

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**AMERICAN RED CROSS BLOOD SERVICES
GREATER OZARKS/ARKANSAS REGION,¹**
Employer,

and

Case 26-RC-8182

**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 referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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,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 herein.³
3. The labor organization involved claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

INCLUDED: Biomedical equipment technician, general maintenance technician, stock inventory assistant II, administrative assistant I, collection technician I, collection technician II without charge responsibility, collection specialist I, collection specialist II without charge responsibility, mobile unit assistant II, scheduler, clerical assistant I, clerical assistant II, technical assistant, laboratory technician, reference laboratory technologist, laboratory technologist II, component manufacturing laboratory technologist II, hospital services technician I, hospital services technician II, hospital services courier, administrative assistant I and administrative assistant II.

EXCLUDED: All office clerical employees, sales persons, 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 unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are 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 the status as such during the eligibility period and their replacements. Those in the military services of the United States Government 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 the United Steelworkers of America, AFL-CIO-CLC.⁵

LIST OF VOTERS

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*, 156 NLRB 1236 (1966); *NLRB 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 of the date of this Decision. 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. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **June 27, 2000**.

RIGHT TO REQUEST REVIEW

Under the provision 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, DC 20570-0001. This request must be received by the Board in Washington by **July 5, 2000**.

DATED June 20, 2000, at Memphis, TN

/S/

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

1. The name of the Employer was amended at the pre-election hearing.
2. The Employer filed a brief which has been duly considered.
3. The parties stipulated that the Employer is a blood bank with offices and places of business located in Little Rock and Jonesboro, Arkansas and Springfield, Missouri where it is engaged in the collection of blood and related materials for distribution to hospitals and other health care providers. During the past 12 months, a representative period, the Employer has had gross revenues from the sale of blood and related products in excess of \$250,000.
4. The Petitioner seeks to represent employees in the following "undisputed" departments: **General Services** (includes biomedical equipment technician, general maintenance technician, stock inventory assistant II and administrative assistant I); **Collection** and **Apheresis Collection** (collectively includes collection technician I, collection technician II without charge responsibility, collection specialist I, collection specialist II without charge responsibility, mobile unit assistant II, scheduler, clerical assistant I and clerical assistant II); **Laboratory** (includes technical assistant, laboratory technician, reference laboratory technologist and laboratory technologist II) and **Hospital Services** (includes hospital services technician I, hospital services technician II, hospital services courier, administrative assistant I and administrative assistant II). Of the foregoing departments, the Petitioner would exclude the component manufacturing laboratory technologist II classification in the Lab as supervisory in nature.

The Employer, contrary to Petitioner, takes the position that it is a health care institution within the meaning of the Act. If so, then the Board's rules and regulations concerning health care institutions govern the appropriateness of the unit. In addition to all employees in the departments sought by Petitioner, the Employer would include all nonprofessional and nonsupervisory employees including employees in the following "disputed" departments: **Information Systems** (includes applications specialist and network specialists), **Donor Suitability** (includes compliance specialist I, compliance specialist II, donor counselor I, donor counselor II, records management technician, records management specialist and clerical assistant II), **Donor Recruitment** (includes senior donor recruitment representative, donor recruitment representative, customer service representative, administrative assistant I, administrative assistant II and communications specialist), **Tele-Recruiting** (includes tele-recruiters) and **Education** (includes education coordinator and document control specialist). If the Employer is not a health care institution, the Board's community of interest test must be applied to determine an appropriate unit.

Executive Director David Chumley and Medical Director Dr. Glen Baker testified concerning the Employer's practices as it relates to providing health care to patients. In 1999, the Employer collected **104,000** units of whole blood; during this same time frame **193** units of blood products were collected by apheresis. Apheresis consists of separating donated blood into its components, retaining the desired products (platelets, red blood cells and/or white blood cells) and returning

the rest to the donor. Of the 193 apheresis collections performed in 1999, there were **150** platelet apheresis collections and **43** granulocyte apheresis collections (i.e., removal of white or red blood cells). There is no indication in the record that the Employer has performed any therapeutic apheresis (i.e., periodic removal and separation of whole blood where the diseased or unwanted components are discarded and the rest is returned to the donor). In 1999, the Employer collected **985** units of directed donations (i.e., donations of whole blood for a specific individual), **720** units of autologous donations (i.e., donations from an individual who will receive his own blood during a subsequent procedure) and **220** therapeutic phlebotomies (i.e., periodic removal of whole blood from individuals with too many red blood cells in order to keep their amatic level at an acceptable level). Dr. Baker describes the foregoing procedures as “medical functions requiring physicians orders”. None of the blood products are administered to the intended patient at the Employer’s facility or by Dr. Baker himself. Dr. Baker is responsible for authorizing and distributing the blood products only; he is not responsible for administering the product to the intended patient. Instead, the product is delivered to the hospital or health care facility where it is administered by the patient’s own physician.

Dr. Baker also receives a number of requests from physicians regarding antibody studies each month. About 15-20% of them require some interaction on his part with either the pathologist or the order physician. The Employer is the sole supplier for plasma product for vericell antibodies for individuals at risk for chicken pox. The Employer requests that administrative notice be taken of the Decision issued in 26-CA-8150 where the Acting Regional Director approved a stipulation that the American Red Cross Tennessee Valley Blood Services Region is a non-acute health care facility.

Section 2(14) of the Act defines “health care institution” as “any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged persons.” In cases where there is no indication that a blood bank performs activities other than the collection, processing and distribution of blood and blood products, the Board has found that the blood bank is not a health care institution within the meaning of the Act. Dane County American Red Cross, 224 NLRB 323 (1976); Green County American Red Cross, 221 NLRB 776 (1975); Sacramento Medical Foundation Blood Bank, 220 NLRB 904 (1975); San Diego Blood Bank, 219 NLRB (1975). However, when a blood bank extends beyond these services and performs therapeutic apheresis and therapeutic phlebotomies, both of which indisputably involve patient care, it will be viewed as being a health care institution within the meaning of Section 2(14) when it performs such functions with sufficient regularity and in a sufficient number. Syracuse Region Blood Center, 302 NLRB 72, 73 (1991) (between 400 and 600 therapeutic apheresis and therapeutic phlebotomies combined – compared to 90,000 whole blood donations - were found to be sufficiently regular and in sufficiently large number to establish that employer was a health care institution).

In its brief the Employer cites Oklahoma Blood Institute, 265 NLRB 1524, (1982) for the proposition that a blood bank that performs apheresis is a health care institution. In that case the Board's finding that the employer was a health care institution was predicated on a stipulation by the parties and was not based on an independent analysis of the facts. Moreover, the employer in that case performed a patient blood transfusion procedure that was administered on a clinic or out-patient basis. This procedure appears to more closely resemble the therapeutic apheresis procedure relied upon by the Board in Syracuse Region Blood Center as involving patient care, rather than the apheresis procedure administered by the Employer in the subject case. The apheresis procedure performed by this Employer is distinguishable from whole blood donations only in the relative complexity of the procedure. Autologous collections are distinguishable from whole blood donations only in the identity of the intended recipient. The Board found that neither of these procedures are indicators that an employer is a health care institution. Syracuse Region Blood Center, 302 NLRB at 73.

Notwithstanding the Employer's argument in brief, there was no evidence that the Employer has performed any therapeutic apheresis. Regarding therapeutic phlebotomies, the record reveals that the Employer performed only 220 such procedures in 1999. As noted above, the other procedures performed by the Employer do not involve patient care. Ibid. Based on the evidence adduced at the pre-election hearing, I find the Employer does not perform therapeutic phlebotomies with sufficient regularity and in a sufficient number to be viewed as devoted to the care of sick persons. Thus, the Employer is not a health care institution within the meaning of Section 2(14) of the Act and I will apply the community of interest test to determine the appropriate unit herein.

EMPLOYER'S FACILITIES

The Employer's main "center" is located in Little Rock where it recruits, collects, processes and distributes blood and blood products to more than 70 hospitals and other health care facilities in Arkansas, southwestern Missouri and Shelby County in western Tennessee. The Employer collects blood at various mobile sites (via mobile units) and at fixed sites located in Little Rock, Jonesboro, Springfield and a number of other locations throughout the area. The Employer maintains a location in Bryant, Arkansas where it employs tele-recruiters only. There is one Hospital Services employee in Memphis, Tennessee. Tele-recruiters and Hospital Services employees also work out of the Little Rock, Jonesboro and Springfield locations. Employees are permanently stationed at the Employer's offices in Little Rock, Jonesboro, Springfield, Bryant and Memphis only.

UNDISPUTED DEPARTMENTS

There are 4 **General Services** employees who are responsible for all of the Employer's real estate, vehicles, supplies, equipment, quality control systems and other resources. The biomedical equipment technician handles quality control matters and ensures that equipment is certified and operating at

proficiency levels. The general maintenance technician is responsible for maintenance and upkeep of the Employer's real estate (e.g., changing light bulbs, repairing stopped-up sinks, etc). The general maintenance technician is also certified to work on some equipment in the lab and is responsible for maintaining, inter alia, the "blast freezer". The stock inventory assistant II works in the warehouse and maintains appropriate stock levels for all supplies used by the region. The administrative assistant operates and maintains the MAXMO computer system that contains information concerning all regulated equipment (e.g., apheresis rotators, blood pressure cuffs, laboratory equipment, systematic grids, mata stats, etc.) used by employees in the Collection Departments, Hospital Services and the Lab. All general maintenance requests and scheduled preventive maintenance is generated by the administrative assistant through this region-wide computer system.

There are approximately **68** employees in the **Collection Departments**, both whole blood and apheresis. There are no employees currently employed as collection technician I. There are **29** employees working as collection technician II employees without charge responsibility. There are **26** collection specialist I employees without charge responsibility. There are currently no collection specialist II employees without charge responsibility. The parties stipulated that collection specialist II employees with charge responsibility are statutory supervisors. Although it is not entirely clear from the record, the term "without charge responsibility" apparently indicates the employee does not exercise supervisory authority. Collection technicians and specialists complete the blood donor records, take the donor's health history, perform a pre-check in order to determine whether the donor is eligible to give blood and draw blood. Collection technicians attend 4 weeks of training in Little Rock where they are taught how to "stick" donors and complete paperwork. Collection employees use company buses and cars for traveling to the mobile sites for blood drives. The record revealed one anecdotal example of a collection employee who had car trouble and was permitted to drive the company vehicle home overnight. There is no other record evidence of collection employees using the company cars for their own personal use.

The Employer contends that collection employees interact with donor counselors in the Donor Suitability Department relating to issues that arise during the collection process (e.g., donor eligibility and deferrals). The Petitioner presented witnesses who testified to the contrary. In particular, Kathy Barber, Betty Walker and Kathe Camp are all collection technicians and testified that they verbally notify donors of temporary deferrals (e.g., high blood pressure, etc.) and provide a letter to donors with indefinite deferrals (e.g., positive AIDS result, etc.) advising them to contact the Employer's toll free number in Little Rock for more information. According to Barber and Camp, they have very little contact with tele-recruiters in their respective cities and no interaction with any donor counselors in the Donor Suitability Department. Walker testified that she sees donor recruiters very seldom and only on the large blood drives.

There is **1** scheduler in the Collection Department who works out of the Little Rock office and schedules blood drives. There is **1** clerical assistant who works in the Jonesboro office where she handles mail and takes phone calls. There are **11** mobile unit assistants (MUAs). The MUAs drive, load and unload the bus for the mobile blood drives. They are also responsible for performing a pre-check for supplies and equipment on the bus. MUA Jimmy Jones testified that he did not have any interaction with employees in Donor Suitability, Information Systems or Tele-recruiting. Jones testified that he does not interact with employees in the Donor Recruitment Department in performing his duties, but does observe the customer service representative at Wal-Mart drives. He also interacts with Education Department employees for training purposes.

There are **18-21** employees in the **Lab Department**. They work at the center in Little Rock on a 24-hour a day basis. Units of blood are taken by collection employees to the lab where the blood is labeled and tubes are prepared so the blood can be tested. Lab employees also prepare the components blood products and use the National Biomedical Computer System to enter the blood donor records. The record reveals **12-15** technical assistants, **1** component manufacturing lab technologist II, **4** reference laboratory technologists and **1** component manufacturing lab technologist II. The lab technologist II position is currently unfilled. The technical assistant packs infractor shipments, works in components in manufacturing areas, labels grid cells or fresh frozen plasma, sterilizes filters on bags and packs GAT tube and central management tube shipments. Technical assistant Brooks Robins testified that he did not interact with employees in Donor Suitability except from "time to time" when he assists them in searching for missing blood donor records. Robins testified about a recent, but rare, conversation with an Information Systems employee. Otherwise, Robins interacts so infrequently with other employees that he does not generally notice them.

As noted previously, there are 5 categories of employees in **Hospital Services**; the number of employees within each category is not revealed in the record. Units of blood are delivered to Hospital Services employees after lab employees complete their testing and labeling requirements. It is either refrigerated until needed or immediately taken by courier to the hospital or other health care facility. Like the Lab Department, Hospital Services employees work on a 24-hour a day basis.

Requirements for employees in the foregoing "undisputed" departments depend on the level of the job and the Employer's job description. The Employer's uniform policy permits each department to select its dress code. The dress code is decided by the manager for each department with input from employees. Because they are dealing with the public "in a health care sort of way", collection employees wear scrubs and lab coats. Lab coats are required for all employees who may come in contact with blood or blood pathogens. Some employees in the undisputed categories (including the scheduler, clerical assistant II, administrative assistants, stock inventory assistant II, technical assistant and reference lab technologists) do not wear uniforms except when

performing regulated procedures. The General maintenance technician and biomedical equipment technician in General Services may or may not wear uniforms. Conversely, employees in the disputed departments wear business clothes, business casual clothes or street clothes. For example, donor recruiters in Donor Recruitment wear casual clothes during blood drives and business clothes when they make recruitment calls at different organizations.

All employees in the undisputed categories are paid on an hourly basis. They are “non-exempt” for purposes of receiving over-time pay and do not participate in the Employer’s incentive “bonus” plan. Employees in both disputed and undisputed categories alike, whether hourly or salaried, punch a time clock. Lab and Hospital Services employees do not work at desks. All employees must receive training through the Education Department for FDA required regulated training and for training required by the Employer’s national organization. The Education Department also provides safety training. General orientation for employees is provided by the Human Resources Department.

Executive Director Chumley testified that all employees receive the same benefits (including medical insurance, retirement benefits, sick leave, attendance, etc.). The Employer’s policies and procedures apply to all employees; all employees in the same city use the same break room and parking lot. The same job posting procedure is used for employees in disputed and undisputed categories alike.

THE DISPUTED DEPARTMENTS

DONOR RECRUITMENT DEPARTMENT (DR)

There are **13-17** employees in the DR Department. There are **2** senior donor recruitment representatives and **6** donor recruitment representatives who solicit businesses, churches and other organizations to sponsor blood drives. The donor recruiters work out of Little Rock, Jonesboro, Springfield, Memphis and northwestern Arkansas. They spend most of their time making calls, setting up blood drives and planning meetings. They spend about 20% of the day in their office attending to arrangements for their blood drives. The evidence establishes that donor recruiters may actually visit the blood drives, especially the larger ones, and on such occasions offer assistance, if needed, to collection employees. Two donor recruiters are qualified to label bags and may offer assistance in this regard. Otherwise, donor recruiters are limited to serving as a liaison with the volunteers, greeting donors, handing out promotional items and donor satisfaction surveys, etc. Donor recruiter Sandra Hutchison testified that she attends more mobile drives than some of the other recruiters because her drives are closer to the center. Hutchison attends about 60-65% of the drives she sets up, but stays only for a few minutes at each one unless there are problems. Donor recruiters must meet certain educational standards, however, it is not clear whether a 4-year college degree is actually required. Donor recruiters may either use the Employer’s vehicle for official travel or receive a car allowance. For those employees who use a company car, they are permitted to take the vehicle home overnight.

There is 1 customer service representative who recruits donors at Wal-Mart blood drives. The customer service representative interacts with the collection staff in distributing promotional items and may confer with them regarding donor flow. There is 1 communication specialist who provides information both internally and externally, acts as the Employer's spokesperson, works on the Employer's newsletter and coordinates media drives. There are 7 administrative assistants (both I and II) who support the donor recruiters and tele-recruiters for blood drives. Administrative assistants are required to have some computer skills in order to perform their duties. They pull lists for tele-recruiters, answer calls from the general public, take customer complaints, prepare postcards for bulk mailings, operate the region's mail system, pull prep sheets, schedule mobile blood drives, etc. Administrative assistants may have some limited contact with lab employees in gathering numbers for the previous day's collections. Some of the administrative assistants interact with the schedulers in the Collection Department to schedule the mobile blood drives. All DR employees, save the customer service representative, work at assigned desks and perform a portion of their daily work assignments there. All DR employees, except the administrative assistants, are paid a salary and are eligible for a bonus under the Employer's incentive plan.

In determining an appropriate unit, the Board considers a number of factors, including the similarity of duties, wages and working conditions, extent of interchange, organizational structure, functional integration of the business, history of the unit and wishes of the Petitioner. With regard to this last point, the Petitioner clearly desires only to represent employees in the undisputed departments. At hearing, the Petitioner indicated it would review the Decision before making a decision on whether to proceed to an election in a unit different from that sought by the petition, as amended at the pre-election hearing. There is no history of the Employer's employees being represented by any labor organization. Although the Employer asserts all of its operations are functionally integrated, there are a number of departments whose main job function is distinct and different from other departments. Thus, I find there is a lack of functional integration.

With regard to the remaining factors, the record reveals sufficient differences with regard to employees in DR such that their inclusion in the requested unit is not required. Moreover, there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, the ultimate unit, or the most appropriate unit. The Act requires only that the unit be "appropriate". That is, the unit must be appropriate to ensure employees in each case the fullest freedom in exercising the rights guaranteed by the Act. Morand Bros. Beverage Co., 91 NLRB 409 (1950). See also, Dezcon, Inc., 295 NLRB 109, 111 (1989). It is similarly well-settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See, for example, General Instruments Corp. v. NLRB, 319 F.2d 420 (4th Cir. 1963); Mountain Telephone Co. v. NLRB, 310 F.2d 468 (10th Cir. 1962). While there is evidence of some limited interaction between donor recruiters and collection employees at the mobile blood drives, for the

most part DR employees do not interact with employees in the undisputed departments in any meaningful way. Moreover, the record reveals significant differences in wage structure, duties and other working conditions between DR employees and employees working in the undisputed departments. In particular, all of the DR employees, except the administrative assistants, are paid a salary and are eligible for a bonus. Conversely, all of the undisputed employees are paid by the hour and are ineligible for a bonus. Additionally, included employees, for the most part, actually handle the blood products and/or are involved in the manufacturing process. Donor recruiters, contrary to employees in the included categories, perform duties similar to those performed by sales and marketing personnel. Except for the sporadic assistance offered by donor recruiters at the mobile blood drives, there is no evidence that DR employees perform any functions also performed by included employees. Moreover, FDA regulations prohibit DR employees from performing most collection-related functions such as taking health histories, performing pre-checks and drawing blood. Lastly, there is no evidence of either temporary or permanent transfers between the DR Department and employees in the undisputed departments. Based on the distinctions noted above, I shall exclude DR employees from the unit found appropriate herein.

TELE-RECRUITING DEPARTMENT (TR)

There are **17** or **18** employees in the TR Department. TR employees work out of Springfield (**1** whole blood recruiter), Jonesboro (**1** whole blood recruiter and **1** apheresis recruiter) and Bryant (**13** whole blood recruiters and **1** apheresis recruiter). They work in cubicles and make cold calls or use a computerized list of former donors and other targeted potential donors. TR employees work varying hours with shifts starting daily at 3:00 PM. TR employees do not have face-to-face contact with the Little Rock personnel. Apheresis recruiters have contact with apheresis collection employees 2-3 times a week in order to reschedule appointments for donors. In the Springfield and Jonesboro offices, recruiters have daily contact with the collection staff, but the record does not specify what type of contact is involved. The Springfield tele-recruiter works in an office area next to the donor area; she serves as the receptionist for the whole building and schedules appointments for apheresis donors. All of the foregoing TR employees are paid an hourly wage and are eligible for a bonus under the Employer's incentive plan.

As with Donor Recruitment employees, there is evidence of some limited interaction between the Springfield and Jonesboro tele-recruiters and the collection staff. For the most part, though, TR employees do not interact with the undisputed employees to any significant extent. The record also reveals significant differences in the wage structure for TR employees - who are eligible for an incentive bonus - and the included employees - who do not qualify for the Employer's incentive plan. There is no evidence of commonality of duties or functions between tele-recruiters and the included employees. In this regard, TR employees work at their desk in an office setting where they make calls to potential donors. Contrary to most of the included employees, tele-recruiters do

not actually handle the blood products and are not involved in the manufacturing process. The record reveals no evidence of either temporary or permanent transfers between the TR Department and the undisputed departments. Based on the distinctions noted above, I shall exclude TR employees from the unit found appropriate herein.

The Employer's reliance on JC Penny, 328 NLRB No. 105 (June 18, 1999), is inapposite. In the cited case, the Board included telemarketers over the petitioning union's objections where the evidence showed they were loaned to other "included" departments when work demands required extra help; telemarketers participated with all employees in the annual inventory, both physically counting merchandise and keying information regarding inventory into the computer; telemarketers and unit employees in the customer relations and factory ship departments performed common functions with respect to handling customer inquiries; and there was evidence of routine permanent interchange and some temporary interchange between telemarketing employees and other included employees. Moreover, the Board found that the functions of the telemarketers was integrated with the overall function of the facility. In this case, contrary to JC Penny, there is little interaction between included and excluded employees, no evidence of transfers, no commonality of functions or duties and significant differences in wage structure.

DONOR SUITABILITY (DS)

There are approximately **10** employees in the DS Department. Employees in this department enter blood donor records and donor demographic information into the computer. This process creates donor records that notify the Employer if an individual is a repeat or first time donor. The department also notifies donors of positive test results; performs "look backs" for individuals with certain positive test results; performs market withdrawals and recalls; and enters deferrals when an individual fails to meet the Employer's criteria. Blood cannot be labeled until donor information is entered into the computer.

There are **2** compliance specialist I employees. These are newly filled positions in that both individuals were formerly classified as collection specialist I employees in the Collection Department. According to DS Manager Jacqueline Wright, the employees' duties did not change, only their job title and department. According to Wright, because of the nature of their duties "[i]t just made more sense in the way the paperwork flow went and the way the work went that they be part of Donor Suitability." There are **1** or **2** compliance specialist II employees who perform the "200%" review of the blood donor records for accuracy. Compliance specialists are trained to perform health histories, phlebotomies and other collection duties and may occasionally go out on collections "as needed". The record revealed some contact among the compliance specialist II employees and hourly collection employees in order to verify that blood donor records have been accurately completed; they also work on a daily basis with Hospital Services employees regarding market withdrawals and recalled products. Compliance specialist I employees may interact with hourly collection employees with regard to "deviations" and missing quality control records.

There is **1** donor counselor I and **1** donor counselor II position. These employees counsel donors who have received positive test results. Donor counselors have contact with employees in the reference lab regarding blood typing and other tests. They also contact collection employees regarding donors who have “hit” on the precheck machines and the scheduling of special donations. They are required to have a bachelor’s degree or equivalent experience. The donor counselor I was formerly employed in the Collection Department. She transferred to DS more than a year before the pre-election hearing.

This department also includes **2** records management specialists. They review the blood donor records against the computer to make sure the data has been entered properly. They are also responsible for ensuring that records are properly stored and maintained. Records management specialists are required to have a high school diploma or the equivalent.

There is **1** record management technician and **2** clerical assistant II employees who perform the data entry for blood donor records and deferrals, type donor demographic information into the computer system and generate paperwork. They also respond to questions from the collection staff regarding blood types, numbers of donations, etc. Since their services may be needed on a 24-hour basis, the record management technician and clerical assistants share “on call” duties and wear a pager on a rotating basis.

All employees in this department work at the Little Rock center. The department’s dress code is business casual. They are supervised separately from other employees. The employees work varied schedules, with at least 1 employee being on call 24 hours a day.

The record reveals evidence to support both the inclusion and exclusion of DS employees, however, viewing the record as a whole, there are sufficient differences in duties and other working conditions between DS employees and those employees in the undisputed departments that the inclusion of DS employees in the unit is not mandatory. Donor counselors have higher educational requirements than any of the included employees. Other than the 1 donor counselor who transferred to DS from the Collection Department a year ago, there is no evidence of permanent or temporary “transfers” in the customary sense of the word. Even though the compliance specialist I position in DS was formerly classified in the Collection Department, such is not evidence of a transfer and does not mandate their inclusion in the unit. In fact, just the opposite is true. The re-classification of the compliance specialist I position establishes that their duties and functions were sufficiently distinct from other collection employees to justify changing their title and placement within the Employer’s organizational structure. The Employer’s argument notwithstanding, the fact that compliance specialists’ are capable of performing collection work will not mandate their inclusion in the unit unless they perform such work on a regular basis. While Manager Wright testified that compliance specialists perform collection work occasionally “as needed”, there is no evidence that compliance specialists perform collection work as part of their regularly assigned

duties. There is no evidence of commonality of duties or functions with regard to any other DS employees and the included employees. Contrary to most of the included employees, DS employees are permitted to wear business casual clothing and generally work at desks in an office or cubicle. Lastly, DS employees are supervised separately. Based on the above noted distinctions, I shall exclude DS employees from the unit found appropriate herein.

INFORMATION SYSTEMS (IS)

The IS department consists of **1** network specialist and **1** application specialist. The department is responsible for user support and maintenance of the Employer's computer infrastructure and telecommunication systems. The computer system consists of the following: standard office automation system connected throughout the region by a local area network; hand-held computer system used on the mobile blood drives; and the National Biomedical Computer System (NBCS). The NBCS tracks blood products from the minute a donation is completed until the product is shipped to the hospital or health care facility. The FDA has determined that the computer system is a medical device and must be treated as such. The network specialist is stationed in the computer room, but probably spends 20% or less of his time there; the rest of his time is spent responding to calls from employees with computer related problems. The applications specialist focuses on software applications and the telephone system.

Both IS employees are high school graduates. The network specialist has worked in the computer field for 30 years (for many years as a programmer) and has received training in Novelle Network Management. The application specialist completed a computer literacy course at a local technical college taught by the IS supervisor. Both employees are paid a salary. Both employees wear business casual clothing. They are separately supervised from other employees.

IS employees spend a portion of their time interacting with included employees, but that alone does not necessitate their inclusion in the unit where there are significant differences in job requirements, duties, functions, wage structure and other working conditions. In point of fact, the record reveals no evidence of commonality of duties or functions between IS employees and the included employees. Nor does the record reveal any evidence of either temporary or permanent transfers between the IS Department and the undisputed departments. Based on the above noted distinctions, I shall exclude IS employees from the unit found appropriate herein.

EDUCATION (ED)

The Education Department is comprised of **3-4** employees who are responsible for providing adequate and appropriate training for all levels of staff and for ensuring that employees meet annual competency requirements for their position and receive additional training as needed. There are **2** or **3** education coordinators who, among other things, train incoming staff and employees in the Collection Department, Hospital Services and the Lab on a regular basis. The Employer requires education coordinators to have a bachelor's degree or the

equivalent (e.g., associate degree with years of training). The education coordinators go out into the field several times a year. There is 1 document control specialist who is responsible for all document control for the region – this involves maintaining procedure manuals on all operations at all locations. The document control specialist has contact with employees in other departments concerning the distribution of manuals and questions concerning same. The education coordinators are paid a salary while the document control specialist is paid on an hourly basis.

Education coordinators have higher educational requirements than any of the included employees and, contrary to the included employees, are paid a salary. While there is evidence that education coordinators are qualified to perform collection duties, they do not perform such work as part of their regularly assigned duties. There is no evidence of commonality of duties or functions with the included employees; nor is there evidence of similar job requirements. Notwithstanding the Employer's argument to the contrary, ED employees are not involved in the manufacturing process. While there is evidence that 1 employee transferred from the ED Department to the Collection Department more than 2 years ago, this does not require the inclusion of ED employees in the unit. Based on the above noted distinctions, I shall exclude ED employees from the unit found appropriate herein.

COMPONENT MANUFACTURING LAB TECHNOLOGIST II

A final issue concerns the supervisory status of the newly created position of component manufacturing lab technologist II. The Petitioner, contrary to the Employer, takes the position that the position should be excluded as supervisory. The position was created about 2 months ago and was filled by Anthony Smith. Prior to his selection for the disputed position, Smith worked as a lab technologist II where he processed the labeling of blood units and worked with test results under a processing supervisor. In his new position, Smith oversees production flow in the component area. Smith is not permitted to make any changes in product flow in that such changes would have to be approved by a supervisor and, possibly, the lab manager. Technical assistant Brooks Robins confirms that the lab supervisor, not Smith, resolves any problems concerning production. Lab Manager Marcella Herman described the new position as a "lead tech". As with other lab positions, Smith is paid on an hourly basis in his new position. Smith does not attend supervisory meetings with the department manager. Smith has no authority to reassign employees from job to job. There is no evidence in the record that Smith has any authority to hire, fire, discipline or that he plays any role in the evaluation of employees. Based on all of the above, I find that the Petitioner has not met its burden of establishing that Smith is a statutory supervisor under Section 2(11) of the Act and shall include the position of component manufacturing lab technologist II in the unit found appropriate herein. Bennett Industries, 313 NLRB 1363 (1994) (burden of establishing supervisory status is on the party seeking to exclude the individual as a supervisor).

The parties stipulated, and I find, that the following employees are excluded from the unit as office clerical and/or confidential management

employees: Petty Arrigo, Iona Wagner and Rose Martin. The parties stipulated and I find that the following individuals possess Section 2(11) indicia and, therefore, are excluded from the unit as supervisors or managers:

<u>Dept.</u>	<u>Location</u>	<u>Name</u>	<u>Title</u>
Col/A	JB	Dooley, Lisa	Team Supervisor
Col/A	JB	Peterson, Jerilyn	Team Supervisor
Col/A	LR	Berry, Rodney	Team Supervisor
Col/A	LR	Smith, Frances	Team Supervisor
Col/A	SPR	Kilpatrick, Kenneth	Team Supervisor
Col/A	SPR	Wilson, Peggy	Team Supervisor
Coll	JB	Rubar, Mary	Team Supervisor
Coll	LR	Campbell, Ruby	Team Supervisor
Coll	LR	Davin, Brenda	Team Supervisor
Coll	LR	Knight, Patricia	Team Supervisor
Coll	LR	Williams, Charlotte	Team Supervisor
Coll	SPR	Hart, Katherine	Team Supervisor
Coll	SPR	Hill, Sherry	Team Supervisor
Coll	SPR	Hughes, Sandra	Team Supervisor
Coll	SPR	McIntosh, Jacqueline	Team Supervisor
Coll	SPR	Mitchell, Pamela	Team Supervisor
Coll	JB	Buford, Dane	Collection Specialist II
Coll	JB	Gann, Jerry	Collection Specialist II
Coll	JB	Melton, Kelli	Collection Specialist II
Coll	JB	Nicholson, Karen	Collection Specialist II
Coll	LR	Bennett, Melvin	Collection Specialist II
Coll	LR	Boson, Secret	Collection Specialist II
Coll	SPR	Boston, Sherry	Collection Specialist II
Coll	LR	Bronson, R. David	Collection Specialist II
Coll	LR	Brown, Rhonda	Collection Specialist II
Coll	LR	Moore, Christel	Collection Specialist II
Coll	SPR	Byrd, Rebecca	Collection Specialist II
Col/A	JB	Pedersen, Patricia	Collection Specialist II
Col/A	LR	Wells, Kathylene	Collection Specialist II
Col/A	SPR	Wood, Shirley	Collection Specialist II
Coll	JB	Roberts, Linda	Collection Specialist II
Coll	LR	Price, Peggy	Collection Specialist II
Coll	LR	Tyiska, Zola	Collection Specialist II
Coll	LR	Edwards, Sally	Collection Specialist II
Coll	SPR	Sullins, Charlene	Collection Specialist II
DR	JB	Draper, Bob	DR Supervisor
GS	LR	Stevens, Keith	GS Supervisor
DR	LR	Hutchison, Sandy	DR Supervisor
TR	LR	Gibbins, Jim	DRD TR Supervisor
TR	LR	Harr, Jordan	TR Supervisor
Coll	LR	Luckom, Debbie	Coll Operations Supervisor
Lab	LR	McDade, Arthur	Laboratory Supervisor
Lab	LR	Plyler, Misty	Laboratory Supervisor
HS	LR	Reagan, Rita	HS Supervisor
HS	LR	Rose, James	HS Supervisor
Coll	SPR	Brogdon, Kerry	Coll Operations Supervisor
HS	SPR	Turk, Steve	HS Supervisor
	LR	Dr. Glen Baker	Medical Director
GS		Keith Stevens	GS Supervisor
		Paulette Tipton	Division Controller

IS		Dick Tackett	IS Supervisor
		Theodore Kelley	HR Manager
DS		Jacqueline Wright	DS Manager
DR		Rick Bufford	DR Manager
	SPR	Sandra Buckle	Manager
		Susan Lowery	Coll Manager
		Elizabeth Luckom	Coll Manager
Lab		Percella Hermann	Lab Manager
HS		Daniel Shelton	HS Manager
ED		Mary Ann Burgess	ED Manager
Col/A		James Bates	Col/A Manager
		Mike Forell	Director (DR, TR and Coll)
		Leo Miller	DR Manager
		Max Farley	Senior Account Manager

There are approximately 90-93 employees in the unit found appropriate herein, not counting the undisclosed number of employees in Hospital Services.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

CLASSIFICATION INDEX

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