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**St. Luke's Health System, Inc. and United Food and Commercial Workers Local Union 222.** Case 18-RC-16937

November 28, 2003

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On February 14, 2002, the Regional Director for Region 18 issued a Decision and Direction of Election finding that a unit of professional employees, excluding physicians, at the Employer's Sunnybrook facility in Sioux City, Iowa, is appropriate.<sup>1</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review arguing that the smallest appropriate unit consists of all professional employees, other than physicians, at the Employer's network of clinics in the Sioux City area.<sup>2</sup> The Petitioner filed an opposition to the Employer's request for review. By Order dated March 13, 2002, the Board granted the Employer's request for review.

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

Having carefully considered the entire record, including the parties' briefs on review, we find, contrary to the Regional Director, that the petitioned-for single-facility unit is inappropriate. As explained below, we find that the Employer has rebutted the single-facility presumption.

I. FACTS

The Employer operates a health care system in the Sioux City area that includes a network of 21 clinics (also referred to as "profit centers") operating out of 16 locations.<sup>3</sup> The clinics, which are not separately licensed, provide nonacute health care-related services in

<sup>1</sup> The Petitioner sought to represent a unit of only registered nurses at the Sunnybrook facility but did not file a request for review of the Regional Director's inclusion of all other professionals (nurse practitioners and physician assistants), except physicians, at the facility or of his direction that the medical technologist vote under challenge.

<sup>2</sup> The Employer's clinics are located in an area that is commonly referred to as "Siouxland," which is comprised of North Sioux City, South Dakota; Sioux City, Iowa; and South Sioux City, Nebraska. Siouxland is generally regarded as one community.

<sup>3</sup> The Regional Director mistakenly stated in his decision that the Employer operates 15 clinics.

family practice, rehabilitation, and specialty areas.<sup>4</sup> The Employer's system also includes an acute care hospital, a college offering nursing and medical technology courses, and a nursing home. The Employer concedes that these latter facilities may be excluded from any unit encompassing the clinics.

The petitioned for unit at Sunnybrook family practice clinic—one of 11 such clinics—employs nine RNs, one medical technologist, one nurse practitioner, and one physician assistant. The Employer's proposed unit would include approximately 121 employees in 11 professions (84 RNs, 9 medical technologists, 7 nurse practitioners, 6 physician assistants, 2 occupational therapists, 10 physical therapists, and 2 speech pathologists). All of the clinics are located in Siouxland. Eleven of the 16 clinic locations, including Sunnybrook, are within 10 miles of each other in metropolitan Sioux City. The remaining clinics are located between 15 and 55 miles from downtown Sioux City.

There is common management of the Employer's Siouxland clinics. Three directors oversee the clinics' operations and are responsible for different functional areas. Rita Collins is the director of the 11 family practice clinics; Wendy VanHatten is the director of the 6 specialty clinics; and Maxine Kilstrom is the director of the 4 rehabilitation clinics. Among other duties, these directors determine the appropriateness of new or vacant positions as suggested by clinic managers via job requisitions, assist with hiring, confer with clinic managers regarding final hiring decisions, authorize suspensions or terminations recommended by clinic managers, approve permanent transfers, and organize and conduct quarterly employee meetings.

Collins and VanHatten report to a vice president, and Kilstrom reports to the chief nursing director. The vice president and chief nursing director in turn report to the chief operating officer (COO), who is in charge of all clinic operations.

Each clinic has an onsite clinic manager, who reports to Collins, VanHatten, or Kilstrom, as appropriate. Some clinics are multipurpose and include more than one department. For example, the Morningside clinic offers both family practice and rehabilitation services. Multipurpose clinics are typically supervised by a separate manager for each department, and some of these managers service more than one clinic. Single-purpose clinics, like Sunnybrook, are each supervised by one clinic manager.

<sup>4</sup> Specialty clinics include a surgical clinic, internal medicine, orthopedics and sports medicine. Physical therapy and occupational health services are offered in the rehabilitation clinics.

The Employer's clinics all operate under the auspices of the human resources (HR) department, headed by Director Gary Johnson. Human resources administers all employee benefit and compensation programs, as well as the Employer's grievance procedure, which may culminate in a hearing before a peer review board. Human resources also directs the clinic managers regarding disciplinary matters and employee hiring and recruitment. When disciplinary issues arise, clinic managers may verbally warn the employee, and also memorialize the warning. However, in cases involving suspensions or terminations, clinic managers must coordinate with HR so that there is consistency among the clinics. If HR determines that the clinic manager has not followed the appropriate disciplinary procedures or provided enough evidence, HR may veto the request to terminate or suspend the employee.

Regarding hiring, HR compiles a weekly list of systemwide openings that is distributed to each clinic, providing all employees with the opportunity to apply for different positions or locations. Current employees fill out a transfer request and submit it to HR. After the director approves the transfer, the clinic manager interviews the employee and coordinates with HR as to the final hiring decision. For outside hires, HR advertises the position, collects and screens all applications, conducts initial interviews, and performs background and reference checks. Human resources compiles a final list of promising candidates, who then interview with the clinic manager. Although the clinic manager decides which candidate to hire, HR possesses the authority to reverse a hiring decision or rescind a job offer. Finally, HR—not the clinic manager—determines the salary to be paid to the new hire. In sum, contrary to our dissenting colleague, we find that HR exercises significant control over the hiring process.

Regardless of which clinic they are assigned to, all of the professional employees share the same skills depending on their particular job classification. All new employees attend the same one-day orientation program, held in a central location. Many of the Employer's educational and training programs are provided to all employees, such as an annual benefit fair and general policy training. Employees from any clinic may attend the more specialized programs, such as those dealing with professional licensure and continuing education. The Employer also holds quarterly nurse meetings in which at least one nurse from each facility is present. All clinic employees are paid on the same wage scale, which the Employer bases on local, regional, or national market surveys. Employees also receive the same employee handbook and fringe benefits. Most of the clinics are

open only during weekly daytime hours, but two have evening hours and one is open on Saturdays. All employees keep track of their time by dialing into a common phone number and entering their specific identification number each time they start and end a shift or take a break.

Permanent transfers among the clinics occur with some frequency through the clinic-wide job posting procedure and the relatively close proximity of the clinics to one another. In 2000, 13 employees transferred from one location to another, including one RN, one occupational health nurse, one nurse practitioner, one physical therapist, and one occupational therapist. In 2001, the number of transferred employees increased to 16, which included 3 RNs, 2 medical technologists, and 4 radiology technicians.

Regarding temporary transfers, up to 20 percent of all job classifications within the clinic work force "floats" to other locations in any given year. For example, RNs float from clinic to clinic when additional assistance is needed and may substitute for vacationing RNs. Also, nurse practitioners and physician assistants may be pulled from their regularly assigned clinics to assist at another clinic that is shortstaffed. The occupational health nurses, who usually work in the school system, fill in at various family practice clinics so that those nurses may take vacations. The medical technologists float to all of the clinics that have labs; thus, their workplace varies on a weekly, and even daily, basis. The occupational therapists, though headquartered at one clinic, often travel to other locations in order to serve patients across the network. Physical therapists temporarily transfer to other clinics upon patient demand. Sunnybrook is the designated "home base" for floaters. Although not every floater is physically present at the facility, management has designated Sunnybrook as the centralized floater location to ensure that they all consistently receive company bulletins, directives, and the like.

## II. ANALYSIS

Although a single-facility unit in the health care industry is presumptively appropriate,<sup>5</sup> that presumption can be rebutted. To determine whether the single-facility presumption has been rebutted, the Board examines such factors as geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history.<sup>6</sup> *West Jersey Health System*, 293 NLRB 749, 751 (1989). Contrary to the Regional Director, we find that, analyz-

<sup>5</sup> *Manor Healthcare Corp.*, 285 NLRB 224 (1987).

<sup>6</sup> We note that there is no bargaining history concerning these clinics.

ing these factors, the Employer has rebutted the single-facility presumption.

The Employer has demonstrated that the clinics operate as a single network and are functionally integrated both as to the services provided and as to the employees who provide them. Thus, patients are able to transition out of acute care and receive a full range of health-related services at the various clinics. Similarly, as to employees, virtually all of the clinics' administrative operations are centralized in that they utilize: uniform job applications, position descriptions, and applicant screening; the same operational systems, such as patient information, computer, purchasing, billing, receivables, payroll, and time and attendance; and identical marketing initiatives and materials. All clinic employees are subject to identical work hours and wage scales, policies and procedures, and fringe benefits. The job skills and duties of the various classifications at all of the clinics are identical. Finally, the clinics are small and employ on average only six professional employees per facility, and workers from all of the clinics jointly attend various meetings as well as educational and orientation programs.

The frequency of temporary and permanent transfers throughout the clinics also establishes the high level of functional integration among all of the clinics. Because job openings are posted at all clinic locations, permanent transfers of employees occur with ease. For example, in the past 2 years, 29 employees (unit and nonunit) have permanently transferred throughout the system.<sup>7</sup>

Our dissenting colleague contends that the record evidence regarding permanent transfers that are specific to Sunnybrook is insufficient to rebut the single-facility presumption because permanent transfers are *generally* a less important indication of interchange than temporary transfers. The Board, however, has long held that no one factor is determinative in analyzing whether the single-facility presumption has been overcome. See *West Jersey Health System*, supra at 751. Here, the network experienced increased permanent transfers during a 2-year period—13 in 2000 and 16 in 2001. We recognize that only four of these transfers involved Sunnybrook, and two of the four did not involve transfers into unit positions. However, the issue concerning these transfers is not to be viewed in isolation. It must be viewed in the context of other transfers. These other transfers include the systemwide floating discussed above. Sunnybrook is the home base for all of the floaters within the Employer's system.

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<sup>7</sup> In 2000, 13 employees permanently transferred, including 4 unit employees. In 2001, there were 16 permanent transfers, 6 of whom were unit employees.

In addition, approximately 15 to 20 percent of employees within all network job classifications were temporarily assigned to other facilities, thus demonstrating the regularity of temporary transfers. For example, RNs float to other clinics to offer additional assistance or substitute for vacationing RNs; nurse practitioners and physician assistants temporarily aid shortstaffed clinics; school-based occupational health nurses fill in at family practice clinics in the summer months; medical technologists travel to all of the clinics with labs and therefore have no "home" base; and occupational and physical therapists move around to various clinics based on patient demand.

In finding the single-facility unit appropriate, our dissenting colleague relies heavily on the absence of temporary interchange directly involving Sunnybrook. We find this reliance unwarranted. First, the record is replete with examples of temporary transfers occurring among other Siouxland clinics and clinics involving all job classifications within the network. Second, due to ever-changing medical and staffing needs, floating has become commonplace among the various clinics. Again, although these temporary transfers may involve other clinics, Sunnybrook is the home base for the entire floating system.

Further, the Employer accords little autonomy to the individual onsite clinic managers. Concededly, clinic managers exercise administrative authority on such pro forma matters as developing inclement weather directives and smoking policies. They schedule employees, make "time off" determinations, and perform annual evaluations, which may be used as the basis for merit increases. However, the merit increases themselves are not decided by clinic managers but by HR. The three offsite directors bear ultimate supervisory responsibility for the clinics, and HR directs the labor relations functions for all clinic employees, such as screening and performing the initial interviews of all outside applicants, as well as determining new hires' salaries; independently investigating and authorizing terminations and suspensions; administering the Employer's grievance procedure; and issuing personnel policies and procedures.

In finding that the Sunnybrook clinic manager has substantial autonomy, our dissenting colleague relies on the fact that the clinic manager decides whether to hire an applicant and can initiate discipline. However, it is HR that decides whether an applicant is suitable for consideration by an individual clinic, and which can reverse a clinic manager's hiring decision or rescind a job offer if HR determines that the applicant was unsuitable. Further, although HR Director Johnson testified that he would defer to a clinic manager's recommendation for

suspension or termination, he also testified that he has “veto power” on a clinic manager’s recommendation to suspend or terminate an employee if it is not properly documented and, if it is necessary to further pursue the matter, it is ultimately resolved at the vice president level. In these circumstances, we find, contrary to our dissenting colleague, that the Employer has a heavily centralized hiring and disciplinary system which undermines the appropriateness of a separate Sunnybrook unit.

Finally, the Employer’s clinics are all located in the Sioux City area. Eleven of the clinics are located in the Sioux City metropolitan area and are less than a 10-minute drive from each other. The remaining clinics are located between 15 and 55 miles from downtown Sioux City. See *West Jersey*, supra (finding single-facility units inappropriate where the distances between the four facilities ranged from 2½ to 20 miles). Indeed, the proximity of the clinics has facilitated permanent and temporary transfers and joint meetings and educational and training programs.

In sum, when all of the relevant evidence is examined, we find that it establishes that a single-facility unit is inappropriate here. Indeed, we find that the interests of the petitioned-for employees have been effectively merged into a more comprehensive unit, such that the petitioned-for clinic is not a separate appropriate unit. We conclude, therefore, that the Employer has rebutted the presumptive appropriateness of the petitioned-for single-facility unit.

#### ORDER

The Regional Director’s Decision and Direction of Election is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with the decision.

Dated, Washington, D.C. November 28, 2003

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

Contrary to my colleagues, I agree with the Regional Director that a single-facility unit of professional employees at the Employer’s Sunnybrook clinic is appropriate. As my colleagues acknowledge, a single-facility unit in the health care industry is presumptively appropriate. *Manor Healthcare*, 285 NLRB 224 (1987). A party may rebut that presumption by proving that the

single facility is so effectively merged into a more comprehensive unit, or so functionally integrated, that it has lost its separate identity. *D&L Transportation*, 324 NLRB 160 (1997). To determine whether the presumption has been rebutted, the Board examines such factors as geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history. *West Jersey Health System*, 293 NLRB 749, 751 (1989). Employee interchange and common supervision are particularly important factors. *Heritage Park Health Care Center*, 324 NLRB 447, 452 (1997), enfd. 159 F.3d 1346 (2d Cir. 1998). In the present case, because the record shows separate supervision and an absence of employee interchange at Sunnybrook, I would find that the Employer has failed to rebut the single-facility presumption.

#### I. SEPARATE SUPERVISION

The Sunnybrook clinic, like each of the Employer’s other clinics, is supervised by its own onsite clinic manager. Contrary to my colleagues, I would find that the clinic manager has substantial autonomy in supervising the clinic’s employees and managing the clinic’s day-to-day labor relations.

First, the clinic manager is largely responsible for hiring. Although my colleagues note that the Employer’s human resources (HR) department screens applications and conducts an initial interview, it is the clinic manager who conducts the final interview and makes the decision on whether to hire an applicant. Second, the clinic manager schedules employees for work, grants time off, and issues annual performance evaluations. Third, although there is a companywide grievance procedure, the Employer encourages the clinic manager to resolve grievances on his or her own, and the HR director testified that the majority of grievances are resolved without HR getting involved. Fourth, the clinic manager initiates discipline. He or she has authority to issue verbal or written warnings without further review. As my colleagues emphasize, a clinic manager’s recommendation for suspension or termination will be reviewed by HR. However, the HR director testified that he will defer to the clinic manager’s recommendation if there is evidence of prior warnings and the recommendation is adequately documented. For all of these reasons, I would agree with the Regional Director that the Sunnybrook clinic manager’s substantial autonomy strongly favors a single-facility unit.

#### II. LACK OF EMPLOYEE INTERCHANGE

Although my colleagues find that both permanent and temporary interchange occurred within the Employer’s

system, the record shows almost a complete absence of interchange affecting Sunnybrook.

My colleagues note that there were 13 permanent transfers throughout the Employer's system in 2000, and 16 in 2001. Those statistics, however, include transfers of clerical employees and managers, who are not included in the proposed unit. Furthermore, of those 29 permanent transfers, only 4 involved Sunnybrook. Of those four, only two involved employees who arguably would be included in the proposed unit.

Even if those two transfers were deemed significant in number, the Board has stated that permanent transfers are generally a less important indication of interchange than temporary transfers. See *Deaconess Medical Center*, 314 NLRB 677 fn. 1 (1994). There is no record evidence of temporary transfers affecting the Sunnybrook clinic. My colleagues find that about 25 employees have "floated" to other locations in the past 2 years. However, they observe that this floating particularly occurs among the Employer's rehabilitation clinics. Sunnybrook is not a rehabilitation clinic. My colleagues also state that the Employer's therapists and occupational health nurses move around to different clinics. Interchange among these employees, however, does not affect Sunnybrook, because these positions do not exist at Sunnybrook. In addition, my colleagues find that nurse practitioners and physician assistants "float" to other clinics to offer temporary assistance. Again, there is no evidence of such interchange to or from the Sunnybrook facility. In sum, while there is general evidence that temporary interchange occurs among certain of the Employer's facilities, there is *no* evidence specific to Sunnybrook. To the extent the Employer relies on temporary interchange to rebut the single-facility presumption, the Employer has the burden to produce relevant, affirmative evidence on that issue. See *J&L Plate, Inc.*, 310 NLRB 429 (1993). By failing to produce any evidence of temporary interchange at Sunnybrook, it has failed to carry that burden.

Without citing any precedent, my colleagues assert that the permanent and temporary interchange at the *other* facilities is relevant because Sunnybrook has been

designated as the "home base for all of the floaters within the Employer's system." The Board has held, however, that interchange is relevant to whether or not the employees in the particular unit at issue have a separate community of interest from employees at other facilities, and thus the only relevant evidence is evidence of interchange involving unit employees in the petitioned-for facility. See *D&L Transportation, Inc.*, 324 NLRB 160, 161 (1997) ("That locations other than Shelton may have a higher or significant level of interchange with each other to accommodate the Employer's daily operations does not negate the separate community of interest shared by the Shelton drivers, who rarely interchange for this purpose. Moreover, there have been only two permanent transfers of drivers from Shelton to other locations.")

### III. OTHER FACTORS

My colleagues observe that the Employer's administrative operations are centralized, and that employees are paid on the same scale and share the same benefits. However, I would find these factors insufficient to destroy the separate identity of the Sunnybrook clinic, in light of the substantial autonomy and lack of interchange. See *New Britain Transportation Co.*, 330 NLRB 397 (1999) ("Centralized control over personnel and labor relations alone . . . is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations. . . .").<sup>5</sup> In view, the Employer has failed to prove that the Sunnybrook facility has been so effectively merged into a more comprehensive unit that it has lost its separate identity. Accordingly, I would affirm the Regional Director's decision that a single-facility unit of professional employees at Sunnybrook is appropriate.

Dated, Washington, D.C. November 28, 2003

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Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD