more of a routine nature, as opposed to the intellectual and varied work involving the consistent exercise of discretion and judgment which is determinative of a professional. Accordingly, we find therapists are not professionals within the meaning of the Act.

A final question remains as to the inclusion of the administrative assistant clinical, who the Employer contends is a supervisor. The evidence shows that this individual is a doctor of clinical psychology whose duties are as a consultant with respect to the treatment of individual clients. There is no evidence that he performs any of the duties of a supervisor. Inasmuch as we find him to be a professional employee, we shall direct that he be allowed to vote separately, with an opportunity to indicate his desire to be represented in a unit with nonprofessional employees, as well as his desire to be represented by the Union.

In accordance with the above findings and the record as a whole, we find that a unit of all full-time and regular part-time employees, excluding managerial employees and supervisors as defined in the Act, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. However, this unit includes a professional employee and nonprofessional employees, which the Board cannot join in a single unit without the desires of the professional employee being determined in a separate vote.

⁵ Although the Union seeks to include the two unit directors in the overall unit, the Employer contends that they should be excluded as supervisors. Inasmuch as the record is inadequate to make a final determination on this question, we shall order that the unit directors be allowed to vote subject to challenge.

We shall direct that a separate ballot be used for recording the vote of the employee classified as the administrative assistant clinical, which will ask two questions:

1. Do you wish to be included in the same unit as other employees employed by the Employer at its Flint, Grand Blanc, and Lapeer, Michigan, facilities for the purposes of collective bargaining?

2. Do you desire to be represented for the purposes of collective bargaining by American Federation of State, County and Municipal Employees Council 29, AFL-CIO?

If the professional employee votes yes to the first question, indicating his desire to be included in a unit with the nonprofessional employees, he will be so included. His vote on the second question will then

⁶ These employees shall vote subject to challenge as supervisors, *supra*, fn. 4

be counted with the votes of the nonprofessional employees voting in the overall unit to decide the representative for that bargaining unit. If, on the other hand, he does not vote for inclusion, his vote will not be counted.

Accordingly, we find the following unit to be appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees [unit directors,⁶ therapists, counselors (cocounselors or paraprofessionals), secretaries, and receptionists] employed at the Employer's Flint, Grand Blanc, and Lapeer, Michigan, facilities, excluding managerial employees, guards, and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]