

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

TRI-STATE DIVISION GREATER ALLEGHENIES  
REGION, AMERICAN RED CROSS

Employer

and

Case 9-RC-17310

DISTRICT 1199, THE HEALTH CARE AND  
SOCIAL SERVICE UNION, SEIU, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called 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>1/</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.
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.

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<sup>1/</sup> The Employer and the Petitioner each timely filed a brief which I have carefully considered in reaching my decision.

5. The Petitioner currently represents a unit comprising all technical, clerical and service and maintenance employees employed by the Employer at all of its locations, including Huntington, Charleston and Parkersburg, West Virginia and Ashland, Kentucky. <sup>2/</sup> The Petitioner now seeks to represent the Collection Specialist IIIs (CS-IIIs) employed by the Employer at these locations, and to include them in the existing bargaining unit. The CS-IIIs have historically been excluded from the existing bargaining unit, although the record does not disclose the basis for such exclusion. The Employer contends, contrary to the Petitioner, that the CS-IIIs are supervisors within the meaning of Section 2(11) of the Act. The parties stipulated that the CS-IIIs are nonprofessional employees, and that if they are not supervisors, they may be properly included in the existing bargaining unit if a majority of them vote for representation. Accordingly, the sole issue for decision is whether the Employer's CS-IIIs are supervisors within the meaning of the Act.

The Employer collects, processes and supplies blood and blood products to hospitals and other health organizations in its geographic area, consisting of 32 counties covering parts of West Virginia, Kentucky and Ohio. Blood collections are performed at the Employer's "fixed sites," which are located in Huntington, Charleston, Parkersburg and Ashland, as well as at various remote locations through the use of "bloodmobiles."

The Employer's overall operations are under the direction of its chief executive officer, Tom Angle, who oversees both the Tri-State region involved here and the Johnstown, Pennsylvania region, where his office is located. The Tri-State region is under the immediate direction of Beth Lloyd, interim COO, and includes a donor recruitment department, collections department, process control department, laboratory and component laboratory department. The collections department, where the CS-IIIs work, is headed by Associate Director of Collections Betsy Starcher. There are four collection supervisors -- Linda Robinson, Rickie Sizemore, Sandy Henshaw and Rocky Snow -- who report to Starcher. The CS-IIIs, 12 full-time and 2 part-time, report to the collection supervisors. The collections department also employs approximately 31 of the 67 employees in the existing bargaining unit; they occupy the classifications of Collection Technician I (CT-I), Collection Technician II (CT-II) and Mobile Unit Assistant (MUA).

There are nine mobile units which perform blood collection at locations remote from the fixed sites. These operations are initiated by employees in the donor recruitment department who make preliminary scheduling arrangements and arrive at a goal for the number of pints of

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<sup>2/</sup> The unit, as described in the current collective-bargaining agreement, is:

All employees employed by the Employer at its facilities in Huntington, Parkersburg and Charleston, West Virginia including all licensed practical nurses, staff technicians, donor resources consultants, the executive medical secretary, the secretary-technical services, the nursing secretary, the maintenance coordinator and the public relations assistant, but excluding the labor liaison-donor resources consultant and all confidential employees, professional employees, guards and supervisors as defined in the Act.

blood to be collected. Based on this goal and the hours of operation planned, the scheduler, a management employee, applies a formula to determine the staffing levels required, and develops a schedule assigning particular employees to each blood drive. These schedules are posted 2 weeks in advance, but are occasionally modified based on input from the CS-III.

Each operation is staffed by a “team” comprising MUAs, CT-Is, CT-IIs and CS-IIIs. The MUAs are responsible for loading and unloading the vehicle and driving it to and from the site. CT-Is perform venipunctures (i.e., draw blood), make up containers for the blood, and perform other less-skilled duties. CT-IIs take health histories from the donors and perform venipunctures. A CS-III is assigned to be “in charge” of about 85 percent of the operations; the remainder are overseen by one of the collection supervisors. CS-IIIs are also sometimes assigned to an operation without being “in charge;” in such instances, they perform venipunctures and take health histories like the CT-IIs.

On the morning of the operation, MUAs arrive about 30 minutes prior to the departure time and load the truck with the necessary supplies and equipment. Other team members arrive just prior to departure, check to assure that the proper equipment has been loaded, sign out the handheld computer, and obtain the vehicle keys from an upstairs office. The person in charge, generally a CS-III, is responsible for seeing that a final checklist has been completed and may assign team members to specific tasks, although it appears that team members generally know what is expected and pitch in without being instructed. The team then rides to the site, generally in the mobile unit driven by the MUA. At the site, the team unloads the equipment and supplies and sets up the operation in the available space. The CS-III in charge is responsible for seeing that the set-up meets all regulatory requirements and that donors will be able to move easily from the registration area, to the health history area, to the donor room, then to the canteen area and to the exit. The CS-III makes out a schedule assigning each team member to a certain area for each hour of the operation, rotating employees among the various areas they are qualified to handle, and assigns meal and break times, subject to modification based on the flow of donors.<sup>3/</sup> During the operation, the CS-III in charge handles any problems which arise, completes numerous reports, and fills in for team members during their breaks or meal periods. At the conclusion of the operation, the CS-III in charge oversees the reloading of the equipment and supplies into the truck and upon arrival back at the Employer’s facility, assures that everything is unloaded and returned to its proper place.

When an employee is sick, they generally notify the scheduler, but may sometimes call the CS-III in charge, who will in turn report the absence to the scheduler. The CS-III does not determine whether the absence will be considered excused. An effort is made to replace an absent employee by requesting an off-duty employee to come in and work; it appears such calls are generally made by the scheduler, that employees are not *required* to fill in for absent employees on request, and that on the rare occasions when there is a choice of more than one employee to call, selection is based on seniority. The record indicates that on one occasion, a CS-III in charge sent an employee home before the team departed for an operation because the

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<sup>3/</sup> Associate Director of Collections Betsy Starcher testified that these written schedules were initiated in order to have some documentation of whether assignments were being made equally.

CS-III believed the employee was too sick to participate in the operation. On another occasion, a CS-III in charge sent an employee home to change into proper clothing before the team departed for an operation. Once at the site of the operation, employees are generally not sent home since they have no independent transportation back to the Employer's facility. If a disciplinary situation arises at the site, the CS-III in charge can remove an employee from the operation but cannot administer any disciplinary action. The CS-III will write up a factual account of the employee's conduct and submit it to the associate director or the collection supervisors. Any disciplinary action is determined and administered by these managers after an independent investigation, including interviewing all individuals involved.

CT-Is, CT-IIs and MUAs are evaluated during their probationary periods by the collection supervisors. CS-IIIs may be asked for input on how a probationary employee has performed during off-site operations, but they do not fill out evaluation forms, determine an employee's rating, or sit in on the evaluation interview. Although Starcher testified that she specifically solicits the CS-IIIs' recommendation whether to retain a probationary employee, the record discloses that probationary employees have been terminated despite the CS-IIIs' contrary opinion. CS-IIIs are not involved in the grievance procedure under the collective-bargaining agreement. However, CS-IIIs may personally resolve minor complaints which arise during an operation, such as an employee wanting to alter his/her assignment. In cases of emergency or illness, the CS-III in charge of an operation will permit an employee to leave early but as a practical matter it is usually necessary to call the Employer's facility to arrange transportation for the employee. The CS-III in charge determines whether to keep an operation open beyond the scheduled closing time when there are donors still waiting. The record indicates that as a general rule, operations are kept open at least 15 minutes beyond the scheduled closing time and longer if the collected blood will remain useable despite a long unrefrigerated storage.

CS-IIIs are hourly paid and punch the same timeclock as employees in the existing bargaining unit. The starting rate for CS-IIIs is \$14.04 per hour compared with \$8.30 for CT-Is and \$9.31 for CT-IIs. The highest starting rate in the existing bargaining unit is \$12.02.<sup>4/</sup> CS-IIIs do not have offices at the Employer's facility and do not attend management meetings. CS-IIIs are permitted to wear either blue and white clothing similar to the clothing worn by the CT-Is and CT-IIs, or multicolored scrubs which current unit employees are not permitted to wear. In contrast to the CS-IIIs and current unit employees, collection supervisors are salaried, have separate offices and generally attend weekly management meetings. CS-IIIs receive the benefit package for all nonbargaining unit employees, while a somewhat different benefit package is contained in the collective-bargaining agreement. The principal differences are in sick leave/vacation time, which for nonunit employees is combined as "earned time off," and in short-term and long-term disability insurance, which is paid at least in part by the Employer for nonunit employees but not for unit employees.

Section 2(11) of the Act defines "supervisor" as follows:

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<sup>4/</sup> The position whose starting rate is \$12.02 is the staff technologist MLT/MT, ASCP registered.

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In a representation proceeding, the burden of proving that individuals are supervisors rests on the party alleging that supervisory status exists. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Ohio Masonic Home, Inc.*, 295 NLRB 390 (1989); *Tuscon Gas & Electric Co.*, 241 NLRB 181 (1979). In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are “vested with genuine management prerogatives” and lead persons who are protected by the Act even though they perform “minor supervisory duties.” *Providence Hospital*, 320 NLRB 717, 725 (1996). In each case presenting a supervisory issue, the Board must “differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact.” *Id.* at 725.

In applying these criteria to the facts in the subject case, I find that the CS-IIIs are not supervisors within the meaning of Section 2(11) of the Act. The CS-IIIs do not possess any authority to hire, fire, transfer, suspend, layoff, recall, promote or reward employees. Although the Employer contends in its brief that the CS-IIIs exercise authority to discipline, the record discloses that they merely make factual reports of any problems, and management officials conduct an independent investigation before determining what if any discipline is warranted. It is well settled that such factual reporting does not constitute supervisory authority to discipline employees. See, e.g., *Brown & Root, Inc.*, 314 NLRB 19 (1994). The case cited by the Employer regarding disciplinary authority, *Health Care & Retirement Corp.*, 328 NLRB No. 156 (July 27, 1999), is clearly distinguishable. The LPNs at issue in *Health Care* had authority to determine whether employee misconduct warranted discipline, and to issue disciplinary warnings without approval from any management official. Here, the CS-IIIs clearly do not possess such authority.

The Employer also contends in its brief that CS-IIIs possess authority to adjust employee grievances, based on their ability to respond to minor employee complaints concerning job assignments or lunch breaks during blood operations where the CS-IIIs are acting in a charge capacity. I find, however, that such authority does not amount to supervisory authority involving the exercise of independent judgment. Job assignments are to be distributed equally and breaks are to be taken as the work flow allows; in this sense, CS-IIIs act as coordinators, but are not called upon to make judgments concerning which employees are best utilized in which assignments or which employees will receive breaks and which will not.

Similarly, I find no merit in the Employer’s final argument made in its brief that CS-IIIs possess supervisory authority to assign and direct employees. Rather, work assignments are based on the principle of equalization and are routine in nature. The authority to “direct” employees to pitch in and assist in the loading or setup of equipment and supplies does not

involve the use of independent judgment. Nor does the CS-IIIs' use of independent judgment concerning where to position the various tables and beds at the site constitute supervisory authority. Such decisions involve merely the placement of objects rather than the exercise of independent judgment in directing employees. Moreover, the fact that an in-charge CS-III may keep a site open beyond the scheduled closing time is determined by whether donors are still waiting to be served and does not require any independent discretion as contemplated in Section 2(11) of the Act.

In its brief, the Employer cites *Beverly Enterprises v. NLRB*, 160 LRRM 2217 (4<sup>th</sup> Cir. 1999); *Glenmark Assocs., Inc. v. NLRB*, 147 F.3d 333 (4<sup>th</sup> Cir. 1998); *NLRB v. St. Mary's Home, Inc.*, 690 F.2d 1062 (4<sup>th</sup> Cir. 1982); and *Monagahela Power Company v. NLRB*, 657 F.2d 608 (4<sup>th</sup> Cir. 1981), in which the Fourth Circuit considered supervisory issues. It is noted, however, that the Employer cited these cases for the criteria necessary to establish supervisory status and for the proposition that supervisors may not be included in bargaining units. I agree with these general propositions. However, I find that the CS-IIIs here do not possess any of the indicia exercised by the individuals found to be supervisors in the cases cited by the Employer. Indeed, the Employer has not cited any cases in which individuals who exercise the type of authority as the CS-IIIs in the subject case were supervisors within the meaning of Section 2(11) of the Act.

In sum, CS-IIIs serve as a classic example of team leaders responsible for coordinating the team's work. Statutory supervisory authority is not established by the limited authority of a charge CS-III to assign job tasks or direct employees to assist in the preparation of an operation site. The fact that CS-IIIs are generally the highest ranking employee at a remote operation site does not confer supervisory status in the absence of any actual supervisory authority, particularly where the number of employees at the site is small, employees are generally able to perform their duties without direction, and the Employer's management officials are accessible by telephone. *First Western Building Services, Inc.*, 309 NLRB 591 (1992).

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the CS-IIIs are not supervisors within the meaning of Section 2(11) of the Act. In agreement with the positions of the parties that the CS-IIIs otherwise share a substantial community of interest with the employees currently represented by the Petitioner, I shall, pursuant to the Direction of Election, permit the CS-IIIs in the following voting group to vote whether they desire to be included in the unit currently represented by the Petitioner:

All CS-IIIs employed by the Employer, excluding all other employees, and all professional employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group 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 voting group 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 included in the unit currently represented for collective bargaining purposes by **District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO.**

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may 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 using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 8, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **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. This request must be received by the Board in Washington by **November 15, 1999**.

Dated at Cincinnati, Ohio this 1<sup>st</sup> day of November 1999.

*/s/ Richard L. Ahearn*

Richard L. Ahearn, Regional Director  
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