

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**SOUTHLAKE COMMUNITY MENTAL
HEALTH CENTER, INC. D/B/A
REGIONAL MENTAL HEALTH CENTER**

Employer

and

**SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 73,
CTW, CLC**

Case 13-RC-123057

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.

Upon the entire record in this proceeding, I find:

1. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that Southlake Community Mental Health Center, Inc. d/b/a Regional Mental Health Center (“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
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
4. The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.

¹ The Employer is an Indiana non-profit corporation engaged in the business of providing mental health services. During the past calendar year, a representative period, the Employer has derived gross revenues in excess of \$250,000. During that same period, the Employer purchased and/or received goods, products and materials valued in excess of \$5,000 at its Lake County, Indiana facilities directly from points outside the State of Indiana.

5. There is no contract bar to this proceeding.
6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

I. ISSUES

There were no litigable issues presented at the hearing.²

II. DECISION

Pursuant to the filing of the petition herein, a hearing officer of the Board conducted a hearing on March 6, 2014, at which the Employer and the Petitioner were given the opportunity to present evidence, including witnesses. The parties did not present any witnesses or other evidence.

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining units:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

Included: All full-time and regular part-time direct care professional employees (Activity/Recreational Specialists, Behavioral Health Specialists, Clubhouse Specialists, Emergency Services Specialists, Intake Workers, Case Managers, Outpatient Nurses, Staff Nurses, Social Workers, Therapists) employed by the Employer at its facilities currently located at 8555 Taft Street, Merrillville, Indiana; 1441 E. 84th Place, Merrillville, Indiana; 2490 Central Avenue, Lake Station, Indiana; 8177 Ralston Court, Crown Point, Indiana; 110 E. 73rd Street, Merrillville, Indiana; 107 W. 79th Street, Merrillville, Indiana; 7403 Cline Avenue, Schererville, Indiana; and 4950 W. 82nd Court, Crown Point, Indiana.

Excluded: All direct care non-professional employees, housekeeping (Housekeeper), maintenance (Maintenance Worker), transportation (Driver), and other support staff who function in a non-direct care capacity, managerial, office clerical employees (Administrative Assistants, Executive Assistants, Clinical Assistants, Receptionists, Clerks), and confidential employees, and guards and supervisors as defined in the Act.

VOTING GROUP – UNIT B (NON-PROFESSIONAL UNIT)

Included: All full-time and regular part-time direct care non-professional employees (Addiction Technicians, Mental Health Technicians, Medical Assistants) employed by

² At the hearing, the parties presented their positions on whether a mail ballot was appropriate in this case. The mode of an election is an administrative decision to be made by the Regional Director and not litigable. See *CEVA Logistics U.S., Inc.*, 357 NLRB No. 60, slip op. at 2 (2011) and Sec. 11301.2 of the NLRB Casehandling Manual (Part Two) Representation Proceedings .

the Employer at its facilities currently located at 8555 Taft Street, Merrillville, Indiana; 1441 E. 84th Place, Merrillville, Indiana; 2490 Central Avenue, Lake Station, Indiana; 8177 Ralston Court, Crown Point, Indiana; 110 E. 73rd Street, Merrillville, Indiana; 107 W. 79th Street, Merrillville, Indiana; 7403 Cline Avenue, Schererville, Indiana; and 4950 W. 82nd Court, Crown Point, Indiana.

Excluded: All housekeeping (Housekeeper), maintenance (Maintenance Worker), transportation (Driver), and other support staff who function in a non-direct care capacity, managerial, office clerical employees (Administrative Assistants, Executive Assistants, Clinical Assistants, Receptionists, Clerks), and confidential employees, and guards, professional employees and supervisors as defined in the Act.

The following classifications are neither included nor excluded from the appropriate collective-bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition:

Food Service Workers (Dieticians, Dietary Technicians).

III. CONCLUSION

Based on the foregoing and the entire record herein, I find that it is appropriate to conduct an election in the units set forth above.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret-ballot election among the employees in the units found appropriate above. The petitioned-for bargaining units include both professional employees within the meaning of Section 2(12) of the Act and non-professional employees. Section 9(b)(1) of the Act prohibits the Board from including professional employees in a unit with employees who are not professional employees, unless a majority of the professional employees vote for inclusion in such a unit. *Sonotone Corp.*, 90 NLRB 1236 (1950); *Pratt & Whitney*, 327 NLRB 1213, 1217-1218 (1999). I am directing a self-determination election to permit the professional employees in the unit to first determine whether or not they wish to be included in the same unit with the nonprofessional employees.

The following two questions shall appear on the ballot for Voting Group A (Professionals):

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?

To which the choice of answers will be "Yes" or "No."

2. Do you wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 73, CTW, CLC?

To which the choice of answers will be “Yes” or “No.”

The single question on the ballot for Voting Group B shall be the same as Question 2 for Voting Group A.

If a majority of the professional employees voting in Voting Group A vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Voting Group B to decide the question concerning representation for the overall unit consisting of the employees in Voting Groups A and B. If on the other hand, a majority of the professional employees voting in Voting Group A do not vote “Yes” to the question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

If a majority of the professional employees in Voting Group A elect to be included with non-professionals in a unit for collective bargaining, the Combined Unit for the purpose of certification of representative or of results of the election shall be:

Included: All full-time and regular part-time direct care professional employees (Activity/Recreational Specialists, Behavioral Health Specialists, Clubhouse Specialists, Emergency Services Specialists, Intake Workers, Case Managers, Outpatient Nurses, Staff Nurses, Social Workers, Therapists) and all full-time and regular part-time direct care non-professional employees (Addiction Technicians, Mental Health Technicians, Medical Assistants) employed by the Employer at its facilities currently located at 8555 Taft Street, Merrillville, Indiana; 1441 E. 84th Place, Merrillville, Indiana; 2490 Central Avenue, Lake Station, Indiana; 8177 Ralston Court, Crown Point, Indiana; 110 E. 73rd Street, Merrillville, Indiana; 107 W. 79th Street, Merrillville, Indiana; 7403 Cline Avenue, Schererville, Indiana; and 4950 W. 82nd Court, Crown Point, Indiana.

Excluded: All housekeeping (Housekeeper), maintenance (Maintenance Worker), transportation (Driver), and other support staff who function in a non-direct care capacity, managerial, office clerical employees (Administrative Assistants, Executive Assistants, Clinical Assistants, Receptionists, Clerks), and confidential employees, and guards and supervisors as defined in the Act.

The mode, date, time and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such

strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **March 19, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, or by facsimile transmission at 312-886-1341. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to

³ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. 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. This request must be received by the Board in Washington by **March 26, 2014**.

DATED at Chicago, Illinois this 12th day of March 2014.

/s/ *Peter Sung Ohr*

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60604-1443