

Abilities and Goodwill, Inc. and Abilities and Goodwill Association of Professional Employees. Case 1-RC-13446

December 1, 1976

DECISION ON REVIEW AND DIRECTION OF ELECTION

Upon a petition for certification of representative duly filed by Abilities and Goodwill Association of Professional Employees¹ on August 19, 1974, a hearing was held on January 23, 24, and 28, 1975, before Hearing Officer Albert N. Stieglitz of the National Labor Relations Board.² Pursuant to direction of the Board, on March 24, 1975, the Regional Director for Region 1 issued an order transferring the case to the Board for decision.

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 is a nonprofit organization established to provide services for mentally, emotionally, and physically handicapped individuals in the State of Maine. The goal of its programs is to prepare persons (herein clients) for independent living within the community. Services include work adjustment rehabilitation, social and cultural guidance, personal hygiene instruction, and other services aimed at making the clients self-sufficient members of the community. In most cases, however, the clients will never reach that goal and they will therefore utilize some of the services for the rest of their lives.

During the Employer's 1974 fiscal year, it had total revenues of \$1,103,104.91. Of this total, \$439,132.18 was derived from various state and Federal grants and programs; \$108,381.80 was received from municipalities for children attending Pride Training School; \$3,352.50 was received by Pride Training School as mail contributions; \$424,225.73 was received from sales of prime products, sales at thrift stores, salvage sales of donated goods, and sales at a gasoline service station which was operated for a short time; \$91,512.03 was received for the performance of subcontracts; and \$36,500.67 was received from miscellaneous sources. During the same fiscal year, the Employer purchased supplies directly from

sources outside the State of Maine valued at \$22,022 and gas and oil valued at approximately \$42,000 from suppliers within the State who received such oil and gas from outside the State.

The Employer contends that in the exercise of its discretion the Board should decline to assert jurisdiction over the Employer. It argues that the services it performs are charitable and nonprofit, that to the extent that it engages in commercial activities, it does so for the purpose of providing work stations for work adjustment training which are ancillary and secondary to the overall purpose of rehabilitating the handicapped. It also denies that it is a health care institution as defined in Section 2(14) of the Act.

On the other hand, the Petitioner argues that the Employer is engaged in commercial activities which meet the Board's discretionary standards for asserting jurisdiction and should therefore be subject to the Act regardless of its eleemosynary objectives. Further, the Petitioner asserts that the Employer is a health care institution as defined in Section 2(14) of the Act.

While we now assert jurisdiction over charitable nonprofit institutions, we have not created a separate jurisdictional category for these institutions but rather classify them according to their fundamental purposes. "The sole basis for declining or asserting jurisdiction over charitable organizations will now be identical with those which are not charitable." *The Rhode Island Catholic Orphan Asylum a/k/a St. Aloysius Home*, 224 NLRB 1344 (1976).

The Employer herein engaged in many activities and could conceivably be classified under more than one of the Board's jurisdictional categories. We will assert jurisdiction if it satisfies the standards of any one of the categories within which it may be classified.³ Since the Employer engages in retail activities, had a gross annual volume of business more than \$500,000⁴ and had annual out-of-state purchases of more than \$50,000, we find that the Employer satisfies our jurisdictional standard for retail enterprises and that it would effectuate the policies of the Act to assert jurisdiction herein.

The Employer is not a health care institution within the meaning of Section 2(14) of the Act. The Employer attempts to prepare persons for independent living within the community primarily by providing vocational rehabilitation, schooling for mentally retarded children, social guidance, and hygiene instruction.

The Employer has one nurse on duty 40 hours a week who dispenses medicine and provides whatever

¹ The name of the Petitioner appears as amended at the hearing

² On November 6, 1974, the Regional Director for Region 1 dismissed the petition on the basis that the Board lacked jurisdiction over the Employer. The Petitioner filed a request for review of the dismissal with the Board and, on December 10, 1974, the Board issued a Ruling on Administrative Action remanding the petition to the Regional Director for the purpose of conducting a hearing

³ *Tinley Park Dairy Co d/b/a Country Lane Food Store*, 142 NLRB 683 (1963)

⁴ *Carolina Supplies and Cement Co.*, 122 NLRB 88 (1958), *Siemens Mailing Service*, 122 NLRB 81 (1958)

other medical services the clients require. Together with the house managers at the Employer's two residential facilities (discussed in detail *infra*), she is responsible for insuring that the house managers have the correct medicine for clients residing at their houses. Many clients, however, handle their own medicine without the aid of the nurse or house managers.

The Employer also has retained a psychologist on a consultant basis who works approximately 1 hour per week with supervisors in the residential facilities. When serious medical emergencies arise with clients, they are generally taken to an outside physician who is not on retainer, but who is paid fees for the actual services rendered. Other times the clients are taken to the emergency room of a local hospital.

Other than the nurse and her office, the Employer has no other medical staff or facilities. While the nurse does administer minor medical treatment, no other medical treatment is provided by the Employer.

Since the Employer's programs are vocational rather than medical in nature, and are designed to prepare clients for self-sufficient living, we find that the Employer is not a health care institution within the meaning of the Act. The services of the Employer are clearly distinguishable from those mental health centers and clinics which provide extensive medical, drug, and/or hospitalization services. Cf. *Mental Health Center of Boulder County, Inc.*, 222 NLRB 901 (1976); *Malcom X Center for Mental Health, Inc.*, 222 NLRB 944 (1976); *St. Peter's School*, 220 NLRB 480 (1975). Moreover, since the Employer attempts to make clients self-sufficient and therefore provides permanent residential care for only a small percentage of clients, this case is clearly distinguishable from *Beverly Farm Foundation, Incorporated*, 218 NLRB 1275 (1975), in which the employer provided housing for substantially all its clients and made no attempt to prepare clients for a return to society.

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

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

4. Petitioner seeks to represent a unit of all staff employees directly involved in the rehabilitative process, except Pride Training School employees, with professional employees being given the opportunity of voting for or against inclusion in the unit. The Employer contends that all employees, whether or not engaged in the rehabilitative function, should be included in the appropriate unit, with professionals, including teachers at the Pride Training School, either constituting a separate unit, or included in the

broader unit as a result of a self-determination election.

The Employer renders numerous services for clients. Adult clients are tested and evaluated at the Vocational Evaluation Center to determine the program into which they are to be placed. Counseling is given to clients in the rehabilitation department to meet their physical and emotional needs. Clients with severe or multiple handicaps are provided work adjustment training at the Extended Employment Center. Transitional housing for less severely handicapped clients who are not residents of the Portland area is provided at Ingraham House. Long-term or indefinite housing is provided for severely handicapped clients at Carlton House. The Social-Recreation Center provides opportunities for recreational experiences. Mentally retarded children receive training at the Pride Training School.

As part of its rehabilitative program, the Employer engages in a number of commercial activities in which clients are given work adjustment training. In carrying out its objective, the Employer appeals to the public and some private businesses for used or defective clothes, shoes, furniture, and appliances that can be repaired or refurbished by its clients. These articles are then offered for sale in one of five retail outlets maintained by the Employer in the Portland, Maine, area. Some of the donated clothing, however, is sent to the Extended Employment Center for processing as wiping rags, which are then sold to various industries.⁵

Ann Pride is the director of the Pride Training School and Thelma Hawman is the curriculum supervisor. There are eight teachers at the school. They teach mentally retarded children between the ages of 5 and 19. Only three of the teachers have college degrees, but all have taken special courses designed to qualify them as teachers of mentally retarded individuals and are certified as such by the State of Maine.

Henry Zacchini is the director of the Social-Recreation Center. Two recreational supervisors coordinate and supervise recreational and field trip activities for clients, students, and handicapped persons in the community. Recreational activities include tours through the state capital, camping trips, skiing, skating, and pool tournaments. There are two recreational aides who are assistants to the recreational supervisors. The aides are often students who work in the evening and on weekends. They are paid hourly. A

⁵ At one time, the Employer also operated a gasoline service station with the hope that some of the clients might learn the basic skills required to work in such an operation and thus have a saleable skill in the community. However, the project failed in its objective and was closed in the fall of 1973.

part-time recreational substitute does the same work as a recreation aide but on a part-time basis. The Center has one secretary to handle its clerical work.

Executive Director Arthur Bennet is responsible for all the operations of the Employer. Bennet has several assistants in the administrative division. Business Manager Frank Krivo supervises the administration office staff. Offices Manager Ann Grant supervises office clerical employees and does some clerical work herself. Assistant Office Manager Carole Fitts directs the work of secretaries and also does some clerical work. Clerical work is performed by a donations clerk, a payroll clerk, a filing clerk, and a receptionist. The administrative office does all the accounting, bookkeeping, recordkeeping, and bill paying for all the divisions of the Employer. Plant Maintenance Manager Tom Howell coordinates maintenance for all the facilities. He hires and fires maintenance employees and directs their work. Food Service Manager Patricia O'Hanlon orders food and directs clients in the operation of cafeterias in the Extended Employment Center and in the administrative offices.

The Extended Employment Center is under the administration of Director Alfred Fitzmorris and Production Manager Austin Pride. Title XVI Project Coordinator Richard Rhoades is in charge of providing such services for clients as counseling, speech and hearing examinations, medical examinations, and vocational evaluations.⁶ Two social workers do in-depth counseling concerning personal and social adjustment of long-term clients. The activities-in-daily-living supervisor instructs clients in simple tasks and hygiene such as preparing food such as soup and combing hair. Four contract supervisors direct from 6 to 20 clients at work stations producing such materials as wiping rags. They instruct the clients in the job and monitor completed work. Two supervisory aides do the same work as the contract supervisors. The assistant contract supervisor is an aide to the contract supervisors. A subcontract procurement specialist solicits private companies for jobs for the Extended Employment Center. The transportation supervisor transports nonambulatory patients and delivers subcontract work. There are two secretaries who do clerical work.

The operational department is under the supervision of Director Bernard Lucas and Assistant Director William Giguere. A dispatcher/dock supervisor is responsible for coordinating transportation such as dispatching vehicles to agency stores, picking up collection boxes, home deliveries, overland trips, and

client transportation. The building 2 supervisor repairs donated furniture. On occasion clients will be referred to him to aid in working on the furniture. However, the building 2 supervisor generally does not train clients to work with furniture, he merely trains them to help them adjust to a work environment. There is one electronic supervisor who repairs donated electrical goods. Clients are referred to him for work adjustment training and for some specific vocational training in electronics. A processing supervisor manages both service workers, who are regular employees, and clients. The processing supervisor is responsible to see that finished products are inspected and made ready for shipment. The processing supervisor assigns daily work schedules and verifies that times for both clients and service workers are properly made out. There is one supervisory aide who assists the electronic supervisor. The supervisory aide is a former client. An assistant processing supervisor is a high school graduate who works with the processing supervisor. A rehabilitation supervisor works on specific jobs with two or three clients at a time. For example, he will repair electrical appliances and work with a couple of clients—instructing them how to repair electrical appliances. A work-study supervisor works with four or five clients at a time instructing them how to build small pieces of wood furniture.

The Employer has five retail outlets in and around the Portland area where donated and recycled merchandise is sold to the public. Four managers oversee operations in four of the stores. One small store which sells only furniture does business in the Employer's main operations facility. There are 11 clerks in the four stores who sell merchandise to the public. In addition, there are five clients in the four stores who wait on the public. The clients were placed in the stores by rehabilitation counselors from the rehabilitation department of the Employer's operations and by social workers from the Extended Employment Center. The stores have extensive contact with the operational department because it is from this department the stores have to get the donated and recycled goods.

Rehabilitation Department Director Peter Mazza-ro is responsible for the two residential facilities, rehabilitation services that are rendered in various departments, the Vocational Evaluation Center, and rehabilitation counselors. Assistant Rehabilitation Director Jane Nichols generally assists the director with his various administrative duties and specifically directs the four rehabilitation counselors in their activities and monitors them. The rehabilitation counselors provide vocational, educational, and social counseling and guidance. Some counseling is

⁶ The title XVI grant is a contribution from the State of Maine to the Employer for salaries, equipment, and supplies in the Extended Employment Center

done at the rehabilitation facility. Often counselors will meet with clients where they are assigned. Consequently there is much contact between rehabilitation counselors and staff at other facilities. A job placement specialist finds employment in the community for clients who are able to make the transition from rehabilitation services to community employment. The job placement specialist has a M.S. degree in counseling and 5 years' experience in human relations employment. A rehabilitation secretary does clerical work. On occasion the rehabilitation secretary will teach a client how to file and direct the client in that activity.

House Manager Howard Hedegard resides in and directly manages Ingraham House and is indirectly responsible for Carlton House. Food Service Manager Louvenia Williams orders food for Ingraham House and Carlton House and prepares food for Ingraham House. She supervises clients in food preparation and cleanup. Four house supervisors work with clients at Ingraham House in the evening hours supervising games, playing games with clients, and simply talking to clients. Two of the house supervisors have college degrees. Ingraham House has one cleaning woman. Hedegard and the house supervisors work closely with the rehabilitation counselors with respect to clients who are in work adjustment training at Ingraham House.

Carlton House is directed by Manager Ruth Brown. The job description for the assistant house manager requires that this individual be a high school graduate with 1 year of employment in human relations. There are two night supervisors, one full time and the other part time⁷

Ruth Coggeshall is the chief evaluator of the Vocational Evaluation Center. She reviews referral information sent into the Employer, coordinates with state institutions when clients leave a state agency and enter the Employer's program, schedules evaluation programs, and assigns clients to vocational evaluators. Two vocational evaluators administer the interest, dexterity, and other tests used to ascertain a client's vocational aptitude. Two work-study guidance aides work with clients who are referred from public schools for evaluations. The work-study guidance aides monitor the individuals when they are evaluated and as they go through the system. Consequently, the work-study guidance aides have much contact with employees in the Social-Recreation Center, the Extended Employment Center, and the operations department. One aide has a B.A. degree and the other will receive a B.S. degree shortly. One

secretary does the clerical work for the Vocational Evaluation Center.

As stated, the Petitioner would limit the appropriate unit to staff employees directly involved in the rehabilitative process, except Pride Training School employees. It would permit professional employees to separately vote for or against inclusion. According to Petitioner's brief, it would include only the following nonprofessional employees: two recreation aides and the recreation substitute in the Social-Recreation Center, four contract supervisors, one assistant contract supervisor, and two supervisory aides in the Extended Employment Center, and the rehabilitation secretary in the rehabilitation department. In the professional voting group, it would include only two recreation supervisors in the Social Recreation Center, two society workers, title XVI coordinator, activities-of-daily-living supervisor in the Extended Employment Center, four rehabilitation counselors, and one job placement specialist in the rehabilitation department. The Petitioner asserts that the foregoing employees have a separate community of interest which justified establishing them as a separate unit appropriate for collective bargaining.

We do not agree that the foregoing proposed unit is appropriate. It would exclude Pride Training School teachers, vocational evaluators and work-study guidance aides in the Vocational Evaluation Center, house supervisors in Carlton House, and various employees in the operations department. All these employees are engaged in helping to rehabilitate handicapped individuals. The attempt of Petitioner to separate out some of the employees engaged in rehabilitation work is artificial. The various departments and their employees are functionally integrated with the single aim of helping the handicapped. All are engaged directly or indirectly in this task. A client in need of rehabilitation usually needs more than one of the services offered by the Employer. Coordination of such services is particularly evident in the case of the Pride Training School. Not only do the teachers in this school educate handicapped children, they also work with social workers in the rehabilitation department to coordinate the transition of children who leave the school and transfer into rehabilitation. After transfer, social workers often contact teachers for information as to the background of former students. The Vocational Evaluation Center makes vocational evaluations of children in the school and provides speech and hearing services to the children as well. The Social-Recreation Center coordinates with the school when it schedules activities for children such as athletic events and field trips. There is constant communication between the school and the Extended Employment Center. Sev-

⁷ Since night supervisors function as guards to protect persons on the Employer's premises, they shall be excluded from the unit as statutory guards

eral teachers have worked as supervisors in the Extended Employment Center during the school summer vacation period. Richard Rhoades, a former teacher at the school, became title XVI coordinator at the Extended Employment Center.

The various facilities, except for the stores, are situated in relatively close proximity to one another. The school is located three or four miles from the Employer's general offices and is closer to other facilities such as the Extended Employment Center and Ingraham House. Labor policy is centrally determined and is applicable to all facilities and employees. Fringe benefits are the same for all employees, except with respect to summer vacations for school employees.

In view of the integration of the Employer's operations, we find that Petitioner's proposed unit does not constitute a craft or a traditional appropriate unit but is only an artificial segment of a companywide unit which, under all circumstances, we find to be appropriate. As requested by the parties, we shall permit the professional employees to vote separately with respect to their inclusion in such broad unit.

However, we have traditionally recognized a community of interest shared by business office clerical employees apart from other employees. Office clericals have generally been excluded from production and maintenance bargaining units because of their "special interests" and different working conditions. *General Electric Company (River Works)*, 107 NLRB 70 (1953). This policy has been utilized in the retail industry to exclude office clericals from most retail store units. *Allied Stores of New York, Inc. d/b/a Stern's, Paramus*, 150 NLRB 799, 806 (1965). The only exception to this policy in the retail area is small retail units where the employee complement is small, many of the clericals perform work similar to or the same as the retail store employees, and the petitioner seeks to represent both groups of employees. E.g., *South Station Liquor Store, Inc., d/b/a Berenson Liquor Mart*, 223 NLRB 1115 (1976). Recently we decided to apply our traditional rule that business office clericals are normally to be afforded separate bargaining units to the health care industry. *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975).

The eight clerical employees here do traditional office clerical work; i.e., they type, file, answer the telephone, make appointments, receive visitors, and do payroll work. Since they do traditional office clerical work and the Petitioner does not seek to represent them (with one minor exception, discussed *infra*), we shall exclude them from the unit.

We perceive no reason for including the rehabilitation secretary in the nonprofessional unit as requested by the Petitioner. Although the rehabilitation sec-

retary does occasionally direct a client in some filing activities, this duty takes only a small portion of her time, which is otherwise devoted to clerical matters. This minor client contact does not, in our view, shift her community of interest from the clerical employees to the other nonprofessional employees. Accordingly, we shall include her with the other business office clerical employees excluded from the unit.⁸

The parties stipulated, and we find, that the following individuals are supervisors within the meaning of the Act: Executive Director Arthur Bennet; Business Manager Frank Krivo; Office Manager Ann Grant; Assistant Office Manager Carole Fitts; Plant Manager Tom Howell; Pride Training School Director Ann Pride; Pride School Curriculum Supervisor Thelma Hawman; Social-Recreation Center Director Henry Zacchini; Extended Employment Center Director Alfred Fitzmorris; Extended Employment Center Production Manager Austin Pride; Operations Director Bernard Lucas; Assistant Operations Director William Giguere; Store Managers Dorothy Killinger, Dorothy Irving, Bonnie Rummer, and Jame Hebblethwaite; Rehabilitation Department Director Peter Mazzaro; Assistant Rehabilitation Department Director Jane Nichols; Chief Evaluator at the Vocational Evaluation Center Ruth Coggeshall; Ingraham House Manager Howard Hedegard; Ingraham House Food Service Manager Louvenia Williams; and Carlton House Manager Ruth Brown.

The parties also stipulated, and we find, that Food Service Manager Patricia O'Hanlon is a managerial employee within the meaning of the Act. We shall exclude her from the unit.

While the parties stipulated at the hearing that Title XVI Project Coordinator Richard Rhoades is a supervisor within the meaning of the Act, in its brief the Petitioner contends that Rhoades should be included in the professional voting group. The evidence is inadequate to determine whether Rhoades is a supervisor. We shall permit him to vote subject to challenge.

⁸ Member Fanning agrees with the exclusion of the office clerical employees from the unit requested by Petitioner on the ground that they lack a sufficient community of interest with employees engaged in direct rehabilitation of clients to require their inclusion in such a unit. He would, however, also exclude the cleaning personnel, the dispatcher dock supervisor, and the store clerks on the same grounds. In his view, the unit as sought by Petitioner and enlarged by our inclusion of employees engaged in direct rehabilitation of clients is wholly appropriate for purposes of collective bargaining, including as it does all employees who by education and training, job functions, and personal relationship to the clients served by the Employer have a community of interests not shared by other employees. He therefore sees no justification for further enlarging the unit by addition of employees not involved in rehabilitation of clients, whose only shared interest with the employees Petitioner seeks to represent is the fact that they work for the same employer.

The parties stipulated, and we find, that the following individuals are professional employees within the meaning of the Act: recreational supervisors, social workers, the activities-in-daily-living supervisor, rehabilitation counselors, the job placement specialist, vocational evaluators, work-study guidance instructor aides, and house supervisors at Ingraham House. These individuals shall be included in the professional voting group.

While the Petitioner sought to exclude eight Pride School teachers from any unit, it stipulated with the Employer that the teachers are professional employees. The record supports the stipulation that the teachers are professional employees. We shall therefore include them in the professional voting group.

The following classifications do not have the statutory indicia of professional employees and therefore are nonprofessional: secretaries, clerks, receptionists, supervisory aides, recreational aides, the recreational substitute, contract supervisors, the assistant contract supervisor, the subcontract procurement specialist, dispatcher/dock supervisor, the transportation supervisor, the building 2 supervisor, the electronics supervisor, the processing supervisor, the assistant processing supervisor, the rehabilitation supervisor, the work-study supervisor, assistant house supervisors, night supervisors, cleaning personnel, and store clerks.

Individuals such as the contract supervisors, assistant contract supervisors, building 2 supervisor, electronic supervisor, rehabilitation supervisor, and work-study supervisor who direct clients in their work are not supervisors within the meaning of the Act. While many clients are paid wages and some will work for indefinite periods of time and therefore have characteristics of employees, it does not follow that the individuals who direct their work are supervisors within the meaning of the Act. The "supervisors" direct the clients, nonunit personnel, only with the purpose of providing guidance. They instruct clients how to do a job and monitor the work to see that nothing goes wrong. The purpose of the work is rehabilitation or vocational training, not production. The parties appear to agree that the aforementioned "supervisors" as well as the dispatcher/dock supervisor are not supervisors within the meaning of the Act. We agree and shall include them in the unit. Cf. *Adelphi University*, 195 NLRB 639, 644 (1972).

It appears that the processing supervisor may exercise supervisory authority over service workers who appear to be in the nonprofessional unit. Since the record is not clear on this matter, we shall allow the processing supervisor to vote subject to challenge.

Accordingly, we shall direct separate elections in the following voting groups:

(a) All nonprofessional employees employed by the Employer at its various facilities in and around Portland, Maine, excluding all professional employees, clerical employees, guards, and supervisors as defined in the Act.⁹

(b) All professional employees employed by the Employer at its various facilities in and around Portland, Maine, including teachers at the Pride Training School, but excluding all nonprofessional employees, guards, and supervisors as defined in the Act.¹⁰

The employees in the professional voting group (b) will be asked two questions on their ballots:

(1) Do you desire to be included in the same unit as other employees of Abilities and Goodwill, Inc., for the purpose of collective bargaining?

(2) Do you desire to be represented for the purpose of collective bargaining by Abilities and Goodwill Association of Professional Employees?

If a majority of the employees in voting group (b) vote "yes" to the first question, indicating they wish to be included in a unit with the 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 (a) to decide the representative for the whole unit. If, on the other hand, a majority of the professional employees in voting group (b) do not vote for the inclusion, they will not be included with the nonprofessional employees and their votes on the second question will then be separately counted to decide whether they want to be represented in a separate professional unit.

We make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in a unit with nonprofessional employees, we find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All employees employed by the Employer, Abilities and Goodwill, Inc., 803 Forest Avenue, Portland, Maine at its various facilities in and

⁹ Nonprofessional employees included the following supervisory aides, recreational aides, the recreational substitute, contract supervisors, the assistant contract supervisor, the subcontract procurement specialist, the dispatcher/dock supervisor, the transportation supervisor, the building 2 supervisor, the electronics supervisor, the processing supervisor, the assistant processing supervisor, the rehabilitation supervisor, the work-study supervisor, assistant house supervisors, night supervisors, cleaning personnel, and store clerks

¹⁰ Professional employees included the following recreational supervisors, social workers, the activities-in-daily-living supervisor, rehabilitation counselors, the job placement specialist, vocational evaluators, work-study guidance instructor aides, house supervisors, and teachers

around Portland, Maine, including Pride Training School employees, but excluding clerical employees, guards, and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, we find that 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:

All nonprofessional employees of the Employer, Abilities and Goodwill, Inc., 803 Forest Avenue, Portland, Maine, at its various facilities in and around Portland, Maine, excluding all professional employees, clerical employees, guards, and supervisors as defined in the Act.¹¹

All professional employees employed by the Employer, Abilities and Goodwill, Inc., 803 Forest Avenue, Portland, Maine at its various facilities in and around Portland, Maine, including teachers at the Pride Training School but ex-

cluding all nonprofessional employees, guards, and supervisors as defined in the Act.¹²

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

CHAIRMAN MURPHY and MEMBER PENELLO, dissenting:

We would not assert jurisdiction over this Employer. As explained in our dissenting opinion in *The Rhode Island Catholic Orphan Asylum, a/k/a St. Aloysius Home*, 224 NLRB 1344 (1976), we adhere to *Ming Quong Children's Center*, 210 NLRB 899 (1974), and would not take jurisdiction over charitable, non-profit, noncommercial institutions. Although the Employer engages in some commercial activities (mainly selling goods refurbished by handicapped individuals), it does so to provide employment for, and to generate funds to service, the handicapped. Thus, its commercial activities are "merely ancillary to its rehabilitative objective." *Epi-Hab Evansville, Inc.*, 205 NLRB 637 (1973). Accord: *Sheltered Workshops of San Diego, Inc.*, 126 NLRB 961 (1960). For that reason, and because the Employer otherwise qualifies as an institution over which the Board would not have asserted jurisdiction under *Ming Quong*, we would dismiss the petition herein.

¹¹ See fn 9, *supra*

¹² See fn 10, *supra*