

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

THE WESTERN PENNSYLVANIA HOSPITAL

Employer

and

**Case 6-RC-11860**

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 95 – 95A, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Robin Wiegand, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.<sup>1</sup>

Upon the entire record<sup>2</sup> in this case, the Regional Director 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.<sup>3</sup>

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<sup>1</sup> 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. 20570-0001. This request must be received by the Board in Washington by September 12, 2000.

<sup>2</sup> Both the Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

<sup>3</sup> The parties have stipulated, and I find, that the Employer is an acute care hospital, and therefore is a health care institution within the meaning of Section 2(14) of the Act.

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)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time skilled maintenance employees, including stationary engineers, carpenters, painters, plasterers, plumbers, electricians, refrigeration mechanics, craft assistants, mechanics, general maintenance employees, clinical engineering technicians, electronics technicians and clinical engineering specialists, employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act and all other employees.<sup>4</sup> While the Employer agrees that a unit consisting of all skilled maintenance employees is appropriate herein, contrary to the Petitioner, the Employer contends that the craft assistants are not skilled maintenance employees, and therefore they should be excluded from the petitioned-for unit. In addition, the Employer contends that the positions of clinical engineering senior technician and chief radiological technician<sup>5</sup> are skilled maintenance positions, and thus should be included in the petitioned-for unit. Contrary to the Employer, the Petitioner asserts that these two positions are supervisory ones within the meaning of Section 2(11) of the Act, and therefore must be excluded from the petitioned-for unit. There are approximately 54 skilled maintenance employees in the petitioned-for unit. There is no history of collective bargaining for any of the employees at issue herein.

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<sup>4</sup> Although the Petitioner adjusted the description of the unit sought at the hearing, I note that the record does not reflect a formal motion to amend. However, at the hearing and in the brief, the parties stated their positions as to the appropriateness of the above-described unit. For ease of reference, the unit described above will be referred to as the petitioned-for unit.

<sup>5</sup> In the record, the clinical engineering senior technician is sometimes referred to as the senior clinical engineering technician, and the chief radiological technician is sometimes referred to as the chief radiologic engineer.

The Western Pennsylvania Hospital (herein "West Penn") is a 512 in-patient bed acute care hospital which covers approximately two and one half blocks in the Bloomfield section of Pittsburgh, Pennsylvania, herein called the Employer's facility. The facility is made up of approximately 10 buildings, most of which are connected to each other by bridges and walkways. James M. Collins is the president and CEO of West Penn, and reports directly to the Board of Directors. There are five vice presidents who report to Collins. Additionally, the Assistant to the CFO, Director of Human Resources, Director of Planning, Director of Information Services, Medical Director/Quality, and various department chairmen also report to Collins.

One of the above-described vice presidents is Barry Deems, whose areas of responsibility include: buildings and grounds, internal construction, engineering/maintenance, plant operations, clinical engineering, community relations and environmental services. Reporting to Deems is Daniel Squires, Director of Engineering and Plant Operations. There are three managers, Thomas Carlin, Dennis Owczarak and Donald Salada, in that department, as well as a project manager, William Marshall. Jean Forchet is the secretary for the Engineering and Plant Operations Department.<sup>6</sup> Additionally, there are approximately 45 employees in this department, including five carpenters, seven electricians, six general maintenance employees, three mechanics, three painters, one plasterer/mason, five plumbers, five refrigeration mechanics, five stationary engineers and five craft assistants.

Also reporting to Deems is Robert Tobin, Manager of the Clinical Engineering Department. That department has a secretary, Michelle Ferry.<sup>7</sup> There are 13 other

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<sup>6</sup> The parties stipulated, and I find, that Squires, Carlin, Owczarak, Salada and Marshall are supervisors within the meaning of Section 2(11) of the Act, inasmuch as they have the authority to hire, fire, discipline and responsibly direct the work of employees, and therefore, they shall be excluded from the unit found appropriate herein. In addition, the parties stipulated, and I find, that Forchet shall be excluded from the petitioned-for unit inasmuch as she performs work as an office clerical employee.

<sup>7</sup> The parties stipulated, and I find, that Tobin is a supervisor within the meaning of Section 2(11) of the Act, inasmuch as he has the authority to hire, fire, discipline and responsibly direct the work of employees, and therefore, he shall be excluded from the unit found appropriate herein. In addition, the parties stipulated, and I find, that Ferry shall be excluded from the petitioned-for unit inasmuch as she performs work as an office clerical employee.

employees in the Clinical Engineering Department, including one chief radiologic technician, two senior clinical engineering technicians, one electronics technician, six clinical engineering technicians and three clinical engineering specialists.

A third department, Environmental Services, also reports to Deems. This department has 64 individuals, including a manager/director, Ed Virbitsky, who works for an outside contractor, operations manager Bob Marchionda, three supervisors, a part-time secretary and approximately 59 other employees. This department is responsible for the cleaning of the interior, non-patient care areas of the Employer's facility. None of the individuals employed in the Environmental Services Department are at issue herein.

The five stationary engineers report to Salada. They are responsible to maintain the power plant, and in this capacity, they clean, repair, operate, perform preventive maintenance, and generally monitor the facility's power and steam systems. In addition to a high school diploma or equivalent, the stationary engineers are required to have a current Class A Stationary Engineer's license from the city, as well as at least five years of experience in institutional boiler maintenance. It is also preferred that the stationary engineer have HVAC experience and EPA universal refrigerant certification. The stationary engineers are required to have computer skills. The stationary engineers earn between \$15.01 and \$23.29 per hour. They are scheduled to work 24 hours per day, seven days per week.

The five refrigeration mechanics are also supervised by Salada. The refrigeration mechanics are responsible to maintain, inspect, monitor, perform preventive maintenance and repair RHVAC equipment in the facility. To be hired as a refrigeration mechanic, the individual must possess, in addition to a high school diploma or equivalent, at least two years of technical school training in refrigeration, three years of experience in an institutional setting, and as well as either Class I, Class II or Universal certification from EPA in refrigerant practices. They earn between \$13.65 and \$21.17 per hour. They are scheduled to work Mondays through Fridays, 7:30 a.m. to 3:30 p.m..

The seven electricians report to Tom Carlin. They are responsible to install, repair and maintain the Employer's electrical systems and equipment. The requirements to be hired as an electrician at West Penn are: high school diploma or equivalent, two years of trade/technical school training in a certified program, four years of experience as a registered electrician in commercial or institutional settings, and a registered electrician's license from the city. They earn between \$15.01 and \$23.29 per hour, and are scheduled to work four days per week, ten hours per day.

The five plumbers also work under the supervision of Tom Carlin. Their job duties involve the installation, repair and maintenance of all of the plumbing systems, as well as coordination of plumbing systems with the steam, water, sewage and air lines at the facility. To be hired as a plumber at West Penn, an individual must have the following qualifications: high school diploma or equivalent, at least five years of a certified trade school program, two years of experience as a registered plumber in commercial or institutional setting, and a county license as a plumber. The plumbers earn between \$15.01 and \$23.29 per hour, and are scheduled to work Mondays through Fridays, 7:30 a.m. to 3:30 p.m..

Tom Carlin is also the supervisor of the five general maintenance employees. These are the employees who usually respond first to emergency calls, such as fire alarms, water leaks and power outages, particularly after the regular duty hours of the other craft employees. They perform routine maintenance and repairs to mechanical and electrical equipment, including elevators and automatic doors, calling a service company if needed. They also troubleshoot for the plumbers and electricians. In addition, the general maintenance employees inspect and repair the pneumatic tube system and fire protection system. The qualifications for this position are: high school diploma or equivalent, at least three years of basic mechanical and electrical experience and a six to twelve month in-house training program. The general maintenance employees earn between \$13.65 and \$21.17 per hour, and are scheduled 24 hours per day, seven days per week.

The five carpenters report to supervisor Dennis Owczarzak. The carpenters build and/or repair structures or structural parts within the facility. They work on walls, ceilings, floors, doors, demolition and other construction projects within the various buildings. To be hired as a carpenter, an individual must have a high school diploma or equivalent, four years of carpentry experience and, preferably, two years of technical education. The carpenters earn between \$15.01 and \$23.29 per hour, and are scheduled to work Mondays through Fridays, 7:30 a.m. to 3:30 p.m..

The three painters and one plasterer/mason also report to Dennis Owczarzak. The painters perform all finishes in interior and exterior painting, as well as hanging wall paper and applying spray finishes to walls. The plasterer prepares, performs the finish work, and repairs plaster and drywall, applies fireproofing on firewalls, and repairs brick and block walls. To be hired as a painter, the individual must have a high school diploma or equivalent, at least four years of experience in the trade, one year of wallpaper experience, and staining experience. The plasterer must, in addition to a high school diploma or equivalent, have four years of experience as a journeyman plasterer and four years of experience working with brick and block. The painters and plasterers earn between \$12.41 and \$19.25 per hour. The painters work two shifts, from 7:00 a.m. to 3:30 p.m. or from 3:30 p.m. to 11 p.m., Sundays through Thursdays. The plasterer works from 7 a.m. to 3:30 p.m., Mondays through Fridays.

Dennis Owczarzak is also the supervisor for the three mechanics. The mechanics are responsible for maintaining and repairing mechanical equipment, including beds, wheelchairs and some dietary equipment. They also install locks and related hardware. The mechanics sometime design and fabricate materials as needed to carry out necessary repairs. To be hired as a mechanic at West Penn, the individual must have a high school diploma or equivalent and four years of experience in a machine shop, as well as mechanical experience including burning and welding. Lock and key making experience is preferred. The mechanics earn between \$13.65 and \$21.17 per hour and are scheduled to work from 7 a.m. to 3:30 p.m., Mondays through Fridays.

Dennis Owczarzak is the supervisor of the five craft assistants as well. Their primary job duty is to maintain the upkeep of the exterior public areas, parking lots and grounds, including such routine tasks as emptying trash receptacles, sweeping, snow removal, leaf removal, cleaning up after other crafts have performed work, and removing carpeting, wallpaper and ceiling tiles. They sometimes drive small trucks owned by West Penn to pick up parts and materials from outside vendors. They operate snow removal and street cleaning equipment and a fork lift. They sometimes deliver oxygen tanks from one building to another. The craft assistants sometime assist in the unloading of materials being delivered to the Employer.

While the majority of their time<sup>8</sup> is spent performing the routine maintenance chores, the craft assistants sometimes act as a 'second pair of hands' for the craft employees, performing such chores as holding ladders, carrying and handing tools to crafts employees, mixing mud for plaster, cleaning up after a craft project is completed, and so forth. Often, the work performed to assist the other craft employees takes place after their regular duty hours, through voluntary overtime assignments.<sup>9</sup> One of the craft assistants, Dan Sacco, spends a portion of his time making and adjusting signs around the various buildings.

The qualifications to be a craft assistant are either a high school diploma or a functional level equivalent of one, and one year of experience in building and groundskeeping. The craft assistants earn between \$10.25 and \$15.91 per hour. Three of them work from 6 a.m. to 2:30 p.m., and the other two work from 7:00 a.m. to 3:30 p.m..<sup>10</sup> While all of the craft assistants

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<sup>8</sup> It is estimated that the craft employees spend eighty to eighty-five percent of their time sweeping and removing trash, and the remainder of the time performing the other duties.

<sup>9</sup> In the last few months, West Penn has been preparing for an inspection by JCAHO, an accrediting organization for health care facilities, which occurs every three years. In anticipation of this inspection, many of the employees in the department have been working overtime to make repairs and improvements to the facility.

<sup>10</sup> The slightly different schedules came about as an accommodation to personal requests by the individual employees.

appear to be long-term employees<sup>11</sup>, two of them transferred into this job from other departments. One of these individuals transferred from the laundry, and one transferred from receiving. No craft assistant has ever moved out of this position into other skilled maintenance crafts within the Employer's facility.

The employees in the Clinical Engineering Department, under the supervision of Robert Tobin, is responsible for the installation, repair and maintenance of the hospital medical equipment, and also the paging and nurse call systems. The employees in this department also perform their duties, including installations, repairs and preventive maintenance, of equipment at Suburban General Hospital ("SGH"), located in the suburb of Bellview.<sup>12</sup> One employee is scheduled to work at SGH on Tuesdays and Thursdays. The Clinical Engineering Department employees are all scheduled to work from 7 a.m. to 3:30 p.m., Mondays through Fridays. In addition, one employee is scheduled to be on-call from 8:30 a.m. to 5 p.m. each weekday.<sup>13</sup>

There is one electronics technician in this department. The duties of the electronics technician primarily are to install, repair and maintain the overhead paging system, the nurse call system, physical therapy equipment, televisions and VCRs in the facility. To be hired into this position, an individual must have a degree from an approved electronics school or the equivalent experience.<sup>14</sup> They are also required to have the skills to use a personal computer. The electronic technician is the entry level position in this department. The electronics technician position pays between \$13.65 and \$21.17 per hour.

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<sup>11</sup> The craft assistants were originally called laborers. About seven years ago, the Employer changed the title of that position to craft assistant.

<sup>12</sup> Aside from the clinical engineering employees, none of the other skilled maintenance employees travel to work at SGH. The clinical engineering department schedules an employee from the department twice each week to perform work there. SGH has its own staff of skilled maintenance employees. Neither party has asserted that the employees at SGH should be included in the petitioned-for unit herein.

<sup>13</sup> The employee who is scheduled to be on-call rotates each day.

<sup>14</sup> Electronics school generally require a two year program to receive a degree.

There are six clinical engineering technicians in this department. The clinical engineering technicians service and maintain much of the medical equipment in the facility, including the laboratories. They work on such equipment as monitors, sterilizers, sanitizers, anesthesia machines, blood gas analyzers, defibrillators, ECG machines, infusion devices suction equipment, and so forth. Sometimes they fix the equipment on site, and sometimes the technicians bring the object back to the clinical engineering department location to perform the repairs. To become a clinical engineering technician at West Penn, an individual must have a degree from a recognized electronics school of technology, have completed specific training on specialized equipment, have a minimum of two years of experience repairing clinical equipment either in a hospital or for a manufacturer, and have the knowledge to repair patient monitors and defibrillators. Additionally, the individual must be able to operate a personal computer. The clinical engineering technicians earn between \$13.65 and \$21.17 per hour.

There are three clinical engineering specialists in this department. These individuals have specialized training to maintain and repair specific types of equipment. Thus, they are not interchangeable with regard to their skills and knowledge. One of the clinical engineering specialists performs the repairs on radiology equipment, working primarily on imaging and x-ray equipment, and one specialist performs work only on respiratory and anesthesia life support equipment.<sup>15</sup> The qualifications to be hired as a clinical engineering specialist at West Penn are: graduation from a recognized electronics school of technology, equipment-specific training on specialized clinical equipment, minimum of five years of experience repairing specialized equipment either at a hospital or for a manufacturer, and the ability to use a personal computer. The clinical engineering specialists earn between \$18.50 and \$28.70 per hour.

There are two clinical engineering senior technicians at West Penn, Ron Grafton and Dan Ejzak. These two senior technicians perform all of the same job duties as the clinical engineering technicians, however, because they are more experienced, they also do more of

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<sup>15</sup> The record does not reflect the specialization of the third clinical engineering specialist.

the installations and perform mentoring functions to less experienced technicians. In addition, Grafton has responsibilities specific to the equipment in the operating room, which Ejzak does not.

In this position, the senior technicians install, repair and maintain such equipment as ventilators, gas machines, sterilizers, and other equipment used in respiratory therapy, anesthesia, laboratories, sterilization, and so forth. As do the other individuals in the clinical engineering department, the senior technicians rotate on the schedule to work at SGH, and also rotate as the individual who is on-call in the department. The senior technicians spend virtually all of their time working with the equipment they are repairing or maintaining.

The qualifications for this position are the same as those for a clinical engineering specialist. That is, they must be a graduate of a recognized electronics school of technology, have equipment-specific training on specialized clinical equipment, have a minimum of five years of experience repairing specialized equipment either at a hospital or for a manufacturer, and possess the skills necessary to use a personal computer. The clinical engineering senior technicians earn between \$15.01 and \$23.29 per hour.

The senior technicians do not have the authority to hire, fire, transfer, discipline, suspend, reward, promote, lay off, recall, evaluate or assign work, nor can they effectively recommend such actions. They have no role in the adjustment of grievances. While the senior technicians mentor less experienced employees, there is no record evidence that they have any part in evaluating other employees. The senior technician is sometimes consulted regarding decisions as to whether it is more economical to repair a piece of equipment in-house or whether to have the repair done by an outside contractor or the manufacturer.

Robert Catalano, Jr. is the only chief radiologic technician at West Penn. He has held this position since it was created in July 2000. Prior to that, he was a clinical engineering specialist, but had been performing the duties of this position for about two years before the title was changed. The chief radiologic technician is responsible for maintaining, repairing and performing preventive maintenance on the imaging and x-ray equipment in the radiology

department. He works on CT scans, x-rays, MRI equipment, nuclear medicine equipment and so forth. The chief radiologic technician acts as a mentor for technicians performing duties in the radiology department. He rotates on-call with the other employees in the clinical engineering department. He is also responsible for keeping records on the radiology equipment.

In order to be hired as a chief radiologic technician, an individual must be a graduate of a recognized electronics school of technology or have equivalent experience, have equipment-specific training on x-ray equipment and how to service and maintain it, have a minimum of five years of experience repairing specialized equipment either at a hospital or for a manufacturer, and possess the skills necessary to use a personal computer. The chief radiologic technician specialists earn between \$22.80 and \$35.36 per hour.

Catalano spend about ninety-five percent of his time actually performing work on equipment, and about five percent of his time mentoring others. There is no evidence that the chief radiologic technician has the authority to hire, fire, transfer, discipline, suspend, reward, promote, lay off, recall, evaluate or assign work, nor that he can effectively recommend such actions. He has no role in the adjustment of grievances. Catalano does mentoring of other employees in the repair and maintenance of the radiology equipment, but there is no record evidence that he has any role in the evaluation of other employees.

As previously noted, the Petitioner contends that the craft assistants should be included in the petitioned-for unit, while the Employer asserts that the craft assistants should not be included in a unit of skilled maintenance employees.

On April 21, 1989, The Board issued its Final Rule on Collective-Bargaining Units in the Health Care Industry ("The Rule"), in which it determined that with respect to acute care hospitals, eight units, including a unit of all skilled maintenance employees, shall be appropriate for collective bargaining purposes and that they are the only appropriate units, absent "extraordinary circumstances". 54 Fed. Reg. 16336, 16347 - 16348, 284 NLRB 1579, 1596 -

1597 (1989). The validity of The Rule was upheld by the United States Supreme Court in American Hospital Association v. NLRB, 499 U.S. 606 (1991).

In “Collective-Bargaining Units in the Health Care Industry: Second Notice of Proposed Rulemaking”, the Board explained its analysis of skilled maintenance employees as follows:

Evidence from the rulemaking hearings shows that skilled maintenance employees perform functions apart from those of unskilled service, maintenance and clerical employees in that these employees deal with highly complex and sophisticated systems and equipment...while they occasionally perform routine, unskilled tasks, skilled maintenance employees are generally engaged in the operation, maintenance and repair of the hospital’s physical plant system, such as heating, air conditioning, ventilation, refrigeration, plumbing, electrical and mechanical...Work on these systems requires abstract skills and knowledge at levels considerably higher than those of other non-professional hospital employees.

284 NLRB 1515, 1557 (1988).

The Board noted further that skilled maintenance employees generally require a high school diploma, some advanced technical training, and apprenticeship or experience in the trade. This is reflected in a higher wage rate, separate supervision in a separate maintenance department, limited contact with other employees and no involvement in patient care. Under the Rule, the Board does not use a traditional community of interest standard used in fields outside of health care to evaluate whether a particular classification of employees should be included in a skilled maintenance unit. Rather, the Board assesses whether the disputed classification possesses the type of skills and is required to perform the kind of job duties common to other skilled maintenance classifications, at similar skill levels. St. Luke’s Health Care Association, Inc., 312 NLRB 139, 141 (1993).

In the instant case, the craft assistants spend the overwhelming majority of their workday performing duties similar to those of a groundskeeper. In this respect, the craft assistants’ primary duties are to empty trash, clean the exterior grounds and parking lots, remove snow and ice in winter, weed around the exterior areas, and clear and remove leaves in the autumn. Other tasks they perform on occasion are to drive a small truck to pick up parts or deliver items

around the facility, demolition work, including picking up old carpeting, peeling old wallpaper, knocking down walls, and removing old ceiling tiles. One of the craft assistants prepares and installs signs around the facility. They also operate a forklift to assist in unloading deliveries to the facility.

While the craft assistants have assisted the other craft employees on occasion, and more recently because of the upcoming JCAHO inspection, such work is not a significant part of their workday. Additionally, this assistance does not involve any skill on the part of the craft assistants, nor does it involve any training for them. Rather, the craft assistants merely aid the skilled craft employees by carrying supplies, holding ladders, handing tools, cleaning up, and so forth. The craft assistants do not substitute for the craft employees in their absence, and no craft assistant has ever moved into a skilled classification.

The qualifications for a craft assistant position are significantly less than for the other craft classifications. Aside from a high school diploma or its functional equivalent, the craft assistant need only have one year of experience in groundskeeping, while the other craft classification require either advanced training, more years of experience, or both. Similarly, the pay rate is significantly lower for the craft assistants than for the other trades.

The Board has addressed the issue of whether groundskeepers, with similar duties to the craft assistants herein, should be included in a unit of skilled maintenance employees. St. Luke's Health Care Association, Inc., supra; Ingalls Memorial Hospital, 309 NLRB 393 (1992); Barnes Hospital, 306 NLRB 201 (1992). In each of these cases, the Board focused on the nature of the work performed rather than the amount of interaction with skilled maintenance employees. In both Ingalls Memorial Hospital, supra, and Barnes Hospital, supra, the groundskeepers actually performed maintenance and repairs on the equipment they used, while the craft assistants herein do no maintenance or repairs on their equipment. Despite those duties, the groundskeepers were excluded from those skilled maintenance units.<sup>16</sup>

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<sup>16</sup> In its brief, the Petitioner asserts that the craft assistants should be included because they sometimes assist the other trades in their work. The Petitioner cites Long Island College Hospital, 310 NLRB 689

Accordingly, based on the above and the record as a whole, and particularly noting that the craft assistants do not spend very much of their time assisting other more skilled employees and that they perform primarily routine, unskilled job duties, I shall exclude the craft assistants from the unit found appropriate herein.

As previously stated, the Petitioner contends that the clinical engineering senior technicians and the chief radiologic technician should be excluded inasmuch as they are supervisors within the meaning of the Act, while the Employer asserts that those two positions are not supervisory ones, and therefore they should be included in the unit.<sup>17</sup>

It is well established that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status upon an individual. Tri-City Motor Company, Inc d/b/a Auto West Toyota, 284 NLRB 659, 661 (1987); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986). However, Section 2(11) of the Act requires that such authority must be exercised with independent judgment on behalf of management, and not in a routine manner. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). If the supervisory indicia is exercised in a merely routine, clerical, perfunctory or sporadic manner, then supervisory status is not conferred on an employee. Bowne of Houston, Inc., supra; Feralloy West Company, 277 NLRB 1083, 1084 (1985). Employees who are merely conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., supra. The Board will not consider titles alone to be determinative of

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(1993), in support of its position, pointing out that, in that case, the laborer was included in a skilled maintenance unit despite the lesser skills required of that position. However, I find that case to be factually distinguishable from the instant case and therefore not controlling herein. In Long Island College Hospital, the laborer was part of the construction group, which included plumbers, carpenters, electricians, painters and plasterers. The laborer worked exclusively with that group to clean their work area and remove their garbage. Supra at 695. Thus, the laborer's primary duties involved providing assistance to the skilled employees. However, in the instant case, the craft assistants only perform those duties as a very small part of their normal duties. The employees at issue herein are more similar to a groundskeeper than the laborer as described in Long Island College Hospital.

<sup>17</sup> There is no contention by the Petitioner that the clinical engineering senior technicians and the chief radiologic technician should be excluded from the unit for any other reason other than their alleged supervisory status, i.e., that they should be excluded because they are not appropriately placed in a skilled maintenance unit.

supervisory status. Marukyo U.S.A., Inc., 268 NLRB 1102 (1984). Further, the burden of providing evidence of supervisory status rests on the party asserting that such status exists. Tucson Gas & Electric Company, 241 NLRB 181 (1979); Bowne of Houston, Inc., supra.

With respect to the supervisory status of the clinical engineering senior technicians and the chief radiologic technician, I note that the record is devoid of any evidence that they can hire, fire, transfer, discipline, suspend, reward, promote, lay off, recall, nor can they effectively recommend such actions. They have no role in the adjustment of grievances. It does not appear that the individuals in these two positions exercise any responsible direction involving the use of independent judgment. Because they are the most experienced and most skilled individuals in the department, they are called upon to mentor the less experienced employees. The Board and the courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than fellow employees or because he gives some instructions or minor orders. Byers Engineering Corporation, 324 NLRB 740, 741 (1997). Moreover, it appears that their time is almost entirely spent performing their own work, and only a very small percentage of time is spent mentoring other employees.

None of these individuals attend management or supervisory meetings. While the clinical engineering senior technicians are paid the same rate as many of the other employees in the unit,<sup>18</sup> the chief radiological technician earns a somewhat higher hourly rate. Although relevant to the issue, the factor of salary is a secondary indicia of supervisory status and is, in itself, not controlling. Memphis Furniture Manufacturing Company, 232 NLRB 1018, 1020 (1977); B & B Grocery, Inc., d/b/a St. Louis IGA Foodliner, 223 NLRB 793, 797 (1976). While the Petitioner points out that Catalano, the chief radiological technician, signed several purchase orders for items used in the department, these purchases were verbally approved by

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<sup>18</sup> The clinical engineering senior technicians actually earn less money per hour than the clinical engineering specialists, who are stipulated to be appropriately included in the petitioned-for unit.

the department manager.<sup>19</sup> Thus, there is no evidence that he exercises any independent judgment in signing the purchase orders.

In summary, the record evidence indicates that the clinical engineering senior technicians and the chief radiologic technician are experienced, long-term employees, upon whom the Employer relies to mentor less experienced employees and to share their opinions on strategies for the department to be cost effective. However, the record fails to support a finding that they are supervisors within the meaning of Section 2(11) of the Act. Accordingly, the clinical engineering senior specialist and the chief radiologic technician positions shall be included in the unit found to be appropriate herein.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees, including stationary engineers, carpenters, painters, plasterers, plumbers, electricians, refrigeration mechanics, mechanics, general maintenance employees, clinical engineering technicians, electronics technicians, clinical engineering specialists, clinical engineering senior technicians and chief radiologic technician employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all craft assistants, office clerical employees and guards, professional employees and supervisors as defined in the Act and all other employees.

### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>20</sup> Eligible to

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<sup>19</sup> It is also noted that the purchase orders which were entered into evidence were signed prior to July 2000, which is the date Catalano received the title of chief radiologic technician. This was a newly created position at the time. Prior to July 2000, Catalano was a clinical engineering specialist.

<sup>20</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election

vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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 and 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.<sup>21</sup> Those eligible shall vote whether

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Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

<sup>21</sup> In order to assure 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); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before September 5, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

or not they desire to be represented for collective bargaining by International Union of Operating Engineers, Local 95-95A, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 29<sup>th</sup> day of August 2000.

/s/Gerald Kobell

Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

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