

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

JERSEY CITY MEDICAL CENTER,

Public Employer-Petitioner,

-and-

DISTRICT 1199-J, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, RWDSU, AFL-CIO,

DOCKET NO. CU-79-4

Employee Organization,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, AFL-CIO,
LOCAL 2254, COUNCIL 52,

Employee Organization.

SYNOPSIS

The Director of Representation, in affirming the recommendations of the Hearing Officer, determines that employees of the Medical Center holding the title of Community Mental Health Worker-Emergency Room, are professional employees, and employees holding the titles of Counselors and Team Leaders are not professional employees, as that term is defined by N.J.A.C. 19:10-1.1. The Director clarifies the unit of all full-time and regular part-time professional employees represented by District 1199-J as including the title of Community Mental Health Worker-Emergency Room and clarifies the unit of all blue and white collar employees represented by AFSCME as including the titles of Counselors and Team Leaders.

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LOCAL 2254, COUNCIL 52,

Employee Organization.

Appearances:

For the Public Employer-Petitioner
Lamb, Hutchinson, Chappel, Ryan & Hartung, Esqs.
(Joseph T. Ryan, of Counsel)

For District 1199-J
Greenberg, Margolis & Ziegler, P. A.
(Philip Freedman & Arthur S. Kramer, of Counsel)

For AFSCME, Local 2254, Council 52
Mr. Vincent Griesi, Representative

DECISION

On August 7, 1978, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Jersey City Medical Center (the "Center")

raising a question concerning the composition of collective negotiations units of professional and nonprofessional employees of the Center represented by District 1199-J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO ("District 1199-J") and American Federation of State, County, and Municipal Employees, AFL-CIO, Local 2254, Council 52 ("AFSCME"), respectively. The Center seeks a determination as to the appropriate unit identification of three employee titles: (1) Community Mental Health Worker-Emergency Room; (2) Counselor-adult partial hospitalization unit; (3) Team Leader-children's partial hospitalization unit.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Bruce D. Leder on December 11, 1978, at which all parties were afforded an opportunity to present evidence, to examine and to cross-examine witnesses, and to argue orally. The Center and District 1199-J filed post-hearing briefs on February 20, 1979 and February 22, 1979, respectively. AFSCME did not file a brief. On May 30, 1979, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. The Center and District 1199-J filed exceptions to the Report on June 25, 1979 and June 28, 1979, respectively. AFSCME has not excepted to the Report. Neither the Center nor District 1199-J has filed answering briefs with respect to the other's exceptions.

The undersigned has considered the entire record, including the Hearing Officer's Report and Recommendations, the transcript

and exceptions, and on the basis thereof finds and determines as follows:

1. The Jersey City Medical Center is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. District 1199-J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, and American Federation of State, County, and Municipal Employees, AFL-CIO, Local 2254, Council 52, are employee representatives within the meaning of the Act and are subject to its provisions.

3. On November 13, 1974, AFSCME was certified as exclusive representative of a unit of all blue and white collar employees employed by the Center.

4. On March 15, 1978, District 1199-J was certified as the exclusive representative of a unit of all full-time and regular part-time professional employees employed by the Center.

5. The instant Petition arises from challenges by the Center to certain voters at the election which preceded the March 15, 1978 certification by the Commission.

6. The titles in question are: Community Mental Health Worker-Emergency Room, Counselor-adult partial hospitalization unit, and Team Leader-children's partial hospitalization unit. The parties have stipulated that the issue placed before the

Commission is: whether the employees of the Medical Center holding these titles are "professional employees," as that term is defined in N.J.A.C. 19:10-1.1 and, therefore, included in the professional unit represented by District 1199-J, or whether they are nonprofessional employees and included in the blue and white collar unit represented by AFSCME.

Accordingly, there is a question concerning the composition of collective negotiations units, a dispute exists, and the matter is properly before the undersigned for determination.

7. N.J.A.C. 19:10-1.1, in defining a "Professional employee," states as follows:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

The Hearing Officer found that a Community Mental Health Worker interviews certain patients who enter the Center through the

Emergency Room. The Worker evaluates the patient and makes independent judgments and referrals as to the type of hospital service or outside agency service required. Since the function is performed in the Emergency Room, the Community Mental Health Worker is confronted by patients with a wide variety of problems. This work is performed virtually without supervision, and other clearly professional medical employees of the Center rely on the Worker's recommendations. All but one of the Workers have achieved either bachelor or masters degrees in psychology. The remaining Worker is matriculating toward a bachelors degree in psychology. The Center provides an eighty hour training session for all Workers.

In In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), the undersigned determined that certain Aides were professional employees. The Hearing Officer, at page 7, described the Aides' duties:

In connection with the intake interviews, which in part, involve assisting the patient with the completion of forms, the Aide takes a case history and submits a recommendation (made in writing and discussed at regular staff meetings) as to whether the patient should enter the program and what type of treatment may prove beneficial. The Aides' recommendations require acceptance or acquiescence by the PH Coordinator and/or Medical Director before they are implemented, but the interview and recommendations are conducted and formulated independently by the Aide.

While in Somerset, the Mental Health Aides did perform additional professional functions, the undersigned finds that the

duties of Community Mental Health Workers are substantially similar to the above cited duties of Aides which were found to be professional in nature. Moreover, the Somerset Mental Health Aides, as the Community Mental Health Workers herein, were not required to have bachelor degrees in psychology or social work and could substitute equivalent combinations of education and experience.

The duties of Community Mental Health Workers are predominately intellectual in character, involve the consistent exercise of discretion and judgment and require knowledge of an advanced nature in the field of social sciences. The undersigned, therefore, agrees with the Hearing Officer and adopts his recommendations that Community Mental Health Workers are "professional employees" and, thus, included in the professional unit represented by District 1199-J.

The Counselor's primary function is to help patients adjust to normal living situations by teaching them cooking, sewing, arts, crafts, and how to deal with banks, supermarkets and other experiences of everyday life. Similarly, Team Leaders help child patients to live a normal childhood by teaching them carpentry, arts, crafts or acting. While the opinions of Counselors and Team Leaders are sought, it is apparent that other clearly professional employees exercise discretionary judgment in determining further treatment.

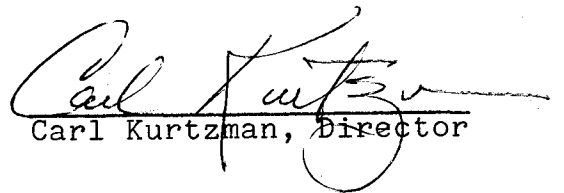
Accordingly, the undersigned finds, in agreement with the Hearing Officer, that while these employees do deal with

patients in a variety of situations, they do not exercise discretionary judgment concerning the treatment of patients, their duties are not sufficiently intellectual in nature, and do not require the type of advanced knowledge necessary to bring them within the definition of "professional employees."

The undersigned, therefore, adopts the Hearing Officer's recommendation that Counselors and Team Leaders are not professional employees and are, thus, included in the blue and white collar unit represented by AFSCME.

For the reasons set forth above, the professional unit represented by District 1199-J is clarified as including the title of Community Mental Health Worker and the blue and white collar unit represented by AFSCME is clarified as including the titles of Counselor and Team Leader. ^{1/} These clarifications are effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 28, 1979
Trenton, New Jersey

^{1/} The parties have stipulated that employees who are determined by the Commission to be professional employees are included in the professional unit represented by District 1199-J and that employees determined by the Commission to be nonprofessional employees are included in the blue and white collar unit represented by AFSCME.

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AMERICAN FEDERATION OF STATE, COUNTY,
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SYNOPSIS

In a Clarification of Unit Petition, a Commission Hearing Officer finds that the community mental health worker, emergency room, is a professional job title, and that counselor and team leader are not professional job titles. Therefore, it is recommended that the unit represented by District 1199J be clarified to include the title of community mental health worker, emergency room, and that the unit represented by AFSCME be clarified to include the titles of counselor and team leader.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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For District 1199J
Greenberg, Margolis and Ziegler, PA
(Philip Freedman and Arthur S. Kramer, of Counsel)

For A.F.S.C.M.E.
Vincent Griese

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On August 7, 1978, a Clarification of Unit Petition was filed with the Public Employment Relations Commission by the Jersey City Medical Center (the "Center"). The petition sought to clarify the unit placement of three titles.

District 1199J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO ("District 1199J") which currently represents a unit of all pro-

professional employees employed by the Center contends that these titles are professional employees within the meaning of the Act and are appropriately included in the unit District 1199J represents. AFSCME, AFL-CIO, Local 2254, ("AFSCME") which currently represents a unit of all blue and white collar employees employed by the Center alleges that if these titles are not professional titles, then the titles are appropriately included in the unit AFSCME represents.

Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on December 11, 1978. During the hearing, all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. In accordance with the request of District 1199J and the consent of the Center and AFSCME, an extension to file briefs was granted. All briefs were filed by February 22, 1979. AFSCME did not file a brief.

Upon the entire record in this processing, the Hearing Officer finds

(1) District 1199J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, and AFSCME, AFL-CIO, Local 2254 are employees organizations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act") and is subject to its provisions.

(2) The Jersey City Medical Center is the employer of the employees involved herein, is a public employer within the meaning of the Act and is subject to its provisions.

(3) The titles in question are (a) community mental health worker, emergency room, (b) counselor, adult partial hospitalization unit and (c) team leader, children's partial hospitalization unit.

(4) On March 15, 1978, District 1199J was certified as exclusive representative of a unit of all full-time and regular part-time professional employees employed by the Center.

(5) On November 13, 1974, AFSCME was certified as exclusive representative of a unit of all blue and white collar employees employed by the Center.

BACKGROUND

Individuals who hold the title of community mental health worker, emergency room (herein ER worker) perform their duties and functions in the emergency room. Patients who enter the emergency room whether for physical or mental problems are initially given a physical examination by a medical doctor. At the discretion of the medical doctor, the patient is referred to the ER worker.

The ER worker interviews the patient for "the purpose of evaluating mental status, family background, development history, and medical history."^{1/} The ER worker evaluates this information and formulates a recommendation. The types of recommendation include referral of the patient to another service of the hospital (e.g. in-patient hospitalization, out-patient clinic, psychiatric unit) or referral to a community agency (e.g. Planned Parenthood). Final decisions with respect to a patient are not made by the ER worker, but are discussed with the emergency room doctor or with a psychiatrist if the recommendation is to admit the patient to the hospital.

The Center provides an 80-hour training session for the ER workers. In addition, there are once a week staff meetings to discuss problems. The educational background of the ER workers ranges from matriculating towards a bachelor of arts degree in psychology to having received a masters degree in psychology.^{2/} The official job description^{3/} states that prior work experience with psychiatric patients is preferred. Other factors considered are life experience and educational background in a health related field.

The second title is counselor, adult partial hospitalization unit (herein Counselor).^{4/} The staff of the adult partial hospitalization unit consists

^{1/} Tr. p. 62.

^{2/} Tr. p. 127.

^{3/} Exhibit J-2.

^{4/} This unit of the hospital provides treatment for psychotic patients from 9a.m. - 3:30 p.m.

of a director, a psychologist, two psychiatric nurses, a vocational- rehabilitation counselor, an art therapist and three counselors. ^{5/} The staff meets twice a week to discuss specific problems and to plan activities. The opinions of the counselors are solicited to determine further treatment. Final decision with respect to treatment are not made by the counselors.

The counselors, as do the nurses, the therapist and the vocational rehabilitation counselor, have a caseload of ten to fifteen people. The responsibility attached to this caseload is to record weekly observations of the patients. With respect to all the patients and not limited to an individual's caseload, counselor conduct activities such as cooking, sewing, arts and crafts, and photography. Additionally, counselors might take patients to the bank or supermarket to help them adjust to everyday living. Counselors have also conducted visits to patients' homes to observe the family situation.

The testimony of various witnesses leads to a certain amount of discrepancy concerning the conduct of group therapy sessions. The Director, Dr. Candela, conceded that counselors do have group meetings of patients, ^{6/} but he would not characterize them as group therapy. On the other hand, Edith Simkins, a counselor, testified that the purpose of these group meetings is to prepare the patients to become functioning members of the community, and as a result, is therapeutic. ^{7/}

The job description does not require any specific educational background, but prior experience with psychiatric patients is required. This job was advertised in the New York Times newspaper and it stated that the Center was seeking an individual with "some college background." ^{8/} Of the three counselors, only one

^{5/} A fourth position as counselor is currently vacant.

^{6/} Tr. p. 49.

^{7/} Tr. p. 136.

^{8/} Exhibit R-1.

individual has some American college background.^{9/} The Counselors receive on the job training for one month. This is taught by the staff of the adult partial hospitalization unit which might lead to an experienced counselor teaching a recently hired counselor.

The third title is team leader, children's partial hospitalization unit. The staff consists of a coordinator, a staff psychiatrist, a primary therapist, a psychiatric nurse, two teachers and four team leaders. In most respects, team leaders have very similar functions that counselors do. Instead of adults, the patients are children who have been referred to the unit by the school the child attends. There is a relationship with the Jersey City Board of Education which provides two teachers who teach academic subjects. The team leaders provide instruction of non-academic subjects^{10/} in a group setting similar to activities conducted by counselors with adults.

The team leaders, as do the counselors, have a caseload. This requires that a team leader record observations of five or six children which will be utilized in determining further treatment. There are bi-weekly staff meetings at which a treatment plan is developed for each child. The team leader has input in this process.

The job requires only a high school diploma. Some of the team leaders have bachelor's degrees.

POSITION OF THE PARTIES

The Center alleges that none of the employees in these three titles are professional employees. Citing the N.J. Supreme Court's directive to consider federal precedent,^{11/} the Center refers to the National Labor Relations Board cases where employees with similar duties to the duties of the three titles herein

^{9/} One counselor has an associate of science degree and is working toward a BA in psychology. Another has a teaching certificate from Cuba, and the third has a high school diploma.

^{10/} The activities include carpentry and recreation.

^{11/} Lullo v. International Association of Fire Fighters, 55 NJ 409 (1970).

were found not to be professional employees. ^{12/}

It is the position of District 1199J that the employees in the three disputed titles are professional employees. District 1199J alleges that the duties of all three jobs fall within the definition of professional employees within the meaning of the Act. ^{13/}

AFSCME contends that if these employees are professional employees, then the titles are appropriately in the unit currently represented by District 1199J. If not, AFSCME should represent these employees.

DISCUSSION

The instant issue is whether the employees in the three disputed titles are professional employees within the meaning of the Act. ^{14/} The definition in the Act of a professional employee establishes three elements. These elements are that the work performed is (1) intellectual and varied (2) requires that consistent exercise of discretion and judgement and (3) requires knowledge of an advanced nature in a particular field.

The nature of the responsibilities and the relative independence in the performance of their jobs leads to the finding that the ER workers are professional employees. The ER workers make independent judgements with respect to treatment of patients. ^{15/} Their work is virtually unsupervised. They are confronted with patients with a wide variety of problems. After interviewing the patients, the ER worker must make an independent judgement as to treatment. The ER worker must decide whether to refer the patients to one of the services of the hospital or to an outside agency. The ER worker, at times, suggests to the emergency room doctor the prescription of medication. ^{16/} The only time a judgement as to further

^{12/} Lakeshore Manor Inc., 225 NLRB 908 (1976), Sodat Inc., 218 NLRB 1327 (1975), Barnert Memorial Hospital, 217 NLRB 775 (1975).

^{13/} N.J.A.C. 19:10-1.1

^{14/} Id.

^{15/} Tr. pp. 63, 64.

^{16/} Tr. pp. 122, 123.

treatment by an ER worker receives serious scrutiny is if the recommendation is to admit the patient to the hospital. That decision is reviewed merely by a telephone conversation between the ER worker and a psychiatrist. The psychiatrist rarely overrules the decision to admit the patient without first interviewing the patient personally. ^{17/}

Though not required by the Center, all but one of the ER workers has at least a bachelor's level degree in psychology. ^{18/} This fact cannot be disregarded especially in light of the fact that prior to the fall of 1978, a master's level psychologist performed the functions that the ER workers currently do. ^{19/} The functions performed by the ER workers certainly requires advanced knowledge. The judgements made involve an analysis of the information gathered by the ER worker. It is difficult to imagine how an ER worker without any training could make a judgement as to the treatment of a patient. The information gathering might be standardized (e.g. the questions asked of a patient), yet, the ability to analyze that information and determine a course of treatment requires some advanced training.

Therefore, due to the variety of patients' problems the ER workers face, the independent judgement they exercise in relation to these problems, and their educational background, the undersigned finds that the ER workers are professional employees and that the unit represented by District 1199J should be clarified to include this title.

^{17/} Tr. pp. 110, 111.

^{18/} The one ER worker who does not have a degree is working toward a degree in psychology.

^{19/} Tr. p. 65.

The job functions of the counselors and the team leaders are quite similar. Both work in conjunction with other professionals (e.g. nurses, teachers, ^{20/} psychiatrists). Both conduct activities which have some therapeutic value and are responsible for recording data to aid in further treatment of the patients.

From the record as a whole, there is no doubt that the counselors in the adult unit and the team leaders in the children's unit spend most of the time in direct contact with the patients.

Yet, the undersigned finds that the role of the counselors and team leaders is to gather information and to monitor progress. While they do have input into weekly staff meetings, the counselors and team leaders are not making final decisions as to treatment, nor do they work without supervision.

In the children's unit, the children are taught daily by certified teachers and are seen by a primary therapist at least one per week. ^{21/} The remainder of the time, the team leaders are responsible to conduct activities. District 1199J

contends that these activities have a therapeutic value and that this therapeutic quality of the work performed by the team leaders is the type of work performed by a professional employee. Yet, it appears that every activity has therapeutic value. The therapeutic value of work performed does not, in and of itself, raise the work performed to the level of a professional worker. In fact, Carol Turano, Coordinator of the Children's Partial Hospitalization and a witness for District 1199J, testified that routine administration of medication by nurses has a therapeutic ^{22/} value.

^{20/} Dr. Hill, Administrative Director of Child Psychiatry, testified that the team leaders conduct activities which are therapeutic, T. 33. Dr. Candela, Director of the Adult Partial Hospitalization, similarly testified with respect to the counselors, T. 56.

^{21/} Tr. p. 98.

^{22/} Tr. p. 99.

The work performed by the team leaders does not appear to require knowledge of advanced nature. The knowledge required is the ability to conduct an activity. Team leaders teach activities in fields of their own knowledge. Teaching children, carpentry, arts and crafts, or acting is not the type of advanced knowledge required by the Act. This is not to say that the functions of the team leaders is not difficult, but the work performed does not warrant a finding that the team leaders are professional employees.

Likewise, the undersigned finds that the counselors are responsible for monitoring progress, rather than exercising judgement with respect to the adults in their unit of the hospital. Because of the great amount of contact with the patients, the counselors, as do the team leaders, are in a critical position to observe and record the actions and progress of the patients. The undersigned, though, finds that these duties do not require the exercise of judgement by a professional employee as envisioned by the Act. The counselors are responsible for helping the patients to cope with every day living. For example, they take the patients to supermarkets, to banks and to apply for welfare assistance. They also teach cooking and sewing classes. Certainly, the recording of these events by the counselors aid in determining further treatment, but the counselors do not have the authority to make independent judgements. The work performed does not require advanced knowledge. In fact, none of the current employees has any education or training in this field.

In conclusion, it is noted that the work performed by the counselors and team leaders is varied. It is acknowledged that the counselors and team leaders are an important cog in their respective units of the hospital. By the very fact that the work with psychiatric patients, it is obvious that they must confront various problems and crises. This might qualify the work as varied as required by the definition of a professional employee; but, the undersigned finds that the other two elements, the exercise of discretionary judgement and the requirement of advanced knowledge, are lacking. The bulk of the work consists of the direction of activities

and the recording of observations. Though these are key responsibilities with respect to the care of the patients, this work is routine and does not meet all the requirements of the definition of a professional employee.

RECOMMENDATIONS

For the above stated reasons, the Hearing Officer recommends that the unit currently represented by District 1199J, be clarified to include the title of community mental health worker, emergency room. It is further recommended that the unit currently represented by AFSCME be clarified to include the titles of counselor and team leader .

Respectfully submitted,



Bruce D. Leder
Hearing Officer

DATED: May 30, 1979
Trenton, New Jersey