

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

**ALTERNATIVE COMMUNITY LIVING, INC.,
d/b/a NEW PASSAGES BEHAVIORAL HEALTH
AND REHABILITATION SERVICES¹**

Employer

and

Case 07-UC-093599

**LOCAL 517M, SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU)**

Petitioner

APPEARANCES:

Daniel A. Gwinn and Gregory Bator, Attorneys, of Birmingham, Michigan for the Employer.
Dan Renner, of Saginaw, Michigan for the Petitioner.

DECISION AND ORDER

The Employer (herein referred to as New Passages or the Employer) is a non-profit corporation that provides services and programs for persons with mental, developmental and/or physical disabilities, and the elderly. New Passages is funded primarily through the Community Mental Health boards in the 11 counties in southeast Michigan in which it provides services.

Since 2006, Petitioner has been the exclusive collective bargaining representative of the following unit of employees employed by New Passages:

All full-time and regularly scheduled part-time direct care workers and case managers employed by the Employer in its various group homes located in Bay, Saginaw, Clinton, Eaton, Ingham, Jackson, Washtenaw, Oakland, Macomb, Lapeer, Livingston, and Sanilac counties in the state of Michigan; but excluding all line managers, directors, human resource personnel, nurses, administration assistants, and guards and supervisors as defined in the Act and all other employees.

The parties' initial collective bargaining agreement expired in December 2011. On December 8, 2011, the parties entered into a "Contract Extension Agreement" extending their

¹ The name of the Employer appears as amended at the hearing.

collective bargaining agreement in its entirety until such time as a successor agreement becomes effective.

New Passages employs approximately 350 direct care workers who work under the job title “rehabilitation assistant.” These employees provide personal care and community living support to individuals in various geographically distinct residential settings. The services provided include meal preparation, routine household care, and assistance with daily living activities such as bathing, dressing, and personal hygiene. New Passages requires that rehabilitation assistants have a high school diploma or equivalent and various other practical trainings and certifications. Rehabilitation assistants are directly supervised by “line managers” who are responsible for hiring, scheduling and directing the work of the rehabilitation assistants and addressing employee disciplinary matters.

On August 1, 2011, New Passages became affiliated with Hope Network, a non-profit corporation that also serves disabled persons and the elderly. Hope Network has offices in Grand Rapids, Michigan, and provides a range of services through approximately 47 affiliated organizations with offices and places of business located throughout Michigan.

According to the record testimony, New Passages affiliated with Hope Network for marketing purposes and for alignment opportunities with major health systems. Additionally, Hope Network contracts with an agency that provides payroll services for New Passages. Hope Network also provides New Passages with a software system for the purpose of maintaining client care information. New Passages pays Hope Network for the payroll service and the software system.

Hope Network S.E. (herein referred to as Southeast), is also a non-profit corporation that provides services and programs to disabled persons and the elderly in five counties in southeast Michigan.² Like New Passages, Southeast is affiliated with Hope Network but is incorporated separately. According to Southeast’s Articles of Incorporation, Hope Network is the sole corporate member of Southeast and the two entities share a resident agent and a registered office. Like New Passages, Southeast utilizes and pays Hope Network for payroll services and client care information software.

Southeast employs approximately 130 “residential instructors” who provide services at private residences and at approximately 15 licensed adult foster care homes commonly referred to as group homes, the majority of which are located in Macomb County. Southeast also operates a crisis unit in Macomb County. Residential instructors provide community living support and instruction regarding daily living skills and self-care tasks. Residential instructors are directly supervised by “managers” or “program coordinators” who possess authority related to hiring and employee discipline.

² The record is not clear as to when Southeast began operating. It is nevertheless undisputed that Southeast commenced operations prior to New Passage’s affiliation with Hope Network.

In about August 2011, Jamie Bragg Lovejoy began serving as the Director of Operations for New Passages and Southeast.³ In about February 2012, her title changed to Executive Director. Lovejoy testified that she is responsible for overseeing behavioral health services on the east side of the state. In addition to New Passages and Southeast, Lovejoy also has authority over what she described as a small prevention service known as Connexion, which is also affiliated with Hope Network. Lovejoy testified that she does not engage in day-to-day supervision of the New Passages rehabilitation assistants or the Southeast residential instructors.

Petitioner seeks to clarify the existing unit of New Passages' direct care workers to include all full-time and regular part-time residential instructors employed by Southeast.⁴ Petitioner asserts that since the time of New Passages' affiliation with Hope Network, New Passages, and Southeast have operated as a single employer. Petitioner further argues that the residential instructors share a sufficient community of interest to justify their accretion into the existing unit. The Employer argues that New Passages and Southeast are separate entities, and that in any event, accretion of the residential instructors is not appropriate because they do not share the requisite community of interest with the unit employees.

As discussed below, based on the record and relevant Board law, I reject the Petitioner's arguments for including the Southeast residential instructors in the existing bargaining unit. There is insufficient record evidence to support a finding that New Passages and Southeast operate as a single employer. Even assuming a single employer relationship, accretion is not appropriate here because the residential instructors have an identity separate from, and do not share an overwhelming community of interest with, the unit employees.

A. Board Law

The Board uses the term accretion broadly to describe any "addition of employees into a unit without an election." *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270 fn.3 (2005). Since an accretion deprives employees of their statutory right to choose their bargaining representative, the Board follows a very restrictive policy in applying the accretion doctrine. *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). The Board has found an accretion appropriate "only where the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *E. I. Dupont de Nemours, Inc.*, 341 NLRB 607, 608 (2004). *Compact Video Services, Inc.*, 284 NLRB 117, 119 (1987).

In deciding whether to find an accretion, the Board considers many factors including: (1) integration of operations, (2) centralized control of management and labor relations, (3) geographic proximity, (4) similarity of terms and conditions of employment, (5) similarity of skills and functions, (6) physical contact among employees, (7) bargaining history, (8) degree of separate daily supervision, and (9) degree of employee interchange. *E.I. Du Pont de Nemours, Inc.*, *supra* at 608; *Archer Daniels Midland Co.*, *supra* at 675. Because most cases have some

³ Prior to New Passage's affiliation with Hope Network in August 2011, Lovejoy held the title of Vice-President of Human Resources, Quality and Compliance at New Passages.

⁴ The petitioned for unit appears as amended at hearing.

but not all factors favoring accretion, the Board has identified two “critical” factors needed for an accretion: employee interchange and common day-to-day supervision. *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218; *Mercy Health Services*, 311 NLRB 367 (1993); *Towne Ford Sales*, supra at 312 (1984).

To find that one group of employees has been accreted into another, both groups must be employed by the same employer in a unit appropriate for bargaining under Section 9(b) of the Act. See, for example, *Hunts Point Recycling Corp.*, 301 NLRB 751 at 752 (1991), where the Board found no accretion because: “... these two groups cannot and do not constitute an appropriate unit for the simple reason that they have different employers.”

In determining whether two nominally separate employing entities constitute a single employer, the Board looks to four factors – common ownership, common management, interrelation of operations, and common control of labor relations. No single factor is controlling, and not all need be present. *Dow Chemical Co.*, 326 NLRB 288 (1998). A single-employer relationship will be found only if one of the companies exercises actual or active control over the day-to-day operations or labor relations of the other. *Id.* citing *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965) (per curiam); *Emsing’s Supermarket*, 284 NLRB 302 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), enfd. mem. 626 F.2d 865 (9th Cir. 1980).

B. Application of Board Law to this Case

I find that there is insufficient record evidence to support Petitioner’s contention that New Passages and Southeast operate as a single employer. New Passages and Southeast are separately incorporated. They seek funding separately and there is no evidence of commingled funds or common bank accounts. They maintain separate books and financial records. There is no evidence of any financial transactions or arrangements between the entities, arm’s length or otherwise. There is no evidence of any consolidation of services performed or facilities or individuals served since New Passages became affiliated with Hope Network. There is no evidence of shared or borrowed equipment. The employees of each entity attend separate staff meetings. As discussed more fully below, while the two entities have the same executive director, day-to-day supervision of employees is entirely separate.

In sum, while New Passages and Southeast share operational purposes and an advertised affiliation with Hope Network, the record does not support a finding that one of the entities in question exercises active control over the day-to-day operations or labor relations of the other.⁵

Even assuming arguendo a single employer relationship exists between New Passages and Southeast, I find that the residential instructors do not constitute an accretion to the existing unit based on the lack of evidence regarding the critical factors of employee interchange and common day-to-day supervision.

⁵ There is insufficient record evidence regarding how and by whom labor policy is formulated at the entities in question, to render a judgment as to this critical factor in finding that two entities are operating as a single employer.

The residential instructors and the rehabilitation assistants perform comparable job functions, requiring similar skills and education requirements. Nevertheless, the evidence establishes that there is minimal interchange among the two groups of employees. There is no evidence of any employee being transferred, either permanently or temporarily, following New Passages' affiliation with Hope Network. There is no evidence that the rehabilitation assistants ever fill in for the residential instructors, or vice versa. Out of the nearly 500 employees working in these classifications, only two perform work at both Southeast and New Passages facilities.⁶ This degree of employee interchange does not support a finding of accretion. *Passavant Retirement & Health Center*, supra at 1218 (lack of interchange among groups of employees – regardless of strong similarities in their skills and duties – precluded accretion); see also *Archer Daniels Midland Co.*, supra at 676.

Turning to the second critical element necessary to find a lawful accretion – common day-to-day supervision, I find that the evidence likewise fails to support accretion. The rehabilitation assistants are directly supervised by line managers who are responsible for interviewing, hiring, scheduling and directing the work of the rehabilitation assistants as well as addressing employee disciplinary matters. The residential instructors are similarly directed in their work by an entirely different group of supervisors known as managers or program coordinators. There is no evidence that any supervisor of one group has directed or disciplined an employee of another group, nor is there evidence to suggest that any supervisor even possesses such authority. This separate day-to-day supervision indicates that accretion here is inappropriate. *E.I. Du Pont de Nemours, Inc.*, supra at 609; *Towne Ford Sales*, supra at 312 citing *Renzetti's Market*, 238 NLRB 174, 175 (1978) (the element of common supervision is particularly significant, since the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location).

While there are some community-of-interest factors present in this case that would favor an accretion,⁷ e.g., centralized control of high-level management as represented by Lovejoy's service as executive director of both entities and some integration of operations as represented by the common payroll and computer systems, I find that these factors favoring an accretion do not outweigh the "critical factors" that militate against such a finding.

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record,⁸ I find and conclude as follows:

⁶ Significantly, in each instance the employees' concurrent employment with Southeast and New Passages pre-dates New Passages' affiliation with Hope Network.

⁷ Again, assuming arguendo a single employer relationship,

⁸ The Employer timely filed a brief, which was carefully considered. The Petitioner emailed its brief directly to the hearing officer. No hard copy nor e-filed brief was received. Pursuant to the Board's Rules and Regulations, 102.114(a), and General Counsel OM 07-07 (Revised), filing with the Regional Director is accomplished through regular mail, hand delivery, or electronically filing through the Agency's website. Accordingly, the Petitioner's brief was not considered.

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.
3. The labor organization involved claims to represent certain employees of Hope Network S.E.
4. The full-time and regular part-time residential instructors employed by Hope Network S.E. are excluded from the unit because they are employed by a different employer and, in any event, they lack an overwhelming community of interest with the unit employees.

Accordingly, the Petitioner's request to clarify the stipulated bargaining unit to include full-time and regular part-time residential instructors employed by Hope Network S.E. is denied, and the petition is dismissed.

Dated at Detroit, Michigan, this 25th day of January 2013.

(SEAL)

/s/ Dennis R. Boren

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RIGHT TO REQUEST REVIEW

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, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **February 8, 2013**. The request may be filed electronically through the Agency's website, www.nlr.gov,⁹ but may **not** be filed by facsimile.

⁹ To file a Request for Review electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.