

Mercy Health Services North, Mercy Hospital-Cadillac and Local 79, Service Employees International Union, AFL-CIO, Petitioner. Case 7-RC-19970

June 28, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
RAUDABAUGH AND DEVANEY

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of are attached). The request for review is denied as it raises no substantial issues warranting review.¹

MEMBER DEVANEY, dissenting in part.

I would permit the biomedical technicians to vote under challenge.

¹ Review was requested of the Regional Director's findings that the following employees were not technical employees: biomedical engineers I and II; renal dialysis technician; physical therapy technicians; and health information technicians.

APPENDIX

DECISION AND DIRECTION OF ELECTION

The Employer is an acute care hospital located in Cadillac, Michigan. The only employees represented for purposes of collective bargaining are the registered nurses who are represented by Petitioner. The Petitioner seeks to represent a unit of all full-time and regular part-time technical employees employed by the Employer at its 400 Hobart Street, Cadillac, Michigan facility. The Employer does not dispute that the unit is appropriate. The parties stipulated to the inclusion of various classifications encompassing about 105 employees,³ but the Petitioner disagrees with the Employer's contention that the following job classifications are technical employees and therefore included within the appropriate unit:

1. Biomedical Engineering Technician I
2. Biomedical Engineering Technician II
- . . .
4. Renal Dialysis Technician
- . . .
7. Health Information Tech
- . . .
9. Physical Therapy Tech

Biomedical Engineering Technicians I and II

Biomedical Engineering Technicians (BET) I and II repair and maintain medical equipment involved in patient care, such as IVAC controllers and defibrillators and assist the nursing staff in the operation and use of such equipment. The BETs are involved in routine preventative maintenance on

³ The stipulated classifications are set forth in the appropriate unit described below.

medical equipment and troubleshooting problems in such equipment that arise. About 20 percent of the preventative maintenance performed by BETs is routine, while the remainder requires subjective use of judgment, education, and skills.

A BET I or II is required to have a minimum educational level of an associate's degree; a BET I is required to have 3 to 5 years of experience, and a BET II is required to have 5 to 7 years of experience. BETs I and II perform the same job duties except that a BET II also maintains and repairs the Employer's computer cable system and the internal telephone system; a BET I may assist in these functions but does not perform such duties independently. The current job descriptions for BET I and II both require certification in addition to the educational and experience requirements. Certification is available through the American Association of Medical Instrumentation. There are currently two employees working as BETs, neither of whom are certified although the record reflects that they are currently studying for the certification exam.

The BETs work out of an office and shop in the main hospital area which is adjacent to an area utilized by the environmental services or housekeeping employees. The BETs are supervised by the environmental services manager who also supervises housekeeping employees and maintenance employees, such as painters, electricians, and carpenters, who work in garages separate from the main hospital building. BETs work from 7 a.m. to 3:30 p.m. and from 8 a.m. to 4:30 p.m. unlike maintenance employees who work three shifts. All employees are eligible to receive benefits on the same basis, which are dependent on whether the employee is considered full time, part time, or casual. Hourly wage rates of BET I are at pay grade level 20, ranging from \$10.60 to \$14.03, while those of a BET II are at pay grade level 22, ranging from \$11.68 to \$15.48.

Although BETs work different hours than others who may be termed skilled maintenance employees, similar employees described by the Board as "highly skilled employees who repair and calibrate sophisticated hospital equipment" have been included in a skilled maintenance unit rather than a technical unit. In *San Juan Medical Center*, 307 NLRB 117 (1992), the Board rejected the contention that biomedical technicians were technical employees because of their high skill level and stated that the Board had contemplated that skilled maintenance units would include employees of varying degrees of skills. Like the biomedical technicians discussed in *San Juan Medical*, the BETs at issue have no direct patient care duties and have skills more similar to those traditionally included in skilled maintenance units. They share common supervision with other maintenance employees. Accordingly, I conclude that BET I and II are not properly included in the technical unit.

Chief Service Technician and Renal Dialysis Technician

There are approximately 15 employees in the renal dialysis unit including 1 social worker, 1 clerk, 1 chief service technician (CST), 1 renal dialysis technician (RDT), 1 nurse extern, 5 licensed practical nurses (LPN), and 5 registered nurses (RN). In performing patient care duties, the employees work under the supervision and direction of an RN.

The chief service technician inspects and tests equipment in the dialysis unit, calibrates such equipment, and performs

preventative maintenance and repairs as needed; the CST also trains staff in the use of equipment. The CST learns to monitor and fix equipment through the vendors of such equipment. The CST also performs direct patient care duties in initiating the dialysis procedure and monitoring patients through the procedure. About 50 percent of the chief service technician's time is spent in patient care duties in the dialysis unit. The CST performs all the duties performed by LPNs except initiating intravenous medication, although he can initiate other intravenous procedures. The CST assists the nursing staff in terms of choices of kidney dialysis machinery.

The CST job description requires 2 years' prior experience with renal dialysis equipment or a biomedical license. The Employer testified that it required a high school education with dialysis experience or a 2-year degree. According to the Employer, certification exists for the CST position, although the person currently in this position has no certification. The wages for this position are at pay grade 16, which range from \$8.72 to \$11.54 per hour.

The renal dialysis technician (RDT) assists in providing patient care during the dialysis procedure. The RDT sets up the various machines used in dialysis, and monitors patients during the procedure by measuring vital signs and visually and verbally monitoring the well being of patients. The RDT may terminate the dialysis procedure by removing the intravenous needle but may not initiate the procedure. Both the CST and the RDT make chart entries as to their patient observations and treatment. A high school diploma is required for the RDT and on-the-job training is provided, although nursing or other health care experience is preferred. There is no certification or licensing available for this position. The wages for this classification are at pay grade 8, and range from \$5.90 to \$7.81 per hour.

Technical employees are defined as those "who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." *Barnert Memorial Hospital Center*, 217 NLRB 775, 777 (1975), quoting *Litton Industries of Maryland*, 125 NLRB 722, 724-725 (1959). Technical employees are those whose specialized training, skills, education, and job requirements establish a community of interest not shared by other service and maintenance employees. Such a separate community of interest is frequently evidenced by the fact that the employee is certified, licensed, or registered although employees may meet the standards of technical employee without such certification. *Barnert*, supra at 776.

On the basis of the foregoing, I conclude that the CST is a technical employee. The Employer requires 2 years of specialized experience, a 2-year degree, or a biomedical license for this position. It appears that the CST is responsible for a broad level of knowledge in the field of dialysis including both machinery and patient care. The CST wage rate is at pay grade 16 which is at the same level as respiratory therapy technicians and cytology technicians, both of which are stipulated to be within the technical unit. *William W. Backus Hospital*, 220 NLRB 414, 419 (1975); *St. Elizabeth's Hospital of Boston*, 220 NLRB 325, 327 (1975). Accordingly, the CST is included in the technical unit.

I reach a contrary conclusion, however, with respect to the RDT whose patient care duties in the dialysis unit are more circumscribed than those of LPNs or the CST. The RDT is only required to have a high school education, is trained in job duties on the job, and is paid in the lower ranges of wages discussed here. Accordingly, I conclude that the RDTs are not technical employees and they are excluded from the unit.

Health Information Tech

Health information techs (HIT), also referred to as medical records technicians, review the entire patient record at the time of discharge and assign diagnostic and procedure codes to such records for reimbursement purposes. Such employees are required to research and analyze patient charts to obtain correct diagnoses. They also examine patient charts for discrepancies and errors relative to such procedures and diagnoses.

Although the previous job description required a nursing or associated medical degree, or accreditation as a record technician, the current job description only requires a high school education with previous related training and experience. A representative of the Employer testified that it was the hospital's practice to require a 2-year program or related education. No certification is currently required, although it is preferred. One of the four current HITs is certified. The hourly pay rate is grade 5, which ranges from \$8.30 to \$10.99.

On the basis of the foregoing, I am unable to conclude that HITs are technical employees. *Faribault Clinic*, 308 NLRB 131 (1992); *Levine Hospital of Hayward*, 219 NLRB 327 (1975). The educational requirements have been reduced from the previous job description. Although certification is available, it is not a condition of employment and only one of four current employees possesses such certification. Although the wages of such employees are comparable to others stipulated to be technical employees, their education and skill level do not rise to that of medical records employees found by the Board to be technical. *Jewish Hospital of Cincinnati*, 223 NLRB 614, 619 (1976). Accordingly, they are excluded from the unit.

Physical Therapy Aide and Physical Therapy Technician

Physical therapy technicians (PTT) work in the physical therapy department with physical therapists, physical therapist assistants, and physical therapy aides (PTA). PTTs are responsible for providing various treatments to patients, according to a treatment plan formulated by a physical therapist under a physician's order. The PTT is also responsible for cleaning and maintaining equipment and transporting patients, when directed. PTTs work Monday through Friday at pay grade 11, at an hourly rate ranging from \$6.83 to \$9.05.

PTAs prepare treatment areas, assist in preparing patients for treatment, and assist others in providing treatments. PTAs work part time and only on weekends at pay grade 7, an hourly rate ranging from \$5.62 to \$7.45.

Both PTTs and PTAs are required to have a high school education and training in cardiopulmonary resuscitation. PTTs are also required to have a year's experience as a PTA. There is no licensing or certification requirement for such

positions, although two of those currently classified as PTTs have completed the college educational requirements for the physical therapist program. Training for PTT positions is received on the job. PTTs perform their job duties under the supervision of a physical therapist, but generally not in their presence. The majority of the job duties performed by PTAs is done in the presence of another person. PTTs spend the majority of their time working with outpatients, while PTAs work mainly with hospital patients.

Neither the PTTs nor the PTAs possess the skills and training sufficient to permit a finding that they are technical employees. They are not required to have any education beyond high school and receive training on the job for their duties. No licensing or certification is available for such positions and their wages are on the lower end of those whose status is at issue here. Accordingly, I conclude that PTTs and PTAs are not technical employees and they are excluded from the unit. *Trinity Memorial Hospital of Cudahy*, 219 NLRB 215, 219 (1975).

5. In view of the foregoing, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time technical employees employed by the Employer at its facility located at 400 Hobart Street, Cadillac, Michigan, including Respiratory Therapy Technicians II/LPN, Certified Respiratory Therapy Technicians, Registered Respiratory Therapists, Computerized Tomography Technologists, Cytology Technicians, Echo Technologists, Registered Histology Technicians, Medical Laboratory Technicians, Medical Technologists, Nuclear Medicine Technologists, Surgical Technicians, Pharmacy Technicians II, Psychiatric Technicians, Radiology Technologists, Ultrasound Technologists, Licensed Practical Nurses, Respiratory Therapy Assistants, Employee Health Specialists, Chief Service Technicians (Renal Dialysis Unit), and on-call technical employees who have worked a minimum of 120 hours in either of two 3-month periods immediately preceding the date of the issuance of the Decision and Direction of Election but excluding all other nonprofessional employees, professional employees, guards and supervisors as defined in the Act.