

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION

McLAREN HEALTH CARE CORPORATION<sup>1</sup>

Employer

and

CASE 7-RC-21532

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO

Petitioner

and

MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Party of Interest<sup>2</sup>

APPEARANCES:

Stewart J. Katz, Attorney, of Detroit, Michigan, for the Employer.  
Betsey A. Engel, Attorney, of Detroit, Michigan, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

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

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<sup>1</sup> The name of the Employer appears as corrected at the hearing.

<sup>2</sup> Michigan Council 25, American Federation of State, County and Municipal Employees, AFL-CIO was served with a copy of the petition and notice of hearing in this matter, but did not appear at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>3</sup> 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 will effectuate the purposes of the Act to assert jurisdiction herein.
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 Sections 2(6) and (7) of the Act.

Petitioner seeks to represent a unit of approximately 230 full-time and regular part-time technical employees, including anesthesia technician, cardioradiologic technologist, cardiovascular technologist, certified occupational therapy assistant, clinical dialysis technician, clinical nurse associate, CT technologist, diagnostic medical sonographer, emergency room technician, histology technician, medical laboratory technician, operating room technician, licensed practical nurse, physical therapy assistant, radiologic technologist, radiation therapy technologist, registered respiratory therapists, special procedures technologist, therapist technician, and nuclear medicine technologist employed at the Employer's McLaren Regional Medical Center in Flint, Michigan; but excluding all physicians, registered nurses, skilled maintenance employees, office clerical employees, all other non-professional employees represented by Michigan Council 25, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME Council 25), guards and supervisors as defined in the Act. The Employer contends that the unit must exclude registered respiratory therapists who are professional employees within the meaning of Section 2(12) of the Act. The Employer additionally contends there is a recognition bar to the petitioned-for unit based on a count of authorization cards presented by AFSCME Council 25 which showed that AFSCME Council 25 represents a majority of technical employees employed at the petitioned-for facility. The record demonstrates that AFSCME Council 25 represents three other bargaining units at the petitioned-for facility including a registered nurse unit, a service employees unit and a skilled maintenance employees unit. In addition, the Michigan Nurses Association represents another registered nurse unit at the petitioned-for facility.

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<sup>3</sup> The Employer and Petitioner filed briefs in this matter, which have been carefully considered.

The Employer is a single integrated health care provider which operates an acute care hospital in Flint, Michigan. In addition to the 34 registered respiratory therapists employed in the department of respiratory care at the petitioned-for facility, there are approximately 6 respiratory therapists employed in the Employer's sleep diagnostic center at the petitioned-for facility.<sup>4</sup> The respiratory care department operates a 7-day, 24-hour operation.

The Employer has no bachelor's degree requirement for respiratory therapists, but they are required to possess a two-year associate degree in respiratory therapy. Additionally, in order to become registered therapists they must complete 2,000 hours of clinical practice, and pass a certification exam and a national registry exam which are administered by the National Board for Respiratory Care.

The respiratory therapists are supervised by two department supervisors, Ronald Hull, manager of department of respiratory care/day shift supervisor and Vickie Droulliard, afternoon shift supervisor. The six respiratory therapists in the sleep diagnostic center are supervised by Janice Downs, polysomnographic technologist. These supervisors are basically responsible for assigning an area of work to the therapists. Otherwise, the record shows that the therapists are minimally supervised in their day-to-day activities and for the most part work independently.

The respiratory therapists are assigned by their supervisor to a certain area of the hospital and generally take care of about 20 respiratory patients per shift. The respiratory therapists are responsible for assessing respiratory patients and performing respiratory therapy techniques and procedures utilized in the Employer's respiratory care program. The respiratory therapists are trained in and administer therapeutic gases, aerosol and humidity therapy, mechanical ventilator and pressure breathing therapy, postural drainage, chest percussion and other rehabilitative techniques. The initial respiratory therapy is ordered by a physician. The respiratory therapists may then modify patient respiratory therapies as needed based on direct physician orders, verbal consultation with a physician or nurse, or their own independent judgment. While the respiratory therapists may modify a patient's therapy without consultation with a physician or nurse, they are always bound by established protocols set forth by the hospital. A respiratory therapist may document verbal orders on the patient's chart without consulting with a physician. The respiratory therapists also ensure that respiratory equipment is running properly. The starting wage rate for respiratory therapists is \$13.00 per hour. After about ten years, they can advance to about \$19.63 per hour.

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<sup>4</sup> It is unclear from the record whether the Petitioner desires to represent the respiratory therapists employed in the sleep diagnostic center. Since all respiratory therapists perform basically the same duties, and the Board discourages the proliferation of units at acute care facilities, I will assume the parties intended to include them in the petitioned-for unit unless the parties advise me after the issuance of this decision that they agree to exclude them from the unit.

While there is evidence that the respiratory therapy employees perform work involving the consistent exercise of discretion and judgment, I nevertheless find that their work is not predominantly intellectual nor does it require the specialized educational background of a professional employee under the Act. *Samaratin Health Services, Inc.*, 238 NLRB 629 (1978); *The Jewish Hospital Association of Cincinnati*, 223 NLRB 614, 620 (1976); *Sutter Community Hospitals*, 227 NLRB 181,187 (1976). Rather, in light of their educational preparation, their certification, their use of various equipment that requires technical training to operate, and their use of independent judgment, I find the respiratory therapists to be technical employees. *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *William W. Backus Hospital*, 220 NLRB 414, 417-418 (1975); *Trinity Memorial Hospital of Cudahy, Inc.*, 219 NLRB 215, 216-217 (1975). Furthermore, the Board's rule-making in the health care industry specifically provides for the inclusion of respiratory therapists in a technical unit. See, 284 NLRB 1527, 1553 (1988). Therefore, I shall include the registered respiratory therapists in the technical unit found appropriate herein.

Regarding the Employer's argument that there exists a recognition bar, the record demonstrates that during the same period that the Petitioner was conducting its organizing campaign, AFSCME Council 25 made various demands for recognition as to the technical employees at the petitioned-for facility. About April 9, 1999, more than two weeks after the Petitioner had filed its petition, the Employer recognized AFSCME Council 25 after verification of signatures on authorization cards presented by the union. During the existence of active and simultaneous organizing campaigns, an employer's voluntary recognition of a union does not bar the processing of a petition if the petitioner demonstrates that it had a 30 per cent showing of interest predating recognition of its rival union. *Smith's Food & Drug Centers, Inc.*, 320 NLRB 844 (1996); modifying *Rollins Transportation System, Inc.*, 296 NLRB 793, 794 (1989). Since I have previously determined that the Petitioner has an adequate showing of interest, predating the Employer's recognition of AFSCME Council 25, I find that the Employer's recognition of AFSCME Council 25 is ineffective as a bar to the instant petition.

Accordingly, for the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All full-time and regular part-time technical employees, including anesthesia technicians, cardioradiologic technologists, cardiovascular technologists, certified occupational therapy assistants, clinical dialysis technicians, clinical nurse associates, CT technologists, diagnostic medical sonographers, emergency room technicians, histology technicians, medical laboratory technicians, operating room technicians, licensed practical nurses, physical therapy assistants, radiologic technologists, radiation therapy technologists, registered respiratory therapists, special procedures technologists, therapist technicians, and nuclear medicine technologists employed at the Employer's McLaren Regional Medical Center<sup>5</sup> in Flint, Michigan; but excluding all physicians, registered nurses, skilled maintenance employees, office clerical employees, all other non-professional employees represented by AFSCME Council 25, guards and supervisors as defined in the Act.

Those eligible shall vote as set for the in the attached Direction of Election.

Dated at Detroit, Michigan, this 23<sup>rd</sup> day of April, 1999.

(SEAL)

/s/ William C. Schaub, Jr.  
William C. Schaub, Regional Director  
National Labor Relations Board  
Region Seven  
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<sup>5</sup> The parties agree that the McLaren Regional Medical Center includes the Employer's kidney and cancer centers.