

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

LEGACY GOOD SAMARITAN HOSPITAL
AND MEDICAL CENTER¹

Employer

and

Case 36-RC-5966

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 701,
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 record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
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 an appropriate voting group:

All moving and storage technicians employed by the Employer at its Portland, Oregon, facility; but excluding all guards and supervisors as defined in the Act, and all other employees.

¹ The name of the Employer appears as corrected at hearing.

² The parties filed briefs, which have been considered.

The Employer is engaged in the operation of several health care facilities, including Good Samaritan Hospital and Medical Center (“Good Samaritan” or “the hospital”, herein) in Portland, Oregon. Petitioner represents a unit of skilled maintenance employees, and by its petition seeks to add, by means of a self-determination election, three moving and storage technicians (“MSTs) to the existing unit. The Employer opposes the petition, on grounds that the MSTs are not skilled and more properly belong in the unit of service and non-skilled maintenance employees currently represented by Service Employees International Union Local 49 (SEIU). SEIU did not intervene in the hearing, and there is no evidence that SEIU claims, or seeks, to represent the MSTs.³

In addition to Good Samaritan, the only facility involved herein, the Employer has numerous facilities in the Portland area, including Emanuel Hospital, Mount Hood Medical Center, Legacy Meridian Park Hospital, Holiday Park Center (research and central laboratory), Legacy Health system offices, Legacy Visiting Nurses Association and Hospice, and several clinics at various locations in the Greater Portland area.

The MST classification was created in July 1999. The three incumbents, Tom DeMyer, Louie Hema, and Greg Grant, were hired at that time. Prior to July 1999, the work which the MSTs currently perform was done by a contractor, WDI. DeMyer and Hema had both been employed by WDI for about 10 years prior to being hired by the Employer. Grant was an employee of the hospital in the medical records department.

The MSTs spend about 25 percent of their time assembling and installing modular units called “Herman Millers.” Herman Millers are made of particle board with a laminated vinyl or plastic surface, and can include shelves, doored cabinets, countertops, computer desks, and other work surfaces. They are hung on brackets attached to metal strips bolted to walls. The MSTs configure, assemble, and install the Herman Miller units, and in doing so often use stationary power saws in the carpentry shop to cut shelves and countertops to custom sizes. In addition to various power saws, MSTs also use levels, measuring tapes, plumbs, power drills, hammers, screwdrivers, and wrenches in their work. DeMyer testified that both he and Hema are quite adept at installing Herman Millers, because of their prior years’ experience doing the same work for WDI, while Grant, who has no similar prior experience, currently lacks the full knowledge and skills. Specific knowledge of how the various components fit together is required. The components do not have pre-drilled holes, and each installation must be custom configured. The work requires at least rudimentary carpentry skills and a few years’ of on-the-job training.

MSTs also move furniture and pre-packed boxes as necessary when an individual’s office is moved from one location to another. They move very large items such as refrigerators and freezers. They also hang items such as pictures and clocks on walls. They spend some of their work time in the warehouse, where they are engaged in organizing the items stored there, including furniture and medical equipment, as well as component parts for Herman Millers. Their warehouse work includes operating a forklift. Until the creation of the MST position, all of this work was performed by employees of a WDI; whatever is not performed by the MSTs still is. The warehouse is about three blocks from the hospital and is the location where the MSTs report to work. The MSTs are supervised by Donald Loper, manager for “central service operations, transportation,” who has an office in the basement of the west wing of the hospital. Also reporting to Loper is the materials specialist, Richard Gill, who works in the warehouse, and about 13 mail collection employees, couriers, and shuttle drivers. It appears none of these is represented by any labor organization. Loper reports to Carolyn Satterwaite, Director for Legacy Health Systems Material Operations.

³ I have been administratively advised that SEIU Local 49 was notified of the proceedings in this matter in a timely manner and did not respond with any interest in representing the employees involved herein.

The skilled maintenance unit includes engineers, telecom technicians, painters, carpenters, locksmith, electronic technicians, and maintenance assistants. Except for the two telecom technicians, all employees in the skilled maintenance unit are supervised by Russ Arnold, manager of operations in the Facilities Department, who reports to Martha Wangenstein, Vice President in charge of Operations. The telecom technicians report to Marilyn Black in Informational Resources, Telecommunication, a different department in the hospital. All skilled maintenance unit employees work at Good Samaritan hospital, but the locksmith also works half time at Emanuel Hospital, and the telecom technicians work at other facilities as needed. There are about 25 employees in the Facilities Department.

No one contends there are (other) unrepresented skilled maintenance employees who should also be included in any vote.

Conclusion.

The Employer argues that the MSTs do not perform duties typical of employees in skilled maintenance units as described by the Board in its Rulemaking proceedings, nor do they have skills and qualifications typical of such employees.

In its proceedings leading to the Health Care Rule the Board noted that skilled maintenance employees are “generally engaged in the operation, maintenance, and repair of the hospital’s physical plant systems, such as heating, ventilation, air conditioning, refrigeration, electrical, plumbing and mechanical.” Such employees have higher skills than those required of service employees, and have had some amount of specialized education and/or training. The Board also noted that biomedical technicians who work on and repair sophisticated computer-based equipment are often included in such units, and that, as well, relatively unskilled workers also may be included in such units if they are involved in the maintenance, repair, and operations of hospitals’ physical plant systems or are part of a separate maintenance department. See 284 NLRB 1556-1562. In *Toledo Hospital*, 312 NLRB 652 (1993), the Board said that it would “not exclude a classification from a skilled maintenance unit simply because the Employer administratively has placed that classification in a different department.”

The record establishes that the MSTs are something more than “unskilled” employees, inasmuch as they are the only employees of the Employer who have the capability to assemble and install Herman Millers. It is undisputed in the record that two of the three MSTs possess specialized knowledge and skills with respect to the assembly and installation of Herman Millers, which they acquired during their ten years’ employment at WDI, and that the third MST is in the process of acquiring such knowledge and skills in on-the-job training. It is clear that the work experience required to attain expertise with respect to Herman Millers is comparable to an apprenticeship, such as that served in recognized crafts. Further, the work they perform with respect to Herman Millers is similar to the work performed by carpenters, and they use many of the same tools. Further, the Herman Millers are in the category of “systems and equipment.”⁴

The MSTs could arguably be included either in the skilled maintenance unit or in the over-all service unit, inasmuch as they regularly spend a portion of their time performing work which requires some degree of specialized knowledge and skills, but also spend a portion of their time performing unskilled work. If SEIU were seeking them, they might arguably have their choice of representative, and thereby select a unit. However, neither SEIU nor anyone else is seeking to represent them.

⁴ In *Jewish Hospital of St. Louis*, 305 NLRB 955 (1991), the Board remarked that, “A distinguishing feature of skilled maintenance employees is their work on systems and equipment as opposed to involvement in direct patient care.”

Based on the entire record, I conclude that a unit of skilled maintenance employees including the MSTs is *an* appropriate group for voting purposes. I particularly note the similarity of their woodworking/carpentry tasks - albeit basic - to the skills of the unit carpenters, the lack of any other union seeking to represent them, the fact that their work historically has been performed by subcontractors, and the lack of any other unrepresented, skilled maintenance employees.

Accordingly, I shall direct an election in the following voting group:

All moving and storage technicians employed by the Employer at its Portland, Oregon, facility; but excluding all guards and supervisors as defined in the Act, and all other employees.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated a desire to be included in the existing skilled maintenance unit currently represented by Petitioner, and it may bargain for those employees as part of that unit. If a majority of the valid votes are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented. In that event, a certification of results of election will be issued.

There are approximately 3 employees in the voting group.

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 INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF 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 and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 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 Officer-in-Charge 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 Portland Subregional Office, Koin Center, Room 401, 222 S.W. Columbia Street, Portland, Oregon 97201-5878, on or before . 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 March 8, 2000.

DATED at Seattle, Washington, this 23rd day of February, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
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