

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

In the Matter of

ST. CLAIRE MEDICAL CENTER, INC. ^{1/}

Employer

and

Case 9-RC-17321

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, 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, ^{2/} 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.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The Employer and the Petitioner have timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the operation of an acute care hospital (ACH) in Morehead, Kentucky, and other medical and health care facilities within the Commonwealth of Kentucky. The Employer currently employs approximately 308 nonprofessional employees at the ACH in the unit found appropriate. The Employer employs approximately 151 additional nonprofessional employees at its other medical and health care facilities.^{3/} There is no history of collective-bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all full-time and regular part-time nonprofessional employees, technical employees, skilled maintenance employees and business office clerical employees employed by the Employer at its Acute Care Hospital facility at Morehead, Kentucky, but excluding all professional employees, guards and supervisors as defined in the Act. Contrary to the Petitioner, the Employer asserts that the appropriate unit must also include all nonprofessional employees employed at several facilities located in close proximity to the ACH (Morehead Campus) and at its four primary care clinics and six home health offices located in adjacent counties. In the alternative, the Employer contends that the smallest appropriate unit must include, at least, the approximately 51 to 55 nonprofessional employees employed at its other facilities located on the "Morehead Campus" with the ACH. Additionally, the Employer maintains that its eight radiology technician IVs (rad tech IVs) must be excluded from the unit as supervisors within the meaning of Section 2(11) of the Act. The Petitioner contends that there is insufficient information on which to resolve the supervisory status of the rad tech IVs. Initially, the parties stipulated that the rad tech IVs are not statutory supervisors but the Employer altered its position in this regard at a subsequent point in the proceeding. Finally, the Employer, contrary to the Petitioner, asserts that Pam Hunt, secretary for its quality management department, is a confidential employee and must, therefore, be excluded from any unit found appropriate. The Petitioner has expressed a willingness to proceed to election in any unit found appropriate.

The parties stipulated that the ACH is an acute care patient medical facility which has a capacity of 130 beds. I find that the Employer is a health care institution within the meaning of Section 2(14) of the Act. Accordingly, the Board's Final Rule (the Rule) on collective-bargaining units in health care institutions is applicable to this acute care hospital. 29 CFR 103 (1980), 284 NLRB 1580 (1989), approved the Supreme Court in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991). Initially, I note that the unit sought by the Petitioner is broader than any which is provided for by the Rule. However, a broader unit is permissible when all parties agree. Here, the parties are in agreement as to the composition of the unit as it relates to the employees of ACH. I find, therefore, that the unit sought may be appropriate under the Rule.

The ACH is one contiguous building comprised of three separate sections that were built as it expanded, with the latest expansion occurring in the early 1990s. The center section of the ACH is seven stories high. The ACH offers a full range of medical care. Departments within the ACH includes an active surgery suite where a variety of surgical procedures are regularly performed and a 14-bed intensive care unit. The ACH also contains an obstetrics department with a level 2 nursery, an inpatient psychiatric unit with 20 beds, emergency room services, cardiac cath, radiology, neurology, a transitional care unit and outpatient services. Further, it has

^{3/} The number of nonprofessional employees working at the ACH was estimated at as high as 390 on the record.

its own laboratory, EKG and pathology departments. In addition to the approximately 308 nonprofessional employees sought by the Petitioner, the various departments are staffed with numerous registered nurses and other professionals.

With respect to the other facilities put in issue by the Employer, the Home Medical Equipment facility (HME) is located across an alley and an employee parking lot from the ACH. The HME facility provides medical equipment needed in patient's homes. This equipment includes items such as beds and oxygen tanks. The services provided by HME personnel includes transporting the equipment to homes, setting it up and training patients and their families on usage. Across the street from the ACH is the Employer's Family Care Clinic (FCC). A physician and staff administers prenatal and postnatal care work out of the FCC. The Employer's midwife program is also located in the FCC. However, childbirth and related care are provided in the ACH. On the other side of the same block, further away from the ACH, is the Hospice facility where the Employer provides respite care for terminally ill patients. Outpatient mental health services are provided by the Employer out of its St. Claire Counseling Services facility, which recently relocated to a building situated in the same block as the ACH. The Employer's Cancer Treatment Center (CTC) is one block down from the ACH and is on the same side of the street as the FCC. Most radiation oncology services are provided at the CTC. Further away from the ACH on the same block as the CTC is the St. Claire Home Health/Outreach Center. On the next block over from the CTC and the Outreach Center is the Employer's Home Health Administrative Office (HHA). The Outreach Center and the HHA serve in part as the office for home health aides working out of patient's homes in Rowan, Bath and Menifee counties. There are approximately five employee parking lots located in the general vicinity of the ACH and the Employer's other nearby facilities. In addition, interspersed between the ACH and the aforementioned facilities of the Employer are numerous buildings unrelated to the Employer, including fast food restaurants, private residences, offices and clinics.

In addition to the above facilities, the Employer operates several treatment centers located in counties surrounding Rowan, the county in which the ACH is situated. Thus, the Employer has four primary care clinics (PCCs), one each in Bath, Carter, Elliott and Menifee counties and six home health offices in the counties of Rowan, Carter, Elliott, Fleming, Lewis and Montgomery. The mileage and approximate drive times between the ACH and the PCCs and home health offices in the counties surrounding Rowan are as follows: Bath County PCC in Owingsville - 21 miles in 20 minutes; Carter County PCC and home health office in Olive Hill - 20 miles in 20 minutes; Elliot County PCC and home health office in Sandy Hook - 26 miles in 45 minutes; Fleming County home health office in Flemingsburg - 28 miles in 25 to 30 minutes; Lewis County home health office in Vanceburg - 37 miles in 40 to 45 minutes; Menifee County PCC in Frenchburg - 26 miles in 35 minutes and Montgomery County home health office in Mt. Sterling - 32 miles in 25 to 30 minutes.

The PCCs offer medical, dental, pharmacy and optometry services and are equipped with labs in which routine tests are performed. If more complex testing is required, samples are sent to the ACH laboratory or on occasion to a referral laboratory. Additionally, patients are regularly referred from the PCCs to the ACH for medical care and services that are unavailable at the PCCs. The home health offices are administrative offices that provide supervision, billing and other administrative support for the home health aides who work out of patient's homes in the counties surrounding Rowan. A single license from the Commonwealth of Kentucky covers all of the Employer's operations with the exception of home health for which regulations require

a separate license. Additionally, the Joint Commission on Accreditation of Healthcare Organizations accredits the Employer's entire operation (JCAHO). To gain JCAHO accreditation an integration of patient care services and methods of operation is required. JCAHO accreditation is important for Medicare purposes and may be required for managed care contracts and teaching contracts.

A Board of Directors that includes President and Chief Executive Officer Mark Neff governs the Employer. Reporting directly to Neff are a number of vice-presidents and directors. They include: Vice-President Planning and Facility Management Roger Russell; Vice-President Human Resources/Administrative Services Kelly Furbee; Vice-President Finance/CFO Robert Camuel; Vice-President Inpatient Services Joan Wells; Vice-President Quality/Resource Management Linda Fultz; Vice-President Medical Affairs/Physician Services Kimberly D. Williams M.D.; Assistant Vice-President Home Care Programs Janet Shroud; Director Information Services Randy McCleese; Director Education/AHEC Greg Bausch^{4/}; Administrative Director for Diagnostic Services Charlene Lewis; Director Mission Integration Sister Mary Margaret Droege and Director of Counseling Services Pauline Siders.^{5/} With the exception of Shroud, it appears that all of these individuals have offices in the ACH.

There are approximately 16 nonprofessional employees under Russell who are employed at the ACH. These include maintenance employees, printers, an office assistant, a gift shop assistant and bio-medical engineering employees. Furbee has administrative responsibility over approximately 30 nonprofessional employees at the ACH; most of whom are food service workers and the remainder are physical therapy technicians and a secretary. Additionally, Furbee is administratively responsible for the PCCs, the CTC and the FCC. Reporting to Furbee for those outreach facilities is Director for Clinic Operations Charlotte Walker. Each of these facilities has an on-site supervisor. Cindy Gulley is the clinic manager for the Bath County Clinic. There are approximately 24 employees employed at the Bath clinic, with 14 of those employees in nonprofessional positions. The nonprofessional positions include registration clerk, certified medical assistant, billing specialist, administrative assistant, environmental services assistant, LPN, optometry assistant, transcriptionist and radiology technician.^{6/} Mary Horsley is the RN supervisor at the Carter County Clinic. There are 19 employees employed at that clinic of whom 11 are nonprofessional. Craig Gasken is the clinic manager for the Menifee County Clinic. There are 21 employees under him, 12 of whom are nonprofessional. Edna Fannin is the RN supervisor at the Elliott County Clinic. She has 14 employees working under her, 10 of whom are nonprofessional. Cancer Care Coordinator Lisa Day, an RN, is the immediate supervisor of the Employer's employees at that location. One of the three employees she supervises is a nonprofessional employee. Linda Griggs is the clinic manager for the FCC. She has 9 employees reporting to her, 3 of whom are nonprofessional.

^{4/} AHEC stands for Area Health Education Center. It is a program operated by the University of Kentucky which contracts with the Employer for space and employees to service the program.

^{5/} Siders performs contract services for the Employer on behalf of St. Joseph Behavioral Health. However, there is one currently vacant nonprofessional position under her supervision outside the ACH.

^{6/} Similar nonprofessional positions are found at the other PCC locations.

There are approximately 38 or 39 nonprofessional employees under Camuel at the ACH. The nonprofessional positions include accounts payable assistant, accounting clerk, administrative assistant, accounts receivable clerk, billing specialist, office assistant II, registration clerk, material management clerk and buyer. Vice-President Inpatient Services Wells also serves as the Employer's Director of Nursing. Wells has 14 supervisors under her at the ACH and they supervise approximately 167 nonprofessional employees. Lewis is responsible for the ACH laboratory and radiology departments.^{7/} There are approximately 20 nonprofessional employees employed in the laboratory and approximately 34 to 42 nonprofessional employees employed in radiology. There is one nonprofessional employee directly under Fultz and an additional 21 or 22 who work under Director of Health Information Management Sue Wilson and her subordinate supervisors. These nonprofessionals are employed in the positions of transcriptionist, office assistant I, III, and IV, tumor registrar, coder analysts and patient representative.

Shrout has administrative responsibility over the home medical equipment operation, hospice services and homecare services. Her office is located in the home health administrative office. Reporting to Shrout is Home Health Director Lois Vice. Vice is responsible for the Employer's six home health offices. Each location has a patient care coordinator who is the immediate supervisor for the employees who report to and work out of those locations. There are approximately 80 nonprofessional employees in the homecare operation. Of that number many work out of the Outreach Center or the HHA in Rowan County. Thus, there are approximately 28 home health aides who work out of the Outreach Center with 14 servicing Rowan County and 14 servicing Bath and Menifee Counties. There are also approximately four billing specialists, an office assistant, one scheduling aide, a secretary II and a LPN who work out of the Rowan County home health office located in the Outreach Center.^{8/} There are 35 additional home health aides who work out of the Employer's five remote home health offices and there are several additional billing specialists, scheduling aides and secretary IIs at those locations. Under Shrout, there are also 11 nonprofessional employees working for Director for Home Medical Equipment and her subordinate Patient Care Coordinator Judy Buelterman and 3 nonprofessional employees employed under Director for Hospice Robin Franklin.

There are four nonprofessional employees under McCleese and his subordinate Data Processing Manager Janet Skaggs. Finally, I note that Bausch supervises seven nonprofessional employees.

As demonstrated by the administrative and supervisory breakdown, the nonprofessional employees employed at the ACH report up through a supervisory chain that is separate from that to which the nonprofessional employees who are employed outside the ACH report. Thus, the nonprofessional employees employed outside the ACH report to immediate onsite supervision and ultimately to Shrout, who generally reports to Walker, who reports to Furbee. Furbee, in turn, reports directly to Neff and on occasion Shrout may report to Neff. In contrast, the vast majority of those nonprofessional employees employed at the ACH report through immediate supervision to Russell, Furbee, Camuel, Wells, Lewis, Fultz, McCleese and Bausch, with most

^{7/} Lewis is also responsible for Pathology and EKG and reports to Wells in those areas in addition to her reporting responsibilities to Neff.

^{8/} The LPN services patients in their homes in all eight counties covered by the Employer's home health operation.

reporting through Wells and Lewis. Below Neff, only Furbee has responsibility for nonprofessional employees inside and outside the ACH and he is responsible for only a small percentage of the ACH nonprofessionals.

Furbee is also in charge of the Employer's human resource department that provides labor relations services to the Employer's entire system. In this regard, when positions are vacant, the jobs are posted each Monday at the ACH and all of the Employer's outlying operations. The Employer gives current employees a week to apply for a vacant position prior to opening up the position to outside applicants. A standardized application form is used for all outside applicants. However, on-site managers exercise final approval within certain boundaries as to which applicants are to be hired. Indeed, the record discloses that an on-site manager's decision to hire an applicant is overruled only in rare circumstances.

The Employer utilizes a single employee handbook that applies across its system. The handbook contains policies on paydays and paycheck distribution, seniority, performance appraisals, transfers and promotions, employee grievance procedure, leave of absence, termination, various rules and regulations and benefits. The progressive disciplinary policy set forth in the handbook is superceded by a January 1997 "Conduct and Performance Policy" which provides for progressive discipline. The attendance and tardiness policy set forth in the handbook is likewise superceded by a January 1997 policy linked to the disciplinary procedure in the "Conduct and Performance Policy" when informal counseling fails to correct a problem. Personnel files for all employees are maintained at the ACH and benefits are uniform throughout the Employer's system.

The Employer has a single payscale with 25 different pay grades. There is a range within each grade. Front line supervisors have the option of recommending that employees they supervise receive all, part or none of any annual increase that the Employer grants systemwide. The Employer's grievance procedure contemplates that the initial step will take place between the employee and his/her immediate supervisor, the second step with the department head and the third step with the assistant vice-president or vice-president responsible for the department. The final two steps involve the human resource director, and if the matter is still unresolved a final review and decision by the Employer's president.

With regard to discipline, the on-site supervisors at the Employers' various facilities have the authority to engage in informal counseling and to issue oral and written warnings, referred to as Step 1 and Step 2 conferences, without prior approval from the human resources department. The third level of progressive discipline is entitled "Decisional Leave." At this step a supervisor may suspend an employee without pay for a day. The supervisor is at least required to consult with the human resources department prior to issuing decisional leave.^{9/} A repeated violation of the lesser type of infraction, referred to as a "Class 1" infraction, within a period of 12 months following a decisional leave will subject the offending employee to termination. If an employee commits a more serious "Class 2" infraction, the supervisor may recommend decisional leave or termination depending on the severity of the infraction. The human resources department must

^{9/} Although no specific examples were offered, Furbee testified that consultation with human resources with regard to decisional leave also means that approval is required. However, a supervisor can place an employee on administrative leave pending such approval.

approve any decision to terminate an employee. Documentation utilized in the disciplinary process is uniform.

The Employer recently installed a time and attendance system for its entire operation. This system permits the electronic processing of payroll for all the employees in the system by clerks located at the ACH. In this connection, the employees at the PCCs and the ACH will use an electronic card swipe system and the home health employees will fill out timesheets that clerks at the ACH use to input data into the system. The ACH employees apparently already have the electronic swipe system and that capability is planned for the PCCs.

The Employer's managers order supplies and new equipment centrally through a buyer located at the ACH. Maintenance and medical equipment repair functions are also performed centrally from the ACH. Thus, the Employer's maintenance employees are based at the ACH but provide maintenance services to all of the Employer's facilities as needed. In this same vein, biomedical specialists and technicians perform repair work on larger pieces of medical equipment at the PCCs. Smaller pieces of medical equipment that need servicing are transported to the ACH where the work is performed.

Each of the Employer's departments and, therefore, each of the outlying facilities is permitted its own dress code but it cannot be more liberal than the parameters set forth in the Employee Handbook. Each of the Employer's departments has its own budget; however, the individual budgets are incorporated into a single operating budget. The heads of the individual departments, including for example those over the various PCCs, authorize employees to work overtime without prior approval from any other official.

Many of the nonprofessional employees at the ACH and the outlying facilities are in the same job classifications and would appear to possess similar skills and perform similar functions. However, permanent and temporary interchange of nonprofessional employees between the ACH and outlying facilities is slight. For example, the record discloses that between about April 1994 and the time of the instant proceeding 55 employees permanently transferred between the ACH and one of the Employer's outlying facilities, including to and from other facilities in Morehead. The record also discloses that as a subset of the above, 16 of the employees who transferred to or from the ACH transferred to one of the PCCs outside Rowan County. The record does not disclose the precise number of temporary transfers that occurred during that same time frame, only that they were significantly fewer in number than permanent transfers. Work related contact between employees at the ACH and those employed at any of the outlying facilities is minimal, with the exception of a few employees whose duties take them from the ACH to the outlying facilities and even fewer whose duties take them from the outlying facilities to the ACH. Examples of the former are couriers, who transport supplies, laundry and equipment back and forth, and the aforementioned maintenance and biomedical personnel. Examples of the latter are dental assistants who may occasionally assist the Employer's staff dentist in performing surgeries at the ACH.

SCOPE ANALYSIS:

In analyzing the factors determinative of the scope of the unit, it is well settled that the Act only requires a labor organization to seek *an* appropriate unit, not the only appropriate unit or even the most appropriate unit. See, *Morand Bros. Beverage Company*, 91 NLRB 409, 418

(1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1950). Moreover, in a representation proceeding, a petitioner's desire concerning the composition of the unit it seeks to represent always constitutes a relevant consideration. *Overnite Transportation Co.*, 322 NLRB No. 122 (1996); *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994); *Dezcon, Inc.*, 295 NLRB 109 (1989). ^{10/} Although other combinations of nonprofessional employees within the Employer's healthcare system may also constitute an appropriate unit, I need only decide whether the unit sought by the Petitioner constitutes an appropriate unit. In making this decision, I am mindful of the Congressional mandate peculiar to the health care industry which requires a careful guarding against the proliferation of bargaining units. See the Rule, *supra*. A principal purpose of this policy is to limit the disruption to critical and necessary medical services which may occur as a by-product of labor strife. See, *Manor Healthcare Corp.*, 285 NLRB 224, 225 (1987).

In industries outside of the health care context, the Board has long applied a presumption that employees sharing a community of interests at a single facility constitute an appropriate unit for collective bargaining even where an employer maintains other facilities that employ similarly classified employees. *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Bell Mills*, 139 NLRB 629, 631 (1962); *Tempco Aircraft Corp.*, 121 NLRB 1085 (1958). The party seeking to challenge this presumption may rebut it by presenting sufficient evidence to show that the single facility has been effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. *J & L Plate, Inc.*, *supra*; *Red Lobster*, 300 NLRB 908, 910, 911 (1990). The Board has applied the same rebuttable presumption in the health care industry. *Samaritan Health Services, Inc.*, 238 NLRB 629, 632 (1978); *National G. South, Inc.*, 230 NLRB 976, 978 fn. 5 (1978). In *Manor Healthcare Corp.*, *supra*, the Board reaffirmed this principle when it specifically held that the Congressional policy of preventing the proliferation of bargaining units in the health care industry, "does not warrant a health care industry exception to the single facility presumption." *Id.* at 225. In reaching this conclusion, the Board held that it could best accommodate Congress' concern that it seek to avoid a unit structure that would threaten the continuity of patient care occasioned by work stoppages or other potential elements of labor strife by continuing to apply the single facility presumption. *Id.* at 226. In this connection, the Board stated, "This presumption means only that a party opposing a particular single facility unit must show some likelihood of harm to the public interest as interpreted by Congress." *Id.* at 227. The type of harm envisioned involves, "disruptions to continuity of patient care." In several recent decisions following *Manor Healthcare Corp.*, the Board has continued to find single facility units in the health care industry to be presumptively appropriate. See, *Visiting Nurses Association of Central Illinois*, 324 NLRB 55 (1997); *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *O'Brien Memorial*, 308 NLRB 553 (1992). I discern no basis on the instant record to depart from the Board's traditional application of the presumption that a single facility unit is appropriate for bargaining. I shall, therefore, apply the single facility presumption in this case.

Having found that the single facility unit sought by the Petitioner is presumptively appropriate for purposes of collective bargaining, I must now determine whether the Employer has rebutted that presumption. In assessing whether such a presumption has been effectively rebutted, the Board considers such factors as central control over daily operations and labor

^{10/} Although a petitioner's desire is a relevant consideration, it cannot be dispositive. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). See also, *American Hospital Assn.*, *supra* at 610.

relations, including the extent of local autonomy; similarity of skills; functions and working conditions; degree of employee interchange; distance between locations and bargaining history. *J & L Plate*, supra, at 429, citing *Esco Corp.*, 298 NLRB 837, 839 (1990); see also, *Mercy Health Services North*, 311 NLRB 367 (1993); *Hartford Hospital*, 318 NLRB 183, 191 (1995). Here, many of the Employer's policies and procedures are centrally controlled and uniformly applied. However, such administrative centralization does not automatically equate to functional integration and does not necessarily render a single facility inappropriate for purposes of collective bargaining. *Samaritan Health Services*, supra, at 633, citing *National G. South*, supra. Here, although there is some centralization on a systemwide basis, I note that substantial autonomy is retained by on-site supervisors and managers at the Employer's various facilities. Thus, on-site supervisors retain hiring authority, the discretion to counsel or issue lower levels of discipline without prior authorization, set annual wage increases within established parameters, handle employee grievances at the lower levels of the procedure and authorize employees to work overtime.

The record also discloses that the degree of employee interchange affecting the unit is negligible. For example, the record discloses that only slightly more than one permanent transfer a month occurred between the ACH and other facilities over a 5-½ year period preceding the hearing in this matter and even a smaller number of these permanent transfers occurred between the ACH and the Employer's remote PCCs and home health offices. More importantly, the number of temporary transfers between the ACH and the other facilities is significantly fewer than the number of permanent transfers, even when at least some nonunit personnel are included in these numbers. Given the large number (nearly 500) of nonprofessional employees throughout the Employer's system, the number of transfers is relatively inconsequential and does not adversely affect the separate character of the nonprofessional unit at the ACH.

I also find noteworthy the lack of a bargaining history in a more comprehensive unit. Finally, the geographical distance between the ACH and the Employer's four PCCs and five home health offices located in counties outside the county in which the ACH is located is significant, i.e. 20 to 37 miles. *Samaritan Health Services*, supra at 633.

I have carefully considered and find distinguishable the cases cited by the Employer in support of its position that a single facility unit limited to the ACH is inappropriate. Thus, in *West Jersey Health System*, 293 NLRB 749 (1989), the primary case relied on by the Employer, the Board reversed a Regional Director's conclusion that a single facility unit was appropriate for bargaining. Contrary to the Regional Director, the Board found that the single facility presumption had been rebutted by the substantial employee interchange, the extent of administrative centralization and functional integration and the potential for adverse consequences to the continuity of patient care caused by a single facility determination. *Id.* at 750, 751. In contrast to the limited number of transfers here, in *West Jersey Health System* there were 147 permanent transfers between employees at the four hospitals in the employer's four divisions. *Id.* at 750. More significantly, a large number of nonunit and unit employees *rotated regularly* between the four divisions. This regular rotation factor, one which clearly erodes the integrity of the separate community of interests possessed by the single facility grouping, does not exist

here.^{11/} Although there is a significant degree of administrative centralization and functional integration demonstrated by the instant record, it is not of the degree found in *West Jersey Health System*. In *West Jersey Health System* the day-to-day operation of the employer's entire system was handled by departmental directors who were based in one of the four divisions and traveled to the others on a regular frequent basis. In the subject case, centralization exists only at the higher level of management. Rather, the on-site managers of the various facilities are largely responsible for the day to day operation of their respective facilities. Additionally, whereas there was a single lab in *West Jersey Health System*, each of the PCCs here has its own lab capable of performing less sophisticated testing.^{12/} Moreover, the Employer's outlying facilities have separate billing and medical transcription from the ACH -- something that will not change with the planned centralization of these functions to the Outreach Center in Morehead.

Finally, the Board concluded that a single facility finding in *West Jersey Health System*, forbode the probability of labor disruption in the employer's other divisions because of the interdependent nature of the four hospital facilities involved. This interdependence included the regular rotation of large numbers of employees and the fact that one hospital prepared and transported all of the hot food required for patients at one of the other hospitals. In contrast, it is clear that all of the Employer's outlying facilities could continue to operate without the ACH, although alternate ancillary services such as maintenance, laundry and equipment repair might ultimately have to be found. Additionally, it is noted that the more complex lab tests would have to be sent to a referral lab for analysis. However, some tests are currently sent to outside labs. It appears that radiology services at the PCCs would be curtailed in the event of labor strife at the ACH. Further, some purchasing functions would have to be shifted in the event of the shutdown of the ACH. However, I note that dental, optometry and pharmacy functions are currently separate from the Employer's other supply purchasing functions and would apparently be affected to a lesser degree, if it all, by a shutdown of the ACH. In sum, on the basis of the above evidence, I find that the nature of the Employer's activities are not so interdependent as to conclude that labor strife at the ACH would adversely affect operations at the Employer's facilities.

I now turn to the Employer's alternative contention that the single facility presumption does not apply to a "health care campus" such as the Morehead facilities. Initially, I am unaware of any legal precedent that a single facility presumption does not apply unless an employer's various free-standing structures are at significant distances from each other. Moreover, the Employer has not cited any Board precedent standing for such a proposition. Rather, the Employer relies on the Sixth Circuit decision in *NLRB v. McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989), as support for its contention. With due deference to the position of the Sixth Circuit Court of Appeals, I am compelled to follow Board precedent when it differs from that of

^{11/} *Neodata Product/Distribution, Inc.*, 312 NLRB 987 (1993), relied on by the Employer for the proposition that the Board has found the single facility presumption to be overcome when there are fewer transfers between facilities than found here is not controlling. The degree of centralization and functional integration between the two facilities in *Neodata* as part of an "order flow process," far exceeds the integration existing in this case. Moreover, the two facilities involved in *Neodata* were only three miles apart. *Id.* Thus, *Neodata* is easily distinguishable from the subject case.

^{12/} In this regard the testimony of Director of Clinic Operations Walker that if there was a shut down of the lab at the ACH she believed that the PCC labs could continue to, "function until our supplies ran out," is reflective of the autonomous nature of the PCCs.

a Court of Appeals. I am, therefore, bound to follow a presumption that a single facility is appropriate. I also note that the Sixth Circuit decision in *McAuley* issued prior to the Supreme Court decision in AHA affirming the Board's Rule in the health care industry. In any event, even accepting that the suggestion by the Sixth Circuit in *McAuley* that a single facility presumption may not be appropriate in the health care industry, I would nevertheless find that the ACH facility here constitutes an appropriate unit. Thus, the factual differences between *McAuley* and the subject case are significant. The two major differences are the vastly higher degree of employee interchange found in *McAuley* and the fact that there were no "remote" facilities in *McAuley*. See, *Visiting Nurses Association*, supra. Finally, I note that the Employer's alternative position of including all the nonprofessional employees on "campus" makes little sense from an administrative standpoint. Thus, the Morehead home health and primary care operations in particular have their counterparts in the outlying facilities and appear to share more in common with the employees at those remote locations than they do with the employees employed at the ACH.

Based on the foregoing, the record as a whole and after careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the single facility unit sought by the Petitioner is appropriate for the purposes of collective bargaining. Accordingly, I shall direct an election in the single facility unit.

SUPERVISORY ISSUE:

It is well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). Here, the Employer raised the issue of the supervisory status of the rad tech IVs near the end of the hearing and offered the testimony of Administrative Director for Diagnostic Services Charlene Lewis in support of its assertion. Unfortunately, Lewis was not the most knowledgeable witness to call on this subject because she had only assumed responsibility for the radiology department 6 weeks prior to the hearing. Although Lewis testified that the rad tech IVs have input on hiring, evaluating employees, scheduling, and that they can make disciplinary recommendations, her testimony is generalized and unsupported by personal experience. Accordingly, based on the record evidence, I am unable to conclude with any degree of certainty whether rad tech IVs are supervisors within the meaning of Section 2(11) of the Act. I shall, therefore, permit the rad tech IVs, Paul Cline, Rodney Gevedon, Kathy Gray, Theresa Hollan, Louise Lamm, Nancy McCleese, Greg McMahon and Mary Stacy, to vote subject to challenge and hereby instruct my agent conducting the election to challenge their ballots if they appear at the polls to vote.

CONFIDENTIAL EMPLOYEE ISSUE:

The Employer, contrary to the Petitioner, asserts that Pam Hunt, secretary for its quality management department, is a confidential employee and should be excluded from any unit found appropriate. A confidential employee is an employee who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations. *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956). Thus, an employee who possesses such a "labor nexus" is excluded from the bargaining unit. The record discloses that Hunt performs secretarial duties for nine individuals, eight of whom are in the Employer's quality management department. Hunt also performs secretarial functions for Vice-President

Medical Affairs/Physician Services Kimberly D. Williams M.D. The record affirmatively establishes, with the exception of Williams, that none of the individuals for whom Hunt performs secretarial services formulate, determine, or effectuate management policies with regard to labor relations. In short they do not possess any particularized responsibility for labor relations or human resource policy. With regard to Williams, it does not appear that she has any direct responsibility for human resource functions. In any event, there is no evidence that Hunt has access to any confidential labor relations matters in connection with the duties she performs for Williams.

Based on the above, the record as a whole, and noting that the Employer has not cited any cases which would support a finding that Hunt is a confidential employee, I find that Pam Hunt is not a confidential employee. I shall, therefore, include her in the unit found appropriate.

STIPULATED CHALLENGES:

The Employer and the Petitioner were unable to agree on the unit placement of Wanda Weaver, account payable clerk; Valerie Cotton, environmental services supervisor; Judy Thompson, chief printer; Wanda Perkins, health information specialist; JoDonna Wilson, program assistant in Infusion Solutions and Chaplains Judy Ramsey, Shirley Baldwin, Marilyn Herman and RuthAnne Pratt. The parties specifically agreed that should these employees appear at the polls to vote that they may cast a ballot subject to challenge. Accordingly, I find that these employees may vote subject to challenge and instruct my agent conducting the election to challenge their ballots if they appear at the polls to vote.

PROFESSIONAL EMPLOYEE STIPULATION:

The parties stipulated, and the record shows, that Med Tech Managers Karen Bailey, Helen Chadwell, Rosemary Curtis, Donna Fannin, Jelana Lewis and Sheila Psimer, are professional employees within the meaning of Section 2(12) of the Act. Accordingly, I shall exclude them from the unit. Additionally, the parties stipulated that the following employees should be excluded from any unit found appropriate as professional employees within the meaning of Section 2(12) of the Act: Wendell Bentley, licensed physical therapy assistant; and Med Techs Grace Bogert, Judy Duvall, Anita Keen, Ronald Lockhart, Dreama McClain, Wilma Miller, Carol Mobley, Harold Smith, Kimberly Staton and Teresa Terry. Accordingly, I shall exclude them from the unit.

CONFIDENTIAL EMPLOYEE STIPULATION:

The parties further stipulated that the following employees are confidential employees who should be excluded from any unit found appropriate: Sue Perry, executive assistant to the president/CEO; Vicky Dehart, administrative assistant; Abbey Baker, benefits assistant; JoAnn Pennington, payroll clerk; Connie Simpson, secretary II for the human resources department and Lisa Hobson, administrative assistant. As this stipulation is supported by the record which discloses that these employees assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations, I shall exclude them from the unit.

SUPERVISION:

In accord with the record evidence, I shall exclude President and Chief Executive Officer Mark Neff; Vice-President Planning and Facility Management Roger Russell; Vice-President Human Resources/Administrative Services Kelly Furbee; Vice-President Finance/CFO Robert Camuel; Vice-President Inpatient Services Joan Wells; Vice-President Quality/Resource Management Linda Fultz; Vice-President Medical Affairs/Physician Services Kimberly D. Williams M.D.; Assistant Vice-President Home Care Programs Janet Shrout; Director Information Services Randy McCleese; Director Education/AHEC Greg Bausch; Administrative Director for Diagnostic Services Charlene Lewis; Director Mission Integration Sister Mary Margaret Droege; Director of Counseling Services Pauline Siders and Director for Clinic Operations Charlotte Walker, from the unit as supervisors within the meaning of Section 2(11) of the Act.

Based on the foregoing, the record as a whole and after careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time nonprofessional employees, technical employees, skilled maintenance employees, and business office clerical employees employed by the Employer at its Acute Care Hospital facility at Morehead, Kentucky, excluding all professional employees, guards and supervisors, as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

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 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 subject to the Petitioner's submission of an adequate showing of interest. 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 **December 16, 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 **December 23, 1999**.

Dated at Cincinnati, Ohio this 9th day of December.

/s/ [Richard L. Ahearn]

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

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