

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

OTTUMWA REGIONAL HEALTH CENTER

Employer

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA (AFL-CIO)

Petitioner

Cases 18-RC-16495, 18-RC-16496,
and 18-RC-16497

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

¹ The Employer, Ottumwa Regional Health Center, operates an acute care hospital and medical clinics in Ottumwa, Iowa. During the past twelve months, a representative period, the Employer purchased

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent units of the Employer's nonprofessional employees (18-RC-16495); technical employees (18-RC-16496); and registered nurses (18-RC-16497). The Employer concedes that the broadly described units are appropriate, but the parties disagree as to the placement of a number of different job classifications concerning each of the units. The parties agree that any unit should include full-time, regular part-time and "PRN" employees (on call).

The Employer operates out of two "sites," known as Penn and Alta Vista. Penn is a four-level building containing primarily the Employer's acute care hospital facility. The Employer also operates three clinics. Two of them, Ottumwa Pediatrics and Ottumwa Allergy and Pulmonary, are attached to the Penn building by a "long hallway."

The Alta Vista site, a mile or so away, was a competing hospital taken over by the Employer about ten years ago. It now houses the Employer's business and administrative offices, home health care department, and outpatient and rehabilitation services, including behavioral health and family recovery units directed at drug and alcohol dependencies. Alta Vista's only inpatient services are for psychiatric and chemical dependency patients. The Employer's third clinic, Psychiatric Medicine, is on the second floor of the Alta Vista

and received goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Iowa and earned gross revenues in excess of \$250,000.

building, independent of Alta Vista's other inpatient mental health unit. The clinics employ about fifty people altogether, including physicians.

The Employer maintains one human resources department for all of its departments, as well as the clinics. One officer is responsible for recruitment, and job openings for the clinics and all other departments are posted on a single list. Employees from all departments and the clinics get the first opportunity to bid on openings throughout the Employer's facilities before the Employer recruits from outside. A number of employees have worked parts of their careers in the clinics and parts in the hospital. The Employer's witnesses testified that seniority credits cross over from the hospital to the clinics and vice versa.

The Employer bases its wages on market surveys. Wages differ somewhat between the clinics and the hospital because the Employer's survey considers clinics and hospitals different markets.

Employees of the clinics and the rest of the hospital share the same employee handbook, policies, and benefits. There is one cafeteria at each of the Penn and Alta Vista sites, utilized by clinic employees as well as hospital employees. The Employer has a number of regular social events, like a Christmas party and a summer beach party, to which clinic and hospital employees alike are invited. The clinics also share environmental services, supply repository and requisition procedures, and the pharmacy with the hospital. Pharmacy employees regularly visit the clinics to take inventory, remove expired drugs, and bring in new stock.

The clinics are open only daytime weekday hours. After hours, the Pediatric Clinic's telephone lines are rolled over to the hospital pediatric department, and hospital pediatric

department employees receive training in the protocol for answering such calls. In addition, a hospital pediatric nurse assists with the clinic's care line phones during busy periods. The Employer is currently working on a similar protocol for transferring calls to the Psychiatric Clinic after hours to the hospital's psychiatric department.

The Employer's lactation consultant is considered a full-time employee of the hospital, but regularly works three mornings a week in the Pediatric Clinic. Of the clinics' three nurse practitioners, one has regularly scheduled rounds in the hospital. Several clinic nurses, particularly those with hospital experience, continue to work on call at the hospital, mainly evenings and weekends. One front office employee engaged in admissions clerical work splits time between the clinic and the hospital admitting departments. These employees all receive a single paycheck including their wages from both facilities.

At the hearing, Petitioner contended that clinic employees were not appropriately included in any of the three units. In its post-hearing brief, Petitioner "withdraws its objections as to said employees at said clinics being included." Based on integration, transfer, interchange, common policies, benefits, and social events, and physical proximity, as well as Petitioner's concession in its brief, I find that the clinic employees should be combined with the hospital employees in all three units.

The Nonprofessional Unit

During the course of the hearing, the parties reached stipulations on a number of job classifications appropriately included in the nonprofessional unit. Those classifications are activity coordinator, addictions counselor, bio-med tech, caring bear, central sterile tech, communications operator, cook, cook first, cook special functions, CRTT eligible, diet clerk, distribution/receiving clerk, distribution clerk, driver, ED tech, electrician,

environmental service tech, environmental services tech team leader, environmental tech, exercise coordinator, food service shift leader, food service store clerk, food service worker, food server, general laborer, general maintenance, gift shop attendant, home health aide, inventory control clerk, lead carpenter, linen service aide I, linen service II, linen services team leader, mail/receiving clerk, maintenance specialist, material management assistant, medication assistant, mental health assistant, nourishment aide, nurse assistant, nurse assistant - resource, nurse asst - res, OR transport, occupational health tech, patient access specialist, patient care tech, pharmacy clerk, purchase project coordinator, purchasing coordinator, radiology aide, rehab tech, rehab tech - outpatient, resident tech/med mgr flex, respiratory therapy assistant, scheduling clerk OR, support associate, transcriptionist, unit clerk, washer operator/dryer, and hearing tech.

The principal dispute regarding the nonprofessional unit concerns a number of classifications proposed for inclusion by the Employer and opposed by Petitioner on grounds that they are business office clericals. The Board distinguishes business office clericals from “other” clericals based on the nature of their duties and on the locations in which they work and consequent contact with other nonprofessional employees. In the health care rulemaking, the Board recognized business office clericals as a separate appropriate unit based on several increasingly common characteristics: 1) concentration on distinct functions related to finances, billing, and dealing with Medicaid, Medicare, and other reimbursement programs; 2) centralization of business office functions under separate supervision; and 3) physical isolation and lack of contact with other nonprofessionals. Collective Bargaining Units in the Health Care Industry; Second Notice

of Proposed Rulemaking, 284 NLRB 1527, 1562-1565 (1988). See also Rhode Island Hospital, 313 NLRB 343, 359 (1993).

Until June 1999, the Employer's main business office was located on the first level of the Penn building, among its administration and human resources offices, gift shop, cafeteria, and chapel. The only patient care area on that floor was the radiation department. The main business office moved to the Alta Vista site's sixth floor in June. There is no evidence as to what else is housed nearby.

Positions in dispute include cashier and credit clerks. Actually, cashier was on the list of positions the Employer sought to include in the nonprofessional unit at the hearing, whereas it claims in its brief not to have sought inclusion of the cashier in the nonprofessional unit. The cashier position is described as the person responsible for taking payments on site for services rendered. The credit clerk meets with patients in order to discuss and make arrangements for payment for services, although it is not involved in preparation of bills or collections. These two positions share an office at the Penn site. They were in the main business office until it moved to Alta Vista.

Although no longer housed in the main business office, the current cashier and credit clerk office remains isolated from the other nonprofessionals. There is no explicit evidence of how much contact the cashier and credit clerk might have with such employees outside of social contacts in the cafeteria during meals and breaks. That kind of contact is presumably maintained even by segregated business office clericals.

The computer operator, computer operator - lead, and MIS trainee have a desk in the management information systems (MIS) office at Penn. There is no evidence on exactly where the MIS office is. The computer operator and computer operator - lead are

responsible for generating a daily report on how many and which beds are filled. They and the MIS trainee also do simple computer maintenance functions on personal computers all over the facility, such as cleaning keyboards.

The data control clerks also sit in the MIS office. They are responsible for taking and directing calls from all over the facility regarding computer problems, such as a report that a password isn't working. These positions have no role in actual troubleshooting or repairs. They also perform unspecified clerical work. The Employer originally proposed for inclusion a position called MIS coordinator, then agreed to its exclusion. No evidence was offered on the duties or responsibilities of the position, or the reason for its exclusion.

It appears that the above-described positions perform functions generally deemed by the Board to be typical business office functions. Charter Hospital, 313 NLRB 951, 952 (1994) (billing, accounting for patient payments, arranging for credit); Rhode Island Hosp., 313 NLRB at 361 (accounting of incoming cash receipts; computer help desk, computer data entry). The cashier and credit clerk used to sit in the main business office, and now have their own office. In light of their duties and segregation from other nonprofessional employees, as well as the Employer's concession in its brief that cashier is a business office clerical position, I conclude that cashier and credit clerk are business office clericals who should be excluded from the nonprofessional unit. Similarly, I find that the computer operators, MIS employees, and data control clerks are business office clericals in light of the nature of their work and their segregation in the MIS department, even if that department is physically removed from the main business office.

Petitioner also objects to the Employer's proposed inclusion of department secretaries and department secretary - EMS. These employees are stationed in each

department, including patient care departments. They answer the phones, greet visitors to the departments, distribute mail, take minutes at department meetings, and type memos and letters. I conclude that the department secretaries are “other” clericals appropriately included with nonprofessionals, not business office clericals, because they do not work on finances, billing, or reimbursement and they are not isolated from other employees in a central business office. See, e.g., Lincoln Park Nursing Home, 318 NLRB 1160, 1164 (1995) (department secretaries and receptionists); Rhode Island Hosp., 313 NLRB at 363-364 (department records clerk).

Petitioner also objects to the Employer’s proposed inclusion of file clerks, supply/file clerks, medical records clerks, and data entry clerks on business office grounds. The Employer’s evidence indicates that it employs one file clerk in its home health department and one in its health information department. The file clerk in health information is responsible for filing all types of patient medical records for patients of the hospital, such as birth certificates.

The medical records clerks work in the health information department. They are responsible for checking incoming medical charts for accuracy, completeness and repetition, and for answering requests for patient medical information, as from an insurance company. In the latter regard, medical records clerks are also responsible for obtaining any releases required for such requests and checking that they have been executed properly.

The position designated supply/file clerk works in home health. The supply/file clerk is responsible for keeping the home health department’s supply room and nurses’ bags inventoried and stocked. There is no evidence otherwise describing the duties of the “file

clerk” in home health, although it is also not explicitly stated anywhere that “file clerk” and “supply/file clerk” refer to the same job. The data entry clerk also works in the home health department, collating and computerizing time records and reports turned in by the home health nurses.

In Rhode Island Hosp., 313 NLRB at 362, the Board states that “Medical records employees have for the most part been deemed not to be business office clericals, but rather hospital clericals.” The health information department is located on the second floor of the Penn site. It is surrounded by the laboratory, intensive care waiting room, respiratory therapy and radiology departments. Based on their proximity to patient care areas rather than the business office, and the nature of their duties, I conclude that the health information department clerks are nonprofessionals, not business office clericals.

The home health department is located at Alta Vista, although not specified where. The home health clerks (file clerk, supply/file clerk, and data entry clerk) are supervised by the director of home health, not a business office supervisor. Because their functions are unrelated to finances, billing, or reimbursement, and they work in a patient care department rather than the business office, I find they are nonprofessionals, not business office clericals. Rhode Island Hosp., 313 NLRB at 363-364 (medical records; department secretary responsible for time and payroll records).

Petitioner objects to the Employer’s proposed inclusion of the appointment desk, front office, and a number of receptionist positions (recep/rec - SIROC; recep/ scheduling clerk; reception/sec’y - FRC) as business office clerical. These employees are responsible for greeting incoming patients, taking down insurance information, scheduling appointments, and collecting any copays or other payments. Based on these employees’

lack of contact with billing and financial records and their positioning away from the main business office, I conclude they are nonprofessionals, not business office clericals. Lincoln Park Nursing Home, 318 NLRB at 1164-1165; Charter Hosp., 313 NLRB at 951.

The Employer proposes inclusion of a position denominated office assistant, to which Petitioner objects that it is a business office clerical. The only evidence on this job is testimony that it is “a new position that we have with our clinics that we are going to have in Eldon and Richland,” and that it will have duties “similar to the ones that [another witness] testified about the other day with pediatric associates and psych medicine.” However, there is no other mention in the record of clinics in Eldon or Richland, and no other witness testified about positions called pediatric associates or psych medicine. It appears from the limited record that this is a job that has not been filled and even when it is, it will be located in a separate facility, so I will not include it in the unit.²

Petitioner also objects to the Employer’s proposed inclusion of the medical staff coordinator as a business office clerical and also on grounds of managerial authority. The medical staff coordinator is responsible for the medical staff’s clerical needs, e.g., booking and scheduling staff meetings, taking minutes at staff meetings, monitoring staff credentials and getting staff members scheduled for any necessary renewals. The job description says this person “has access to confidential peer review information and information relating to hospital and medical staff policies and practices.” As for unit placement, this position sounds like a department secretary, which is nonprofessional, not business office clerical, as described above.

² If the position is filled before the eligibility date, any such employees may vote subject to challenge.

To be considered a managerial employee, one must “formulate and effectuate management policies by expressing and making operative the decisions of the employer’ through ‘taking or recommending discretionary actions that effectively control or implement employer policy.” Joint Diseases, North General Hosp., 288 NLRB 291, 297 (1988) (quoting NLRB v. Yeshiva Univ., 444 U.S. 672, 678-83 (1980)). Since a finding of managerial status removes one from the protections of the Act, the burden of proving it rests upon the party to seeking to establish it. Union Square Theatre Management, Inc., 326 NLRB No. 17, slip op. at 2 (Aug. 17, 1998). The evidence is that the medical staff coordinator acts in a purely clerical capacity and has no role apparent on this record in decision making. Accordingly, Petitioner has not sustained its burden of proving the medical staff coordinator is managerial.³

The Employer proposes inclusion of the physician recruitment coordinator, public relations coordinator, and redesign specialist. Petitioner claims all possess managerial authority and should be excluded on that basis.

The physician recruitment coordinator works with the staff recruiting committee. When the committee identifies a candidate for recruitment, the physician recruitment coordinator contacts that person, assists them with travel arrangements to Ottumwa, schedules their interviews, and gives tours of the Ottumwa area, and if someone takes a job, the physician recruitment coordinator helps them move. The position job description

³ Petitioner does not claim that the medical staff coordinator is a confidential employee, although the facts it cites for its managerial argument have to do with this person’s access to “confidential” information and staff meetings. With no evidence to explain the job description, I cannot find that medical staff coordinator is a confidential employee within the meaning of the Act. See, e.g., Lincoln Park Nursing Home, 318 NLRB at 1164 (confidentials “assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations”) (emphasis added).

indicates this person is responsible for screening physician applications to identify qualified applicants for vacant positions. The only explanatory testimony is the Employer's conclusionary testimony that the physician recruitment coordinator has no role in hiring or making the decision to invite an applicant to Ottumwa.

The public relations coordinator has its own office. This employee edits and prepares the hospital's weekly newsletter, deals with media requests, and sets up a hospital booth at community events like the county fair.

The redesign specialist "works with" and "facilitates" the redesign team, which includes medical staff working on ways to improve the quality and efficiency of the Employer's services. For example, the redesign team recently recommended combining certain jobs that were doing repetitive patient history interviews into a single new job classification. The only further specification of what "working with" and "facilitating" the redesign team means is collecting data and information on which the redesign team relies. The position's job description says this person serves as an advisor to the vice president and the committee, and should collaborate with the vice president and the committee in the evolution of performance improvement activities. The Employer's witness conclusionarily denied the accuracy of that part of the job description, and no other evidence was offered on the weight or authority of the redesign specialist's recommendations, if any.

As noted above, the burden of proving managerial status rests with Petitioner. I find Petitioner has failed to prove that the physician recruitment coordinator, public relations coordinator, or redesign specialist formulate or effectuate management policies or take or recommend discretionary actions that control or implement employer policy. No other

basis for their exclusion from the nonprofessional unit being suggested, I shall include them.

The Employer proposes to include the operating room technician in the nonprofessional unit. Petitioner contends this job should be in the technical unit, further described below. The operating room technician scrubs for surgery and hands instruments to the physicians. No license or permit is required, and the only training the Employer requires is on the job. The operating room technician has no responsibility for assessment or documentation of the patient's condition or surgery's progress.

Technical employees are “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.” Meriter Hosp., 306 NLRB 598, 600-601 (1992). The Board has found operating room technicians to be technical employees in the past, but relied on their exercise of judgment in stocking their instrument trays and in anticipating a physicians' needs, their training programs, and in some cases the performance of responsible tasks like simple suturing. Meriter Hosp., 306 NLRB at 600-601; Rhode Island Hosp., 313 NLRB at 354. The Employer's operating room technicians, lacking all those characteristics, are not technicals, and I shall include them in the nonprofessional unit.

The Technical Unit

In the technical unit, the parties agreed that the following classifications are appropriately included: accredited records technician (ART), ART coder, certified occupational therapy assistant, certified respiratory therapy tech, clinical research

assistant, EEG tech, EMT I, LPN's, mammography tech, mobile imaging tech, MRI tech - eligible, MRI tech -registered, nuclear tech, outcome resources tech, paramedic, pharmacy tech, physical therapy assistant, polysomnographer, radiology therapy tech, radiology tech, respiratory therapist eligible, respiratory therapist registered, and somnographer registered.

Petitioner objects to the Employer's proposed inclusion of clinical coordinator technical services (aka technical services department (TSD) coordinator) on grounds that the position is managerial or professional. The incumbent is a registered respiratory therapist. The job description indicates that this employee "may cross train to all other areas of the TSD for specific purpose of orientation for new employees," but there is no further description of what those other areas might be. The TSD coordinator job description also requires an AMA accredited education, registration with NBRC (not defined), and an RCP (respiratory care practitioner) license from the state of Iowa. The employee is primarily responsible for staff development, education, and orientation of new employees, and acts as a resource for other employees.

The job description indicates that the incumbent may "assume the leadership role" in the absence of the TSD clinical manager, which both parties concede is a 2(11) position. The only evidence of what that authority would include is the Employer's conclusionary testimony that even when acting as a substitute supervisor, the TSD coordinator would not have independent authority to exercise any of the supervisory indicia listed in Section 2(11) of the Act. As noted above, the burden is on the Petitioner to prove supervisory or managerial status to exclude this classification from the coverage of the Act.

I find no basis on this record for considering this position supervisory or managerial under the Act.

Professional status is harder to assess. There is no more evidence of this person's duties and judgments than what is just described. The educational and licensing requirements are consistent with professional or technical status. It is unclear whether this person engages in substantial direct patient care in addition to the "leadperson" duties for which he or she is primarily responsible. Without more evidence on the judgments and decisions made by this employee, however, I will defer this issue to the challenge procedure. Since no labor organization seeks to represent professional employees (other than RN's), if TSD coordinator is later deemed a professional employee within the meaning of the Act, they will remain unrepresented.

The Employer proposes that social workers employed in the psychiatric clinic should be in the technical unit. Petitioner objected at the hearing solely on the grounds that they are employed by the clinics. The limited evidence concerning the social workers indicates that they are licensed by the State of Iowa and work on outpatient counseling. The Employer's witness also testified that their duties are similar to behavioral health counselors employed at the hospital. Behavioral health counselors are not proposed to be in any of the units at issue in this case.

The Board generally considers social workers to be professionals. See Rhode Island Hosp., 313 NLRB at 345 & n.9; Mount Airy Psychiatric Center, 253 NLRB 1003 (1981). Professional employees are statutorily entitled to a choice on whether they wish to be represented with nonprofessionals or in a professionals-only unit. I am reluctant to treat Petitioner's withdrawal of its original objection to social workers' inclusion on the clinic

station grounds as a stipulation that social workers under the circumstances of this case are technical, not professional employees. In light of the dearth of evidence concerning social workers' educational and training requirements and the nature of any judgments they must make in their work, I shall direct that social workers vote subject to challenge in order to reserve a determination on their potential professional status. As with TSD coordinators, if it is later determined that they are professionals, they shall remain unrepresented.

The last issue in the technical unit concerns the pharmacy intern, whom the Employer would include and to whose inclusion Petitioner objects on the grounds that this is a temporary student employee. The evidence indicates only that the position is occupied by a pharmacy student, who works during the summer and occasionally on school breaks and perhaps even scattered weekends. There is no evidence on the number of hours the incumbent has put in within any representative or recent period. There is no evidence of whether the intern gets school credit, or how much he or she is paid compared to other pharmacy interns. There is no evidence as to whether any pharmacy intern has continued employment after graduation or whether the interns have any reasonable expectation of doing so.

Student interns' inclusion in a unit depends on whether they share interests with other employees, or whether their employment is incidental to their educational objectives. This depends on a number of factors including how their wages and benefits compare to other employees, whether they receive job evaluations or course credit, and how their other conditions, such as schedules, compare with other employees. Rhode Island Hosp., 313

NLRB at 365-366. The record lacks evidence on those points and I am again constrained to leave a determination of the pharmacy intern's status for the challenge procedure.

The RN Unit

In the registered nurse unit, the parties agreed that the following job classifications, in addition to employees classified simply as RN, should be included: clinical orders expert, nurse educators, project grant assistants, QA coordinators, RN resource, RN weekend flex, RN/util mgmt, research assistants, care management coordinators, and lactation consultants.

In the RN unit, the Petitioner did not specify its objections except in regard to a few job classifications it contends are in the clinics, which objection it withdrew in its brief. That issue is dealt with above. Apparently, the rest of the objections are on community of interest grounds. The only community of interest factor cited in Petitioner's brief in support of its position is the fact that some RN's receive a salary and no overtime pay as opposed to an hourly wage and time-and-a-half pay for overtime work.

Positions so in dispute include the clinical systems coordinator. This position is in the MIS department and is responsible for all computerized documentation. The job description indicates that a degree in nursing is required, but there is no license requirement. There is no evidence this position engages in any hands-on patient care. The job description also indicates that this position is responsible for some clerical work, purchasing computer hardware and software, and integrating the Employer's records into the available software and/or adapting the records to the software. The job description makes this position appear to be most appropriately included in the business office with the other MIS positions described above. Since it is not involved in direct patient care and

does not require current nursing registration or licensure, I will not include it in the RN unit, even if the current incumbent happens to be an RN.

Nurse practitioners (including specifically nurse practitioners, nurse practitioner - clinic, and occupational health coordinator) are employed in the clinics (one of whom at least also does hospital rounds, as described above), in the home health department, and in occupational medicine. The record indicates that nurse practitioners are licensed by the State of Iowa to diagnose injury and disease and prescribe medication independently of physician oversight.

There is also one RN - occupational health. The occupational health department is open weekdays, daytime hours. It deals specifically with local industries in treating and rehabilitating occupational injuries. After hours for the occupational health department, occupational injuries are addressed in the emergency room.

In the Board's rulemaking, it established the appropriateness of all RN units. One basis for this conclusion was that RN's are predominantly grouped in a single department supervised by a nurse. *Collective Bargaining Units in the Health Care Industry; Second Notice of Proposed Rulemaking*, 284 NLRB 1527, 1544 (1988). The Board acknowledged that there are some exceptions in which RN's are assigned to other particular departments, such as "ambulatory services, discharge planning, home health care, and anesthesiology." There is no indication that those RN's belong in the "other professionals" unit. Before the rulemaking, the Board consistently included RN's in all departments in all-RN units. Frederick Memorial Hosp., 254 NLRB 36, 39 (1981) (operating room, oncology, home care); Long Island College Hosp., 256 NLRB 202, 207 (1981) (methadone clinic, alcoholism treatment, home care). Accordingly, I conclude that

the nurse practitioners should be included in the RN unit, as should the RN - occupational health. The fact that they may be salaried rather than hourly paid is insufficient to exclude them.

The nurse clinician is primarily responsible for staff development, orientation of new employees, and continued competence checking. This position also engages in hands-on direct nursing care. In addition, the nurse clinician sits in on new employee interviews and reports on other employee's performance during orientation to the department director. The Employer's witness testified conclusionarily that hiring, firing, disciplinary, and all other 2(11) decisions are made independently by the department director and the patient care coordinator, who consider the nurse clinician's reports among other things. Only the department director and patient care coordinator sign employee evaluations or disciplinary reports. The job description indicates that the nurse clinician "may" substitute for the patient care coordinator, but there is no evidence on how often that actually happens, if at all, or that the nurse clinician assumes any independent authority when so substituting. Petitioner has failed to justify any exclusion for this position. Being salaried as opposed to hourly paid is not sufficient by itself to overcome the other reasons for including all RN's in a single unit.

The program coordinator - aging right reports to the home care director and works primarily in discharge planning for elderly patients. This function requires contact with acute care professionals in determining the patients' post-discharge requirements. This person also deals with "support type of educational needs of the older adult, or the elderly patient." He or she also acts as a "liaison" with community aging groups. In Pocono

Medical Center, 305 NLRB 398, 398 (1991), the Board included a similar position in an RN unit, and so shall I.

The risk manager is responsible for dealing with conditions that may involve high risk. From the job description, this appears to refer to unusual results that may lead to claims or lawsuits. This person is responsible for compiling reports on care issues that might lead to such risks and developing preventive educational programs for other staff. The risk reports are considered confidential by the Employer, but they deal exclusively with patient care issues, not proprietary, financial or labor issues. This person also coordinates the hospital's community health telephone line and develops protocols for answering calls from the public. Again, the salary in lieu of an hourly wage is insufficient to justify exclusion, so I shall include risk manager in the RN unit.

Finally, the Employer employs one RN in the position of pastoral care. The Employer's witness testified that RN qualification is "useful" but not necessary. The job description notes that a bachelor's degree is required, no field specified; and clinical pastoral education or equivalent experience and work experience in health care ministry is preferred. This person is responsible for assessing and addressing patients' and their families' spiritual needs and ethical issues like whether to resist blood transfusions, for writing sympathy letters to families of patients who die, and dealing with local clergy. There is no specific evidence in the record as to how RN training, education, licensing or experience is relevant to these functions. Accordingly, I find that this job is nonprofessional and the fact that it happens to be currently occupied by an RN does not justify its inclusion in the RN unit.

6. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Nonprofessional unit:

All full-time and regular part-time and PRN nonprofessional employees, including activity coordinators, addictions counselors, appointment desk, bio-med techs, caring bears, central sterile techs, communications operators, cooks, cooks first, cooks special functions, CRTT eligibles, data entry clerks, department secretaries, department secretaries - EMS, diet clerks, distribution/receiving clerks, distribution clerks, drivers, ED techs, electricians, environmental service techs, environmental services tech team leaders, environmental techs, exercise coordinators, file clerks, food service shift leaders, food service store clerks, food service workers, food servers, front office, general laborers, general maintenance, gift shop attendants, home health aides, inventory control clerks, lead carpenters, linen service aides I, linen services II, linen services team leaders, mail/receiving clerks, maintenance specialists, material management assistants, medical records clerks, medical staff coordinators, medication assistants, mental health assistants, nourishment aides, nurse assistants, nurse assistants - resource, nurse asst - res, OR transport, occupational health techs, operating room technicians, pastoral care, patient access specialists, patient care techs, pharmacy clerks, physician recruitment coordinators, public relations coordinators, purchase project coordinators, purchasing coordinators, radiology aides, recep/sec - SIROC, recep/scheduling clerks, reception/sec'y - FRC, redesign specialists, rehab techs, rehab techs - outpatient, resident tech/med mgr flex, respiratory therapy assistants, scheduling clerks OR, supply/file clerks, support associates, transcriptionists, unit clerks, washer operator/dryers, and hearing techs employed by the Employer at its Penn and Alta Vista facilities and associated clinics; excluding technical employees, skilled maintenance employees, business office clerical employees, all other employees, guards and supervisors within the meaning of the Act.

Technical unit:

All full-time and regular part-time and PRN technical employees, including accredited records technician (ART), ART coder, certified occupational therapy assistant, certified respiratory therapy tech, clinical research assistant, EEG tech, EMT I, LPN's, mammography tech, mobile imaging tech, MRI tech - eligible, MRI tech -registered, nuclear tech, outcome resources tech, paramedic, pharmacy tech, physical therapy assistant, polysomnographer, radiology therapy tech, radiology tech, respiratory therapist eligible, respiratory therapist registered, and somnographer registered employed by the Employer at its Penn and Alta Vista facilities and associated clinics; excluding all other employees, guards and supervisors within the meaning of the Act.

RN Unit:

All full-time, regular part-time, and PRN registered nurses, including clinical orders experts, nurse clinicians, nurse educators, nurse practitioners, nurse practitioners - clinic, occupational health coordinators, program coordinators - aging right, project grant assistants, QA coordinators, RN's - occupational health, RN resource, RN weekend flex, RN/util mgmt, research assistants, care management coordinators, lactation consultants, and risk managers employed by the Employer at its Penn and Alta Vista facilities and associated clinics; excluding all other employees, guards and supervisors within the meaning of the Act.

DIRECTION OF ELECTION⁴

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible

⁴ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **August 30, 1999**.

to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁵

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Laborers' International Union of North America (AFL-CIO).

Dated at Minneapolis, Minnesota, this 16th day of August, 1999.

⁵ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **August 23, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board
Suite 790, Towle Building
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