

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**CHILDREN'S HOSPITAL MEDICAL CENTER
OF NORTHERN CALIFORNIA D/B/A
CHILDREN'S HOSPITAL OF OAKLAND** ^{1/}
Employer

and

Case No. 32-RC-4772

**HEALTH CARE WORKERS' UNION, LOCAL
250, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO**
Petitioner

DECISION AND DIRECTION OF ELECTION

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

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

Upon the entire record in this proceeding, the undersigned finds: ^{2/}

1. The hearing officer's rulings made the hearing are free from prejudicial error and are thereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate purposes of the Act to assert jurisdiction herein. ^{3/}

3. The Petitioner 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 voting group which may appropriately be added to the existing bargaining unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ^{4/}

Included: Accredited record technician/coder, anesthesia technicians, anesthesia technologists, cardiovascular technicians, care team associates, clinical laboratory assistants, dental assistants, ECG/holter technicians, EEG technicians, junior accredited record technicians, nuclear medicine technologists, operating room technicians, pulmonary function technicians, research laboratory assistants and respiratory care practitioners (who are employed at least 4 hours per week in the quarter preceding this Decision and Direction of Election), employed by the Employer at the its Oakland, California facilities.

Excluded: All other employees, including professional employees, guards and supervisors as defined in the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to be indicated the desire to be included in the existing collective bargaining unit currently represented by the Petitioner and the Petitioner may bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. **Please read the attached notice requiring that the election notices be posted at least three (3) days prior to the election.** Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the 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 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 to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **HEALTH CARE WORKERS' UNION, LOCAL 250, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO**

LIST OF VOTERS

In order to ensure 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 in the election should have access to a list of voters 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 359 Facility*, 315 NLRB 359, 361 n. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before September 8, 2000. 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, NW, Washington, DC 20570.
This request must be received by the Board in Washington by September 15, 2000.

Dated at Oakland, California this 1st day of September, 2000.

/s/ James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
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32-1203

355-2200-2201
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- 1 / The Employer's name appears as amended at the hearing.
- 2/ The Employer and the Petitioner filed timely briefs which have been duly considered.
- 3/ The parties stipulated that Children's Hospital Medical Center of Northern California d/b/a Children's Hospital of Oakland, hereinafter referred to as the Employer, is a California non-profit corporation with offices and places of business located in Oakland, California, where it is engaged in the operation of an acute-care pediatric hospital. During the past 12 months, a representative period, the Employer received gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5000 directly from firms located outside the State of California.
- 4/ The Petitioner seeks to represent a residual unit of all unrepresented technical employees, which are: anesthesia technicians, anesthesia technologists, cardiovascular technicians, care team associates, clinical laboratory assistants, dental assistants, dietetic assistants, ECG/holter technicians, EEG technicians, junior accredited record technicians, accredited record technician/coder, lead cardiovascular technician, nuclear medicine technologists, operating room technicians, pharmacy technicians, pulmonary function technicians and respiratory care practitioners. Concerning the respiratory care practitioners, the parties agreed that they must meet the Board's test of a casual employee – at least 4 hours per week in the quarter preceding the Direction of Election.

The Employer stipulated to the placement of the above employees in the residual technical unit except for the following job classifications: clinical laboratory assistants, dietetic assistants and pharmacy technicians, whom the Employer asserts are not technical employees, and lead cardiovascular technician, whom the Employer asserts is a statutory supervisor. Moreover, the Employer seeks the inclusion of cytogenetic technologists and research laboratory assistants in the bargaining unit while the Petitioner asserts these employees are professionals.

The Petitioner represents a unit of the Employer's employees, which includes licensed vocational nurses, central processing lead technicians, patient-care assistants, kitchen employees and various types of aides. The Petitioner has represented these employees since 1941. The last collective bargaining agreement was effective May 1, 1996 through April 30, 2000. The parties agree and, I so find, that under Board law, the residual technical employees as found in this Decision will vote as to whether to be represented by the Petitioner as part of the existing unit or against representation by the Petitioner. See, **St. John's Hospital**, 307 NLRB 767 (1992).

The Board has defined technical employees as "those who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses ". **Barnert Memorial Hospital Center**, 217 NLRB 775, 777 (1975). Technical employees are frequently certified, licensed, or registered, although said technical status may be met without such. *Id.* at 776. Professional employees are defined in Section 2(12) of the Act as "(a) an employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period time; (iv) requiring knowledge of an advanced type in a field science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, from an apprenticeship or from training in the performance of routine mental, manual, or physical processes."

The parties stipulated that all employees sought by the Petitioner as well as those employees sought by the Employer receive the same fringe benefits, including health insurance, retirement plan, paid time off, sick leave and holidays.

The Employer employs approximately 16 **clinical laboratory assistants** in its Clinical Laboratory. The Petitioner seeks their inclusion in the unit while the Employer asserts they are non-professional employees and, thus, should be excluded. The requirements to be hired as a clinical laboratory assistant are high school degree, phlebotomy certificate and one year of phlebotomy experience.

A major job duty of the clinical laboratory assistants is the collection of specimens, usually blood, from patients. The laboratory assistant normally draws blood from a patient's arm but if an appropriate vein is not located, then the laboratory assistant can draw it from elsewhere. The specified amount of blood is drawn into the appropriately colored tube, depending on the tests to be run on the blood. The laboratory assistants' next steps are to enter the specimen into the computer; if the specimen is for metabolic testing, then it is placed in a centrifuge to turn it into plasma; if a complete blood cell count is required, then the tube of blood is put on a rocker, a method of shaking the tube; if microscope slides are needed, then the laboratory assistant will take a drop of blood and place it on a slide; and finally, the specimens are delivered to the technologists or laboratory clerical scientists for testing. The laboratory assistant is informed as to whether metabolic testing or complete blood cell testing is needed by information on the initial label, which the laboratory assistant receives from the computer. If duplicate tests are ordered, the laboratory assistant can eliminate the duplication. Other duties include dissecting tissue or other specimens, pursuant to a prescribed protocol, separating specimens by category, checking specimens to determine if appropriate for testing and preparing specimens for shipment to outside laboratories.

In performing these duties, laboratory assistants use the following equipment: syringe, centrifuge, rocker, vortex (vibrates specimen), scalpel, cytocentrifuge and incubator.

I find the clinical laboratory assistants exercise independent judgment in the following manner: determining which vein to draw the blood out of, eliminating duplicate tests, and rejecting specimens which are inappropriate for testing. In making these judgments, the clinical laboratory assistants rely upon their education in phlebotomy as well as their training. I also find that the clinical laboratory assistants are required to

possess specialized training -- specifically, education in phlebotomy, and a phlebotomy certificate, and perform work of a technical nature. Thus, I find the **clinical laboratory assistants** to be technical employees and included in the residual technical employee unit. The Employer's reliance upon the Board's holding in **Southern Maryland Hospital Center, Inc.**, 274 NLRB 1470, 1474-75 (1985), is unpersuasive because the phlebotomists in that case were not required to have any specialized training or certification and their duties were more limited than the duties of the clinical laboratory assistants of the Employer.

There are 10 **cytogenetic technologists** who are employed in the cytogenetics laboratory. This laboratory is responsible for the clinical diagnosis of inherited or acquired chromosome abnormalities and is managed by Dr. Phillip Cotter and the laboratory supervisor, Gloria Tung, both of whom were stipulated as statutory supervisors. The laboratory is located in a building near the Hospital. As previously stated, the Employer seeks their inclusion in the residual technical unit while the Petitioner asserts they are professional employees. The educational requirements to be a cytogenetic technologist are a bachelor degree in genetics or other biological science and certification as a specialist in cytogenetics by the National Certification Agency for Medical Laboratory Personnel. In order to receive this certification, one must have a bachelor degree, 2 years experience in a cytogenetic lab and pass a test which tests one's ability to diagnose from genetic images and their knowledge of the field. The cytogenetic technologists II are paid between \$23 and \$28 an hour while the III's are paid \$29 to \$30 an hour.

The duties of the cytogenetic technologists are divided into three components: establish the sample in a culture, culture and harvest the sample chromosomes and analyze the chromosomes. The first component is a relatively simple process of setting up the sample in a culture media. The second component requires independent judgment on the part of the cytogenetic technologists to assess how the sample is growing, especially if that sample is amino or skin, and whether or not it needs to be "fed" before it is "harvested". When the sample cells are ready for harvest, they are "effectively killed" and put on a microscope slide. The third component involves the

cytogenetic technologists counting 20 separate metaphase spreads, grouping of chromosomes, under a microscope, identifying the chromosomes in each metaphase spread and noting the coordinates of each metaphase spread. After this is accomplished, the cytogenetic technologists are required to independently choose the four clearest metaphase spreads and analyze each, which entails identifying chromosomes and making sure they are identical, band for band. If they are not identical, then an abnormality has been located. Next, they are required to take another four metaphase spreads and complete the analysis on these, including making a computer image of the metaphase spreads. Thereafter, the cytogenetic technologists create a "karyotype" image, through computer software, of two of the metaphase spreads and these images must be cleaned up by the cytogenetic technologists. After completion of this analysis, the cytogenetic technologists take the information to the laboratory supervisor for her review.

The primary difference between the duties of the cytogenetic technologists II and III is that the IIIs are primarily responsible for prenatal setup, culture and harvest or because this requires more experience.

I find that the **cytogenetic technologists** are professional employees because their work is predominantly intellectual, analyzing chromosomes for abnormalities; involves the consistent exercise of independent judgment, such as choosing the metaphase spreads to analyze and determining when to harvest the culture; and requires knowledge in the field of genetic science, which they primarily learn in college, as opposed to on the job training. See, **St. Barnabas Hospital**, 283 NLRB 472, 473 (1987); **Barnert Memorial Hospital Center**, *supra*. Thus, I shall exclude the cytogenetic technologists from the residual technical employees voting group.

There are 4 **dietetic assistants** employed in the food service department, of whom 2 are full-time and 2 are part-time (have averaged 16 hours a week for the past year). The Petitioner asserts they are technical employees while the Employer asserts they are non-professional employees. The qualifications within the job description are a high school degree and 3 years of education in nutrition. The record evidence showed the 3 years of education requirement was waived for the last dietetic assistant hired and

that employee was hired with 2 years of college education. Furthermore, the evidence showed the educational requirement might be totally waived if the applicant had prior work experience in the field. There is no certification requirement. They are paid \$11 to \$14 an hour.

The duties of the dietetic assistants are to check to determine who is a patient each day and put each patient's name on a preprinted menu for distribution; distribute and collect the menus from the patients; add the number of each item ordered in order that the cooks have sufficient quantity of each item; speak to the patients to make sure the previous meals were satisfactory; substitute an item in the same food category if the kitchen ran out of the item, such as an apple for an orange; and review the food and utensils on the tray for temperature, cleanliness and completeness of order before food is sent to patient. The dietetic assistants do not have the authority to modify the prescribed diet, without appropriate authority, although the record evidence showed on at least one occasion this was done. The only changes which dietetic assistants make, such as substitution of an item, are not modifications in the diet and do not require independent judgement. Furthermore, the dietetic assistants do not have authority to counsel patients on nutrition.

Overall, the record evidence fails to establish that the **dietetic assistants** utilize any independent judgement in their duties; thus, I find they are not technical employees and excluded from this voting group. See, **Barnett Memorial Hospital Center**, *supra*. The Petitioner's citation to **Hallandale Rehabilitation and Convalescent Center**, 313 NLRB 835 (1994), is unpersuasive because in that case the Board found the dietetic assistant was a technical employee and excluded from the unit of service employees but did not provide a factual basis for the finding.

The **lead cardiovascular technologist** works in the cardiology department and reports to Nancy Shibata, director of critical care services. The Petitioner seeks the inclusion of this position while the Employer asserts the lead is a statutory supervisor. The record evidence established that Jeff Sullivan, the lead cardiovascular technologist, effectively recommended employees for hire, approved overtime, granted time off, scheduled hours for employees, evaluated employees and participated in the discipline

of employees. Thus, I find the **lead cardiovascular technologist** is a supervisor within the meaning of Section 2(11) of the Act and I shall exclude him from the residual technical employees voting group herein.

There are 10 **pharmacy technicians** who work in the in-patient pharmacy at the Hospital. The Petitioner seeks their inclusion in the unit while the Employer asserts the pharmacy technicians are not technical employees; rather, they are non-professional employees. Pharmacy technicians are required to be a high school graduate and be licensed by the State of California as a pharmacy technician after completion of an accredited pharmacy technician program, which lasts approximately 10 months. In performing their job, the pharmacy technicians use the basic knowledge gained through their education as well as the six weeks of on the job training.

The duties of the pharmacy technicians are to generate computer labels, which provide the patients' names and IV status; check the floors to determine if patients are still on IVs; prepare the IVs, based upon the label specifications on the drug and amount of dilution; distribute the IVs to the patient care areas; fill the cassettes, a series of drawers with patients' medications, based upon the "fill list" on the computer; and prepare narcotics for the nursery patients by diluting them pursuant to the specified amounts. Other duties are entering total parental nutrition orders, hyper-alimentation orders, and drug orders into the computer; preparing hyper-alimentation solutions, through the use of an IV hood and two machines which create the solution based upon pre-determined amounts of dilution, and distributing them to the patient care areas; and preparing antibiotic syringes in the same manner as IV bags. A pharmacist checks all of this work before the medications are administered to the patients. Additional duties include preparing baby formula, answering the phone and detecting outdated items. In performing all of these duties, the pharmacy technicians do not have any authority to change pharmacy orders, although on occasion they may speak to a pharmacist as to the correctness of an IV order.

The Board has previously held on several occasions that pharmacy technicians are not technical employees. In **Rhode Island Hospital**, 313 NLRB 343, 356 (1993), the Board found these employees were not technical employees, wherein they

formulated, prepared and delivered medications pursuant to physicians' orders and all orders were reviewed by pharmacists, because the pharmacy technicians did not make independent judgments in preparing the medications; instead, they based their decisions on approved standards. In order to be hired, these pharmacy technicians had to have at least one year of college and complete a 15-week training program at the hospital. In **Meriter Hospital**, 306 NLRB 598 (1992), the Board declined to find pharmacy technicians to be technical employees, where they received prescriptions from patients, filled the prescriptions and the pharmacist checked the products but not the amount of dilution. I find the pharmacy technicians perform the same type of duties for the Employer as performed in the above two cases. Thus, the pharmacy technicians do not exercise independent judgment and do not meet the definition of a technical employee. Therefore, I shall exclude the **pharmacy technicians** from the voting group. In making this finding, I distinguish the Board's holding in **Duke University**, 226 NLRB 470, 472 (1976), where pharmacy technicians with 6 months of training at a technical institute were found to be technical employees, on the basis that the Employer's pharmacy technicians do not exercise independent judgment even though they are required to be certified after completion of their education at a technical college.

The final group of employees at issue is the seven **research laboratory assistants** who work in various research laboratories in a separate facility within seven blocks of the Hospital. The Employer seeks their inclusion in the voting group while the Petitioner asserts they are professional employees and, thus, excluded from the voting group.

The research laboratory assistants perform a number of experiments in order to generate data for research by the research scientists. These experiments include polymerase chain reaction (PCR), where copies of DNA are made, and the dot blot hybridization. Through these experiments, the research laboratory assistants determine whether the gene is positive or negative. Another procedure is to measure the concentration of DNA, through the use of a spectrophotometer, and record this information for review by a scientist. Furthermore, they calculate the frequencies and run various statistical tests on the computer. The research laboratory assistants do not

analyze the data; rather this is left to the scientists and staff research associates. Other duties for the research laboratory assistants are to maintain the stock in the laboratory, order supplies, unpacks supplies, obtain specified articles from libraries and cleanup the laboratory.

The research laboratory assistants are required to have two years of college including courses in natural sciences and two years of laboratory experience. The three research laboratory assistants in the genetic epidemiology laboratory are recent graduates of the University of California at Berkeley where each received a Bachelor of Science degree in molecular biology. But the three research laboratory assistants were hired after approximately two years of college. The record evidence establishes that approximately 90 percent of their work is learned through training, as opposed to their college education. The research laboratory assistants are paid between \$12.00 and \$13.62 an hour.

I find that the **research laboratory assistants** are technical employees, as opposed to professional employees, because they are not required to have a college degree, the named research laboratory assistants did not in have a college degree when initially hired and their work is not predominantly intellectual, although it does require the consistent exercise of discretion and judgment. See **Middlesex General Hospital**, 239 NLRB 837, 838 (1978).

There are approximately 150 employees eligible to vote in the residual technical employee unit.