

CGE Caresystems, Inc. and Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 182, a/w International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 3-RC-10634

June 17, 1999

DECISION ON REVIEW AND ORDER
MEMBERS FOX, HURTGEN, AND BRAME

On January 26, 1998, the Regional Director for Region 3 issued a Decision and Direction of Election in the above-entitled proceeding. She found, inter alia, that the Employer's five billing clerks, two file clerks, and one accounting clerk (collectively referred to herein as the clerks), as well as its four customer service representatives, may be excluded from the nonprofessional service and maintenance unit found appropriate at the Employer's medical equipment and clinical services facility.¹

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, contending that the Regional Director did not properly apply the test set forth in *Park Manor Care Center*, 305 NLRB 872 (1991), and that she had incorrectly concluded that clerks and customer service representatives working at the Employer's facility may be excluded from the service and maintenance employee unit sought by the Petitioner. On March 17, 1998, the Board granted the Employer's request for review. The Employer filed a brief on review. The election was held as scheduled on February 24, 1998, and the ballots were impounded pending the Board's Decision on Review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have considered the entire record in this case with respect to the issues on review and have decided to affirm the Regional Director's conclusion that the petitioned-for unit of service and maintenance employees at the Employer's medical equipment and clinical services facility is an appropriate unit for bargaining, and that the Employer's clerks may properly be excluded from that unit. In reaching that conclusion, however, we find, in agreement with the Employer, that the proper analysis is that set forth in *Park Manor*, supra. Applying the *Park Manor* test, we reverse the Regional Director with respect to her exclusion of the Employer's customer ser-

vice representatives, and modify the unit found appropriate specifically to include those employees.

In *Park Manor*, the Board ruled that the proper test for determining the appropriateness of bargaining units in nonacute care health care institutions is the "empirical community of interest test." Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on Collective-Bargaining Units in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 Fed.Reg. 33900 (1988), reprinted at 284 NLRB 1528, and Final Rule, 54 Fed.Reg. 16336 (1989), reprinted at 284 NLRB 1580 and codified at Section 103.30 of the Board's Rules. The Board further considers the evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute.

In the instant case, the record supports the Regional Director's conclusion that the Employer's billing, filing, and accounting clerks may be excluded from the service and maintenance unit. In its rulemaking, the Board identified a category of business office clericals who perform distinct functions such as handling finances, billing, and dealing with computerized Medicare, Medicaid, and other health care cost reimbursement systems requiring advanced education and training. See 284 NLRB at 1562-1565. In this case, as the Regional Director found, the clericals in question are supervised by the Employer's billing manager. They appear to perform functions typically associated with business office clericals. Thus, the clerks work in the separate billing area of the Employer's facility and are responsible for processing bills and claims under Medicare and other reimbursement programs. See *Charter Hospital of Orlando South*, 313 NLRB 951 (1994). Although in some respects—particularly their lack of advanced education or training—they are distinguishable from the acute-care business office clericals identified by the Board in rulemaking, we conclude that on balance they constitute a sufficiently distinct category of employees under *Park Manor* to exclude them from the unit.

With regard to the four customer service representatives (CSRs), however, we do not agree with the Regional Director that they may be excluded from the petitioned-for service and maintenance unit. CSRs are primarily responsible for handling communications with patients and physicians, taking orders for durable medical equipment, and passing necessary information to the Employer's professional staff and to service technicians. The Regional Director predicated the CSRs' exclusion from the petitioned-for unit on their lack of contact and integration with service technicians. They are not, however, physically isolated in a separate area as are the billing, filing, and accounting clerks discussed above. Moreover, the CSRs have wages, benefits, hours of

¹ The Petitioner sought a unit of all full-time and regular part-time service technicians, biomedical technicians, and shipping and receiving clerks. The Employer contended, contrary to the Petitioner, that the only appropriate service and maintenance unit must include the clerks and customer service representatives listed above. The unit found appropriate by the Regional Director includes all full-time and regular part-time service technicians, biomedical technicians, and shipping/receiving clerks employed by the Employer at its Syracuse, New York facility; excluding all professional employees, managerial employees, customer service representatives, billing clerks, file clerks, accounting clerks, other employees and guards and supervisors as defined in the Act.

work, and other terms and conditions of employment similar to the service technicians that constitute the majority of the unit. In addition, they have face-to-face interchange with the technicians a number of times during the workday. The CSRs also work in proximity to service technicians and attend, on a rotating basis, a daily staff meeting with other employees. Because under *Park Manor*, they do not have a sufficient separate community of interest to warrant separate representation, we will include those employees in the unit. See *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164–1165 (1995).

In sum, applying the *Park Manor* test to the particular factual circumstances of this case, we conclude that the Regional Director correctly found that the Employer's billing, filing, and accounting clerks may be excluded

from the bargaining unit, but erred under that test in finding that the customer service representatives may be excluded.

ORDER

The Regional Director's Decision and Direction of Election is affirmed with respect to the exclusion of the billing, filing, and accounting clerks. The Decision and Direction of Election is reversed with respect to the customer service representatives, and those employees are specifically included in the unit found appropriate. This proceeding is remanded to the Regional Director for further appropriate action.