

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**BRYAN MEDICAL GROUP, INC.<sup>1</sup>**

**Employer**

**and**

**Case No. 8-RC-15872**

**UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC**

**Petitioner**

**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; hereinafter referred to as the Board.

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 in this proceeding,<sup>2</sup> 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.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The parties filed post-hearing briefs, which have been duly considered.

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. 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 licensed practical nurses, medical assistants, radiologic technologists and medical laboratory technologists employed by the Employer at its facilities in Bryan, Edgerton, Edon, Montpelier, Sherwood, Stryker and West Unity, Ohio, but excluding all certified technical laboratory assistants/phlebotomists, technical laboratory assistants/phlebotomists, medical technologists, medical transcriptionists, radiologic department clerks/receptionists, laboratory department clerks/receptionists, professional employees, registered nurses, office clericals, guards and supervisors as defined in the Act, and all other employees.

The Employer is an Ohio corporation operating an outpatient, multi-specialty medical group practice located at 442 West High Street, Bryan, Ohio. In addition, the Employer provides services at four satellite locations in Montpelier, Stryker, West Unity, and Edgerton, Ohio, and employs employees in two medical offices in Edon and Sherwood, Ohio. There are approximately 64 employees in the unit found appropriate herein.

The Petitioner seeks to represent a unit consisting of licensed practical nurses (LPNs) and medical assistants (MAs) employed by the Employer at its Bryan, Montpelier, Edgerton, Stryker and West Unity, Ohio locations. The Petitioner indicated on the record, however, that it would be willing to proceed to an election in an alternate unit. The Employer contends that the only appropriate unit is a unit of technical employees which it asserts includes licensed practical nurses, medical assistants, medical transcriptionists, medical technologists, medical laboratory technologists, certified technical laboratory assistants/phlebotomists, technical laboratory

assistants/phlebotomists, and radiologic technologists employed by the Employer at facilities in Bryan, Montpelier Edgerton, Stryker, West Unity, Edon and Sherwood, Ohio.<sup>3</sup>

The Employer provides medical services on an outpatient and inpatient basis at its Bryan facility and four satellite offices located in Montpelier, Edgerton, Stryker and West Unity, Ohio. There are 23 different medical specialties serviced by 35 full-time and 23 part-time physicians. In addition, the Employer manages the practices operated by a Doctor Basi in Sherwood and Edon, Ohio. The employees, except for the physicians, are employees of Bryan Medical Group. The Employer's headquarters are located in the Bryan Medical Group building in Bryan, Ohio. The Bryan Dental Group and Ringer's Pharmacy also occupy the building. In addition to the various doctors' offices, the clinic contains x-ray and laboratory departments. The Employer's standard office hours are from 8:00 a.m. to 5:00 p.m. and most employees work these hours, although there are slight variations in the starting times. LPNs and MAs may work later if the physician they are working with requires their assistance.

The administrator, Darryl Kinnan, is the highest-ranking official at the Employer's facility, followed by the assistant administrator, Troy Simon. Both the administrator and the assistant administrator have responsibility for overall human resource decisions. All employment decision regarding hiring and disciplining employees must be approved by the administrator and the assistant administrator. There are also department supervisors to whom employees initially report. All nurses, including the licensed practical nurses and the medical assistants report to Diane Hetz. The employees in the laboratory department report to Barb

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<sup>3</sup> The Employer employs medical record employees, "runners" and administrative employees that neither party contends should be included in the petitioned-for unit. In addition, the parties stipulated that the clerk and receptionist positions in the laboratory and x-ray department should be excluded from the unit. I accept the parties' stipulation and shall exclude those employees from the unit.

Weber. The employees in the radiology department report to Susie Orcholski. Becky Cape supervises the medical transcription employees.

The record establishes that the Employer is not an “acute care hospital” as that term has been defined by the Board. **Collective Bargaining Units in the Health Care Industry, Final Rule, 29 CFR Part 103, 284 NLRB 1579, 1597 (1989)**. In **Park Manor Care Center, 305 NLRB 872 (1991)**, the Board indicated that appropriate unit determinations in non-acute care settings should be based upon elements examined by the Board in its rulemaking proceedings concerning collective bargaining units in the healthcare industry, community of interest factors and Board precedent. I am also mindful of the Board’s obligation to give appropriate consideration to the issue of unit proliferation in the health care field. *Id.* at fn. 12. While there are few reported cases involving employees similar to the instant one, I note that the Board has found a petitioned-for unit composed of all technical employees in an outpatient clinic to be an appropriate unit. See **Faribault Clinic, Ltd., 308 NLRB 131 (1992)**. In the healthcare industry generally, the Board has found bargaining units including all technical employees to be appropriate units. See **Lancaster Osteopathic Hospital, 246 NLRB 600 (1979)**; **Barnert Memorial Hospital Center, 217 NLRB 775 (1975)**. Furthermore, the Board’s rulemaking on bargaining units in the healthcare industry similarly found that technical employees share unique interests that make a separate unit of technical employees generally appropriate. See **Collective Bargaining Units in the Healthcare Industry, Second Notice of Proposed Rulemaking, 29 CFR Part 103, 284 NLRB 1527, 1556 (September 1, 1988)**.

The petitioned-for unit seeks only LPNs and medical assistants (MAs). Applying the test set forth in **Park Manor** I find that the appropriate unit herein is one comprised of all of the Employer’s technical employees. While the parties are in agreement over the inclusion of LPNs

and MAs in the unit, as noted above, they are in disagreement over the unit placement of several classifications. Since the record establishes that there are, in fact, several other classifications of technical employees, a unit limited to only LPNs and MAs has no basis in precedent and would appear to violate the Congressional directive to avoid the proliferation of units at health care facilities. The Board has specifically held that “It is well settled Board policy that, in the health care industry, absent special circumstances such as a stipulation by the parties, existing separate representation or a separate bargaining history, LPNs should be included in a bargaining unit of all technical employees.” ***Albert Einstein Medical Center, 284 NLRB 63 (1980).***

### **LICENSED PRACTICAL NURSES AND MEDICAL ASSISTANTS**

Director of Nursing Diane Hetz testified that the nursing department hierarchy is made up of registered nurses, licensed practical nurses and medical assistants. The licensed practical nurses and medical assistants provide patient care to the patients in the various physician offices. The record revealed that the duties performed by the licensed practical nurses and the medical assistants are very similar, albeit only the licensed practical nurses perform catheterizations. LPN Darcy Doyle and Marilyn McKelvey both testified that, as licensed practice nurses, they are responsible for taking a patient’s clinical history, preparing for the doctor’s examination, performing blood sugar tests, throat cultures, collecting specimens, performing EKGs, and performing catheterizations. Both McKelvey and Doyle testified that medical assistants perform basically the same functions that they perform.

Director of Nursing Diane Hetz testified that the licensed practical nurses must attend an accredited school usually entailing a 12-month program and must take an examination in order to be licensed to practice in the State of Ohio. While there are no licensure insure requirements for a medical assistant position, the Employer does mandate that the medical assistant either attend

an 18-month course to obtain a certificate as a medical assistant, or a 2-year program to acquire an Associate's Degree. Hetz also testified that the starting wage rate for licensed practical nurses is \$10.93 and \$9.09 for medical assistants. The record establishes that the licensed practical nurses and medical assistants are subject to the same Employer policies and benefits as employees in the other departments. The licensed practical nurses and medical assistants are also required to wear uniforms as are the employees in the radiology and laboratory departments. The record disclosed that the LPNs and medical assistants are eligible for merit increases during the first five years of their employment with the Employer. After the first five years, the licensed practical nurses and medical assistants receive cost of living increases but are no longer eligible for merit increases. The record establishes that the Employer employs 53 LPNs who are working in the LPNs classification and 5 MAs working in that classification.

I conclude that the record evidence establishes that the licensed practical nurses and medical assistants exercise the use of independent judgment and are required to have specialized training and skills in order to perform their job duties. In both acute care and non-acute care healthcare facilities, the Board has found licensed practical nurses to be technical employees. See *Lincoln Park Nursing Home, 318 NLRB 1161 (1995)* and *St. Catherine's Hospital, 217 NLRB 787 (1975)*. In the Board's rulemaking on bargaining units in the health care industry, it stated that although the licensed practical nurses do work in patient care areas and provide direct patient care they were appropriately included in a unit with other technicals in light of their skill level and the requirement that they be licensed. See *Collective Bargaining Units in the Health Care Industry, Second Notice of Opposed Rulemaking, 284 NLRB 1528, 1554-1555 (September 1, 1988)*. (Accordingly, based on the above and the parties' agreement, I shall include LPNs and MAs in the unit.)

## **RADIOLOGIC TECHNOLOGIST**

The Employer maintains that the 5 radiologic technologists, commonly referred to as X-ray technicians are technical employees and should be included in a bargaining with the licensed practical nurses and medical assistants. The Petitioner maintains that the radiologic technologists are not technical employees on the basis that there is no evidence to indicate that their jobs require the use of independent judgment.

Radiology Department Supervisor Susie Orcholski testified that the x-ray technicians are responsible for performing x-rays of the extremities, abdomen, chest, skull, and kidneys. She indicated the x-ray technicians also perform floor exams and hysterosalpingograms. The x-ray technicians do engage in patient contact inasmuch as they must position the patients for the proper x-rays. In addition, the x-ray technicians often assist the patients in preparing for the x-rays. Orcholski further testified that in order to work as an x-ray technician or radiologic technologist, an individual must complete a two year formal training with an accredited school, university or college and then pass a national test. After attending an accredited program and passing the national test the radiologic technologist can become registered with the American Registry of Radiologic Technologists. Radiologic technologists are also licensed by the Health Department in the State of Ohio. The record revealed, like the licensed practical nurses, the radiologic technologist must satisfy continuing education requirements in order to maintain their registry. The radiologic technologists are subject to the same policies and benefits it pertained to the other employees employed by the Employer. The starting wage rate for radiologic technologists is approximately \$12 per hour. Like the licensed practical nurses and medical assistants, the radiologic technologists are also required to wear uniforms.

The record evidence indicates that interaction between the licensed practical nurses, medical assistants, and the radiologic technologists occurs when the nursing staff is needed to assist the x-ray technologist in performing particular procedures. The testimony also revealed that the radiologic technologists may, on occasion, meet LPNs and MAs at the medical offices in order to return x-rays, patients, or clarify x-ray orders. Based upon the above, I find that the radiologic technologists do perform jobs that involve specialized training and the use of independent judgment such that they are technical employees. In ***Faribault Clinic, 311 NLRB 131 (1992)***, the Board found a unit including licensed practical nurses and x-ray technologists, as well as other job classifications, to be an appropriate technical unit. In that case the licensed practical nurses were each assigned to work with a particular physician and performed work similar to the LPNs in the instant matter. The x-ray technologists in the ***Faribault*** case were also akin to the x-ray technologists in the instant matter. Both classifications were found to be appropriately included in a technical unit. In view of the specialized training required for the positions and the use of independent judgment, I find that the x-ray technologists should be included in a technical unit with the licensed practical nurses and medical assistants.

### **MEDICAL TECHNOLOGIST**

The Employer employs approximately four employees as medical technologists. Petitioner maintains that the medical technologists are professional employees and should be excluded from the unit. The Employer seeks to include the medical technologists as technical employees. In this regard, I agree with the Petitioner's position.

The Board has established a rebuttable presumption in *Group Health Association, 317 NLRB 238 (1995)*, that medical technologists are professional employees as defined in Section 2(12) of the Act.<sup>4</sup>

The evidence in the record indicates the Employer requires the Medical technologists possess three or four years of college, a one year internship at a lab approved by the American Society of Clinical Pathologists (ASCP) and a license from the ASCP. The Employer's job description for medical technologist position states that the medical technologist must be able to perform chemical, bacteriological, serological and microscopic procedures in one or more functional laboratory sections.

Barb Webber, Chief Technologist and Supervisor of the Laboratory, testified that, unlike the other lab employees, the medical technologist is responsible for approving test results before the results are submitted to the physician. A review of the record leads me to conclude that the Employer has failed to rebut the presumption that medical technologists are professional employees. Accordingly, I shall exclude them from the Unit.

### **MEDICAL LABORATORY TECHNOLOGIST**

It appears from the record that the Employer employs one medical laboratory technologists. Chief Technologist and Supervisor Barb Webber testified the requirements for

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<sup>4</sup> Section 2(12)(a) of the Act defines employees as professional whose work is:

- (I) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
- (II) involving the consistent exercise or discretion in judgment in its performance;
- (III) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
- (IV) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from

this position consists of a two year college degree with a minimal amount of lab experience and certification or a license with the ASCP. Like the medical technologist position, the medical laboratory technologists is also expected to perform chemical, bacteriological, serological and microscopic procedures in one or more of the laboratory sections. However, unlike the medical technologists, the medical laboratory technologists has no authority to approve test results and transmit them to physicians.

Petitioner asserts that the medical laboratory technologists is a professional employee and should be excluded from the Unit. The Employer contends that the medical laboratory technologists is a technical employee and should be included in the Unit.

In view of the educational prerequisites for this position and the nature of the job duties assigned to this position, I conclude that the position of the medical laboratory technologists requires specialized training and the use of some independent judgment warranting its inclusion in the technical unit. I reject the Petitioner's argument that the medical laboratory technologists position is a professional position and should be excluded from a technical unit on the grounds that the record evidence distinguishes the Medical technologists from the medical laboratory technologists. The medical laboratory technologists are not required to approve test results for submission to physicians and, thus, do not exercise consistent discretion in judgment in the performance of the job duties necessary for finding that professional status within the definition of Section 2(12) of the Act. Rather, I find that their duties establish that they are technical employees and thus included in the unit.

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a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

**CERTIFIED TECHNICAL LABORATORY ASSISTANT/PHLEBOTOMIST  
AND TECHNICAL LABORATORY ASSISTANT/PHLEBOTOMIST**

In the laboratory the Employer employs approximately two certified technical laboratory assistants/phlebotomists and approximately six technical laboratory assistants/phlebotomists, whose primary function is to draw blood. The Employer wishes to include these employees in a technical unit; the Petitioner seeks to exclude them on the basis that they are not technical employees.<sup>5</sup>

According to the testimony of Barbara Webber, and based upon the Employer's job description, the technical laboratory assistants/phlebotomists must have a high school education or equivalent and on-the-job training. In order to be a certified technical laboratory assistant/phlebotomist, the individual must pass an exam sponsored by the AFCP. Webber testified that regardless of whether the technical laboratory assistant/phlebotomist is certified or not, the job functions performed are the same. Thus, there is no evidence that specialized training is necessary to perform either job. I conclude that the job functions of this position do not require the use of independent judgment. Accordingly, I shall exclude these classifications from the technical unit found appropriate herein. See ***Southern Maryland Hospital, 274 NLRB 1470 (1985)***.<sup>6</sup>

**MEDICAL TRANSCRIPTIONISTS**

The Employer employs approximately four employees in the classification of Medical Transcriptionist. The Employer would include these employees in the technical unit, while the

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<sup>5</sup> While Employer Exhibit 2 lists two MAs as being employed in the laboratory, the record establishes these employees are actually employed as phlebotomists. In addition a medical technologist, Sandra Diehl is also employed as a phlebotomist. These employees are excluded from the unit since they are not working as technical employees.

<sup>6</sup> The record establishes that a LPN and MA are employed as medical transcriptionists. Since these employees are not working in a technical classification they are excluded from the unit.

Petitioner would exclude them. The record revealed that the Medical Transcriptionist type dictation from the doctors for placement in medical records, referral letters, and other miscellaneous letters. Medical Transcriptionists are not required to undergo any specialized training to perform this job. The Employer maintains that in the course of typing the physicians' dictation, the Medical Transcriptionist must interpret the terminology used by the physicians. However, since the record does not establish that the Medical Transcriptionists need specialized training to accomplish this task, or that they utilize independent judgment in furtherance of it, I shall exclude them from the Unit. See *St. Catherine's Hospital of Dominican Sisters of Kenosha*, 217 NLRB 787, 789, fn. 20 (1975).

#### **EATON AND SHERWOOD, OHIO OFFICES**

Assistant Administrator Troy Simon testified that temporary transfers have occurred between employees at the Bryan Clinic and the Eaton and Sherwood offices. I find that employees at the Eaton and Sherwood, Ohio locations, who work in classifications I have found to be technical positions, should be included in the Unit. I reach this conclusion in view of the temporary transfers that have occurred between the facilities. The fact that these employees work in Dr. Basi's office does not detract from the fact that they are the employees of the Employer and work in classifications that are unit positions.

As noted, the Petitioner has indicated its willingness to proceed to an election in an alternate unit. I shall, therefore, direct an election in the above-described Unit comprised of all of the Employer's technical employees.

## **DIRECTION OF ELECTION**

An election by secret ballot shall 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 to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, 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 employees 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Steelworkers of America, AFL-CIO, CLC.

## **LIST OF VOTERS**

In order 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); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969)*. Accordingly, it is directed that an eligibility list containing the *full* names and addresses

of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. *North Macon Health Care Facility, 315 NLRB 359 (1994)*. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

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. 20570-0001. This request must be received by the Board in Washington, by July 23, 1999.

Dated at Cleveland, Ohio this 9<sup>th</sup> day of July 1999.

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

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