

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
SOUTH METRO HUMAN SERVICES,)	
)	
Employer,)	
)	
and)	Case No. 18-RC-17754
)	
AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES)	
COUNCIL 5,)	
)	
Petitioner.)	

South Metro Human Services' Exceptions to the Hearing Officer's Report and Recommendation On Challenges and Objections

Pursuant to 102.69(c)(2) of the Board's Rules and Regulations, the Employer, South Metro Human Services, respectfully excepts to the following findings and conclusions of Hearing Officer Joseph Bornong in his Report and Recommendation on Challenged Ballots and Objections in Case 18-RC-17754, which issued on June 17, 2011:

Exception 1: While the Hearing Officer Properly Concluded That the Job Classification of Mental Health Counselor II (MHC II) Is Included in the Stipulated Professional Unit, The Hearing Officer Erred in Findings and Conclusions Resulting in the Recommendation that Petitioner's Challenges to the Ballots of MHC II's Samantha Hofmaster and Cindy Van Heise Should Be Sustained. The Hearing Officer's Recommendation is Not Supported by Applicable Law or Facts in the Record.

- a) The Hearing Officer's erred in finding that South Metro "prefers" MHC II's to have a Bachelor's degree in a related field. The record evidence establishes that a Bachelor's degree is required and exceptions to this requirement are limited to specific circumstances, and that Ms. Hofmaster and Ms. Van Heise fall within this limited exception.
- b) The Hearing Officer erred in finding that "most or all" of Ms. Hofmaster's and Ms. Van Heise's duties are not intellectual and varied in character, and improperly concluded that Ms. Hofmaster's and Ms. Van Heise's work is not predominantly intellectual and varied in character.

- c) The Hearing Officer failed to consider the record evidence establishing that Ms. Hofmaster's and Ms. Van Heise's job duties require consistent exercise of professional discretion and judgment, and erred in concluding that Ms. Hofmaster's and Ms. Van Heise's work does not involve consistent exercise of professional discretion and judgment.
- d) The Hearing Officer erred insofar as he determined that a general incident reporting protocol and individual client treatment plans "too closely circumscribe" the independent judgment and discretion required for Ms. Hofmaster and Ms. Van Heise to be considered professionals.
- e) The Hearing Officer unduly emphasized development of client treatment plans as "crucial" to finding that Ms. Hofmaster and Ms. Van Heise are professionals, and erred in finding that MHC II's have "no responsibility in the development of client plans"; the record evidence establishes that MHC II's are responsible for continually assessing a plan's effectiveness and for recommending changes or improvements to clients' plans.
- f) The Hearing Officer failed to distinguish administrative burdens from limitations on the exercise of professional judgment and discretion, improperly conflating the former with the latter.
- g) The Hearing Officer erred in finding that South Metro only "generally" distinguishes between Mental Health Counselor I's (MHC I's) and MHC II's. The record evidence establishes that MHC II is a separate job class from MHC I, and that MHC II's serve a different, higher-need population and thus require different, higher-level skills and qualifications.
- h) The Hearing Officer erred in finding that "crisis duty responsibilities" for MHC I's and MHC II's are distinguished only by "frequency." The record evidence establishes crises differ not only due to frequency but also because of their nature and severity. MHC II's respond frequently to crises of a clinical nature with severe consequences.

Exception 2: The Hearing Officer erroneously refers to phone lists for South Metro's Adult Foster Care and Community Foundations Programs as "schedules."

Exception 3: While the Hearing Officer Properly Concluded that On-Call Employees Should Be Excluded From the Bargaining Unit, The Hearing Officer Improperly Relied Upon Perceived Employer Fault to Conclude That Employer's Contingent Objection Concerning Disenfranchisement of On-Call Employees Should Be Overruled If On-Call Employees Are Included in the Bargaining Unit.

Exception 4: While the Hearing Officer Properly Concluded that Petitioner's Objections Should Be Overruled, the Hearing Officer Erred in Summarizing the Record Evidence Concerning Wage Increases.

- a) The Hearing Officer incorrectly stated that testifying employee witnesses did not remember the rationale for wage increases; the record evidence establishes that employees who testified remembered the rationale given for the increases.
- b) The Hearing Officer erred in finding that “past practice is not supportive of Employer’s position”; the record evidence of past practice supports South Metro’s rationale for granting wage increases to employees in specific programs.

Based on the arguments set forth in the accompanying Brief in Support of the Employer’s Exceptions to the Hearing Officer’s Report and Recommendation, the Employer urges the Board to:

- 1) Reject the challenges to the Ballots of Samantha Hofmaster and Cindy Van Heise and Order Those Ballots to be Opened and Counted;
- 2) Adopt the Hearing Officer’s Recommendation With Regard to All Other Challenges;
- 3) Adopt the Hearing Officer’s Recommendation With Regard to All Petitioner’s Objections;
and
- 4) Issue an Appropriate Certification After Compilation of a Revised Tally.

ALTERNATIVELY, If the Board should find that on-call employees must be included in the petitioned-for bargaining unit, the Employer asks for the following relief:

- A. Order that the Election in Case 18-RC-17754 be set aside and a new election conducted in which all on-call employees are given an opportunity to vote.

DATED: July 1, 2011

**GRAY, PLANT, MOOTY, MOOTY &
BENNETT, P.A.**

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