

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**AMERICAN RED CROSS TENNESSEE
VALLEY BLOOD SERVICES REGION**

Employer
and

Case 26-RC-8399

**UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 1995, AFL-CIO, CLC**

Petitioner

**ACTING REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

The Employer, American Red Cross Tennessee Valley Blood Services Region, is a chartered unit of the American Red Cross, a federally chartered corporation with tax-exempt status that is headquartered in Washington, D.C. The Petitioner, United Food and Commercial Workers, Local 1995, filed a petition with the National Labor Relations Board under § 9(c) of the National Labor Relations Act seeking to represent certain employees in the Employer's collections department. Following a hearing before a hearing officer, the parties filed briefs with me.

The two issues raised at the hearing and briefed by the parties are (1) whether the scope of the petitioned-for unit should be expanded to include additional classifications; and (2) whether seven site supervisors should be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act.

As modified at the hearing, the unit sought by the Petitioner would include 117 collections technicians, 22 mobile unit assistants (MUAs), and 4 mobile unit assistants-F (MUA-Fs), for a total of approximately 143 employees. The Employer contends the appropriate unit should include 42 additional classifications and consist of all 305 non-supervisory employees involved in the collection, manufacture, and distribution of blood products. Alternatively, the Employer asserts that an appropriate unit would include, at a minimum, all employees employed in collections and apheresis departments including site supervisors, compliance specialists, and schedulers. This is the same position the Employer took in proceedings in 1997 and 2000, where elections were directed in units similar to the unit sought by the Petitioner here.¹ The Employer contends that changes implemented since the issuance of the 2000 Decision and Direction of Election support a departure from the prior unit determinations.

With regard to the supervisory status of the site supervisors, the Petitioner takes the position that the site supervisors should be excluded from the unit because they are statutory supervisors. Conversely, the Employer contends the site supervisors are statutory employees and are properly included in the unit.

¹ In 1997, in Case 26-RC-7876, the Regional Director rejected the Employer's argument and found appropriate a unit similar to that currently sought by the Petitioner. Similarly, on March 13, 2000, in Case 26-RC-8150, an election was directed in a unit consisting of all collection and pheresis department employees, including registered nurses (RNs), licensed practical nurses (LPNs), collection technicians I and II, phlebotomy technicians, mobile unit leaders (MULs), mobile unit assistants, and maintenance technicians employed at the Employer's center on Charlotte Avenue, Nashville, Tennessee; Vanderbilt Hospital, Nashville, Tennessee; and Paducah, Kentucky facilities but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

In addition to full-time and regular part-time employees, the Employer also employs per diem employees in some job classifications.² The parties agree that if a particular job classification is included in the unit, then the per diem employees in that classification should be included in the unit. The unit sought by the Petitioner only includes 8 per diem employees, while the unit proposed by the Employer would include 28 per diem employees.

The parties stipulated and I agree that 71 individuals should be excluded from any unit found appropriate.³ The parties also agreed that all registered nurses, with the exception of Marie Felder, were employed in supervisory positions and should not be included in the unit.

I have considered the evidence adduced during the hearing and the arguments advanced by the parties on each of the issues. I have also examined and considered the prior unit determinations and factors considered in the earlier cases. I have concluded that the changes in the Employer's organizational and operational structure are insufficient to warrant a departure

² Per diem employees typically work 4 hours per day when they are scheduled to work.

³ The parties stipulated that the following individuals have the authority to hire, fire, or to discipline, or to effectively recommend discipline, or transfer and are supervisors within the meaning of § 2(11) of the Act: Patricia A. Anderson, Jerry Antoine, Sandra K. Armstrong, Marsha S. Baker, Mary M. Banks, Steven A. Beeler, Billy Dean Beydler, Sandra B. Bonds, Patricia Callicoat, Brian R. Carlson, Arthur R. Colbert, Judith A. Cravotta, Doris P. Curry, June S. Douglas, Norma Foster, Susette Frankel, Connie H. Gibson, Glenda A. Gibson, Robin R. Grace, Gwendolyn L. Groves, Mary Marlene Guthrie, Joyce M. Guynn, Chris tia W. Hall, Penny E. Harrell, Terry G. Holton, Cheryl B. Jones, Janice L. Jones, Patricia Lynn Jones, Wanda Jung, Carol A. Kelso, Carolyn D. Lewis, Jocelyne I. McCall, Russell McGee, Paul G. McLean, Sherry Miljour, Carol M. Miller, Sandra J. Morton, Heather Murphy, Joe M. Nuckoles, Shanda O'Neal, Sonia S. Pena, Jacy H. Pettis, Eileen M. Ricker, Karen L. Scott, Nancy C. Settle, Brian Shreeve, Deloris A. Smith, Patricia M. Smith, Rita Starbuck, Brenda K. Stephenson, Lee Ann Stiles, Janie L. Stone, Dennis Taylor, Dale Teal, Faye G. Thompson, Kaye Walker, Michelle Walker, James Walsh, Cheryl R. White, Cindy G. Whitehead, Anita J. Wiggins, Tonya Wilson, Jackie N. Wood, and Teri L. Youngblood.

The parties further stipulated that the following employees should be excluded from the unit because they are confidential employees: Melony A. Englert, Pamela D. Hooper, Celeste Long, Wendy Mennenga, Leecia B. Penrod, and James Sturgeon. Finally, the parties stipulated that William Stanfill, the security guard, should be excluded from the unit.

from the prior unit determinations. Similarly, I reject the Petitioner's argument that the site supervisors, who were formerly included in the unit,⁴ should now be excluded because their roles have changed since the last Decision and Direction of Election. Applying the principles of *Park Manor Care Center*, 305 NLRB 872 (1991), as more fully set forth below, I am directing an election in a unit comprised of approximately 152 employees that includes the collections technicians, mobile unit assistants, site supervisors, and the collection specialists.

To provide a context for my discussion of the issues and my conclusions, I will first provide an overview of the Employer's operations and structure. Then I will discuss the changes in the Employer's operations since the prior decisions. Finally, I will present the facts and reasoning that support my conclusions on each of the issues.

I. THE EMPLOYER'S OPERATIONS AND STRUCTURE

A. Overview

The Employer is a non-acute health care facility that employs about 376 employees. It recruits, collects, processes, manufactures and distributes blood/blood products to approximately 75 hospitals and 20 home health agencies and outpatient clinics in a geographic area which encompasses 84 counties in middle Tennessee; Paducah and Bowling Green, Kentucky; and a couple of counties in Illinois and Missouri.

To meet the blood services requirements of its clients/customers, the Employer collects blood at both mobile and fixed sites. A significant amount of the Employer's blood collection operation occurs in mobile units away from fixed site locations. Typically, the Employer conducts

⁴ Site supervisors were formerly referred to as mobile unit leaders.

an average of 18 blood drives each weekday at mobile sites.⁵ The Employer's permanent fixed sites are located on Charlotte Avenue and at Vanderbilt Hospital in Nashville, Tennessee, and in Paducah, Kentucky. Additionally, the Employer has temporary fixed sites in Bowling Green, Kentucky; Clarksville, Tennessee; and Murfreesboro, Tennessee. Donor collections for apheresis occur at the three permanent fixed sites and at the temporary fixed site in Murfreesboro.⁶

All of the Employer's employees have the same fringe benefits, salary scale, grievance procedure, employee manual, and performance review procedure. An incentive or bonus plan is available for certain employees such as collections technicians, MUAs, site supervisors, schedulers, donor recruitment representatives, telerecruiters and some lab employees. The criteria for determining the incentives vary.

With regard to supervisory and management structure, Chief Executive Officer Patricia Callicoa is responsible for overall operations. Seven directors or managers report directly to Callicoa. They are Technical Operations Officer Steve Beeler, Donor Recruitment Director Carol Miller, Collections Director Connie Gibson, Operations Support Director Eileen Ricker, Medical Director Brian Carlson, Communications Manager Patricia Smith, and Human Resources Manager James Sturgeon.

The employees that the Petitioner seeks to include in the unit, the collections technicians, MUAs, and MUA-Fs, all work at the blood drives and are part of either the collections

⁵ There are fewer drives on the weekends.

⁶ Neither party disputes the inclusion of employees who work at sites other than the Charlotte Avenue facility.

department or the apheresis division of the technical operations department. The two other departments that include employees the Employer asserts should be included in the unit, are the donor recruitment department and operations support. Each of those four departments and the classifications included in each department are discussed below.

B. Collections Department

The collections department is responsible for collecting the blood from the donors at both mobile and fixed sites. Collection department employees at blood drives typically work on a team consisting primarily of MUAs, collections technicians, site supervisors, and/or the team supervisor. The other employee classifications in the collections department are mobile unit supply clerk, collections specialist, scheduler, compliance specialist, fleet maintenance technician, training specialist, administrative assistant II, and receptionist. The mobile unit supply clerks, schedulers, compliance specialists, fleet maintenance technician, training specialists, administrative assistant, and receptionist all work at the Charlotte Avenue facility in Nashville.

MUAs: The 26 MUAs, including the MUA-Fs, set up the equipment for the blood drives and transport blood back to the Charlotte facility after the drive. The four MUA-Fs have the same duties as the other MUAs but are designated MUA-Fs because they are authorized pursuant to DOT regulations to drive certain types of vehicles. Before a drive begins, the MUAs report to the Charlotte Avenue facility to pick up their vehicles and carts for the drive. The carts, which contain supplies, are prepared by the mobile supply clerk who works at night. MUAs typically arrive at the site an hour or more before the other collections team members in order to have adequate time to set up and prepare for the blood drive. During the blood drive, the MUAs primarily retrieve collected blood and blood donor records, seal the bags of blood, and place

them on ice. They may also assist the collections staff by making bags for collections or observing a donor who has given blood. MUAs do not collect blood from the donors but do transport it back to the Charlotte Avenue facility. At the end of the drive, the MUA loads the equipment back into the vehicle and returns to the Charlotte Avenue facility, where he unloads the collected blood and the equipment. The MUA releases the collected blood to an employee in the laboratory.

In addition to their primary duties associated with the blood drive, MUAs also occasionally do milk runs, which are regularly scheduled hospital deliveries. Usually volunteers or employees from hospital services, the area responsible for distribution of blood, do the milk runs. It is only when a volunteer or employee who regularly does the milk run is not available than an MUA will do this.

MUAs are hourly employees and regularly work overtime. The MUAs report to a separate direct supervisor from the collections staff. However, during the blood drive, MUAs like other employees on the drive, report to whoever is in charge on the drive, usually a team supervisor or site supervisor.

Collections technicians: The approximately 108 collections technicians in the collections department constitute the largest group of employees.⁷ Their primary job is to collect blood from donors. Their hours of work vary, but they generally average about 50 hours a week. They are hourly paid and are subject to a uniform policy. Four collection technicians are employed as per diem employees.

⁷ The other nine collections technicians work in apheresis, which is part of the technical operations department.

Collection technicians generally receive their work schedules two weeks in advance. The schedules contain the date and time of the drive, the team members assigned to a particular drive, and a designation of the person who will be in charge of the drive, i.e. team supervisor, site supervisor, or some other individual. For each drive, the collections technicians meet other team members, except the MUAs who left earlier, at the facility on Charlotte Avenue before departing together for the drive.

Prior to collecting the blood, the collections technicians must ensure that a donor blood report (BDR)⁸ is accurately completed and that the donor's vital signs are taken. After the drive is completed, the collection technicians clean all equipment and assist with preparing it for return to the facility. They then return to the facility and clock out.

Collections technicians, like the MUAs, are only at the facility for a limited time and do not generally use the breakroom at the Charlotte Avenue facility. Collection technicians and MUAs receive incentive bonuses and are subject to uniform policies.

Site supervisors: Of the seven site supervisors,⁹ five are assigned to the mobile units and two work in apheresis. The site supervisors engage in functions similar to the collections technicians. Specifically, they take donor health histories, vital signs, and collect blood. They are hourly employees and are subject to the same uniform policy as the collections technicians.

Site supervisors are in charge of a blood drive when no team leader is present but have no authority to hire, fire, or discipline employees, nor, do they effectively recommend such action.

⁸ The blood donor reports contain donor history information that is completed by the donor and the collections technician.

⁹ The seven site supervisors are Collections Site Supervisors Kris Bull, Trey Meadow, Cathy Myrick, Wayne Albert and Ha Bolia and Apheresis Site Supervisors Stephanie Swan and Sonya Jaquette.

When they are in charge of a blood drive, their responsibilities include rotating the collections technicians so that no technician is continuously performing the same task. Additionally, they make sure that team members receive their breaks. Site supervisors generally spend 50 to 76 percent of their time as the sole supervisor on a blood drive, although some site supervisors spend as much as 80 to 90 percent of their time as the sole supervisor on a drive.

The site supervisors were formerly referred to as mobile unit leaders and were included in the units found appropriate in the earlier cases. Sometime after the issuance of the March 13, 2000 Decision and Direction of Election, the Employer changed the position classification from mobile unit leader to site supervisor. According to CEO Callicoat, the name change was made because the Employer wanted the employees to function as supervisors when there was no team leader present.¹⁰ Notwithstanding the name change and the Employer's asserted reason for the change, Callicoat testified that no substantive changes were made in the duties and authorities of the site supervisors.

Collections specialist: One collections specialist is assigned to the mobile units.¹¹ According to the Employer, this individual is Marie Felder.¹² Felder is a registered nurse and a former team supervisor who retired and later returned to work for the Employer as a per diem employee in the collections specialist position. According to Team Leader Shreeve, who previously worked as a collections specialist on mobile blood drives, the collections specialist

¹⁰ The team leaders are admitted supervisors.

¹¹ Another collections specialist works in apheresis, which is part of the technical operations department.

¹² The Petitioner asserts that Felder is a site supervisor. Felder is not required to be a registered nurse in her current position and neither party seeks to exclude on the basis that she is a professional.

works with the collections technicians and the MUAs. The collections specialist gets donor histories and collects blood. According to the job descriptions,¹³ the collections specialist is also involved in on-the-job training of new staff. The collections specialist is not required to be a registered nurse.

Mobile unit supply clerks: One of the two mobile unit supply clerks works in the evening and is responsible for replenishing carts with requested supplies. He places the appropriate supplies, such as needles, bags, tubes, and snacks, on the supply carts that the MUAs pick up and take to the drive. The other mobile unit supply clerk works during the day. He retrieves empty transporters from the prior night and is also responsible for maintaining the central supply area. If needed during a drive, this clerk may also transport additional supplies to the blood drive.

Compliance specialists: The three compliance specialists in the collections department work at the Charlotte Avenue facility on the second floor, right outside donor suitability and donor data entry. The two compliance specialist I's place compliance-related material in the mailboxes of staff and review paperwork from the blood drive and ensure it is complete. They examine both the BDRs and the QC sheets, which show the supplies used and whether the accommodations for the blood drive were adequate. They also sign off in order for blood to be released for delivery, and in that capacity have daily contact with lab employees. The compliance specialist III¹⁴ answers questions by telephone from potential donors as well as collections

¹³ The record from the hearing in Case 26-RC-8150 contains job descriptions for a collections specialist I and a collections specialist II.

¹⁴ The Employer does not currently employ anyone as a compliance specialist II.

technicians and supervisors, about donor eligibility or suitability. The compliance specialists are former collections technicians.

Schedulers: Once the donor recruitment department has confirmed a drive, the four schedulers are responsible for placing it on the calendar and assigning a team, including the site supervisor. Additionally, the schedulers are responsible for securing coverage if an assigned employee cannot work or has to be replaced. Collection employees call in to the schedulers to report absences and to request time off. One scheduler is on call in the event collection problems occur after the main facility has closed. Schedulers do not attend blood drives and are not required to wear a uniform. Three of the schedulers are former mobile collections technicians and the other scheduler previously worked in apheresis.

Training specialists: The three training specialists conduct new employee training, including instructing new employees on taking donor histories and in phlebotomy pursuant to Blood Services Directives, which are the Employer's specific procedures. Most of the training is conducted at the Charlotte Avenue facility. However, about two or three times a month the training specialist takes new employees to a mobile site so that they can observe that process. On some of those occasions, the training specialist will actually work on at the drive. Training specialists work 40 hours a week, Monday through Thursday from 8 a.m. to 4:45 p.m. and on Friday from 7 a.m. to 3 p.m.

Fleet maintenance technician: There is one fleet maintenance technician who monitors the vehicles and ensures that they receive proper preventive maintenance. He deals with all the Employer's vehicles including those in hospital services, lab, and donor recruitment, as well as

those in Paducah. He works with the scheduler with regard to scheduling vehicles for maintenance. He is an hourly employee.

Administrative assistant and receptionist: The two remaining classifications in the collections department are administrative assistant II and receptionist. The administrative assistant II is essentially a clerical position that is responsible for maintaining payroll and time records for employees in the department. She also deals with problems with cell phones and pagers. The receptionist answers the telephone and registers donors who come into the facility.

C. Donor Recruitment Department

The Employer recruits blood donations from a variety of sources. The donor recruitment department is responsible for both telerecruiting and direct market recruiting of sponsor groups for blood drives and individual donors for whole blood and apheresis procedures. The department is comprised of employees in the following classifications: donor recruitment representative (DRD representative), senior DRD representative, administrative assistant, lead telerecruiter, and telerecruiter (both fixed site and mobile).

DRD representatives: Fourteen DRD representatives are primarily responsible for recruiting large or corporate donors and sponsors for blood drives. Once a drive has been confirmed, the DRD representative provides the information to a scheduler, an employee in the collections department. The scheduler actually schedules the drive and arranges for the staffing of the drive. DRD representatives may, but are not required, to attend blood drives. On the average, DRD representatives attend about 20 percent of their blood drives for at least some period of time. When DRD representatives do attend a drive, they do not have any assigned job duties. They generally greet donors, assist with crowd control, and staff the canteen, an area

where donors go after they have given blood. Those functions are typically performed by a volunteer, team supervisor, or site supervisor. DRD representatives are salaried and work an average of 45-50 hours per week. It is preferable that a DRD representative possess a college degree. They are not required to wear a specific uniform. When DRD representatives attend blood drives, they have contact with the employees in the petitioned-for unit. While the DRD representatives perform collateral duties that are associated with the job duties of employees in the petitioned-for unit, they do not perform the essential or regulated duties of these employees. No employee from the petitioned-for unit has ever been promoted to a DRD representative.

Senior DRD representatives: The three senior DRD representatives are responsible for maintaining paperwork for the field supervisor and manager as well as having regular recruitment responsibilities. One of the senior recruitment representatives is also responsible for training new recruiters.

Administrative assistants: The four administrative assistants in donor recruitment prepare posters, fliers, and other materials for the blood drives and perform basic clerical duties such as answering the telephones and filing. As they rarely attend blood drives, their contact with employees in the petitioned-for unit is generally limited to telephone conversations that may come from employees in apheresis concerning a scheduling issue. This generally occurs when an employee in apheresis cannot get through to the scheduler.

Telerecruiters: The 24 telerecruiters, including a lead telerecruiter, work from the fixed locations. Like DRD representatives, the telerecruiters recruit donors. However, the telerecruiters only contact prior individual donors. The telerecruiters are hourly paid and work between 15 and 40 hours per week, with one or two telerecruiters getting some overtime. One

telerecruiter is a per diem employee. The lead telerecruiter is responsible for training the mobile and apheresis telerecruiters. Telerecruiters are not required to wear a uniform. Since telerecruiters only attend blood drives in extraordinary circumstances, any contact they might have with an employee in the petitioned-for unit would generally occur in connection with the apheresis process. In that situation the telerecruiter is actually in the center with the collections staff and would engage in donor assistance functions similar to those performed by the DRD representative at a blood drive.

D. Technical Operations

The technical operations department includes apheresis, the laboratory, hospital services, education, and reference laboratory functions. Once the blood is collected at either mobile or fixed sites, it is taken to the laboratory for processing into the various component products. The laboratory staff determines whether the blood and blood products are suitable for release to hospital services. Hospital services maintains the finished blood product inventory and coordinates the distribution of the blood products. All of the laboratory and hospital services employees work at the fixed site locations.

Apheresis: Apheresis is a process whereby platelets in the blood are taken out of the whole blood and the blood is immediately returned to the donor minus the platelets. The apheresis function occurs at fixed site locations, rather than mobile sites, and is performed by nine collections technicians and one collections specialist. Their functions are similar to those of the collections technicians and collections specialist who work in the collections department.

Laboratory: The laboratory functions, under the supervision of Laboratory Manager Anita Wiggins, include 19 component technicians, 3 laboratory assistants, 8 laboratory

technicians, 3 reference laboratory technicians, and a product shuttle coordinator. Fifteen of the 19 component technicians are classified as component technicians I and the other 4 are component technicians II. The laboratory receives the blood from the MUA and the apheresis staff member. There is a sign off procedure for receiving the blood that ensures that the amount delivered is consistent with the paperwork provided. After they receive the blood, the component technicians break the whole blood product into various component products, such as red cells, plasma and platelets.

Although the laboratory assistants are involved in the manufacturing process, they do not have the skill level of the component technicians. Their duties include cutting down, segmenting and shelving the blood units until they are ready to be labeled.

Depending upon their classification, the laboratory technicians either quarantine and label products, or perform quality control functions. The reference laboratory technicians are primarily responsible for doing the antibody work-ups to ensure that a product is compatible to a particular request. They also screen blood for sickle cell trait.

The product shuttle coordinator coordinates shuttles from the collection sites back to the main facility. The shuttles are used in connection with the platelet production. Component technicians, volunteers and MUAs are used for shuttling purposes.

Hospital Services: Hospital service functions are performed by 14 hospital service technicians, 6 hospital service couriers, and a hospital technician service representative. The hospital service technicians are primarily responsible for packaging and distributing products to the Employer's clients and other Red Cross regions. Two of the hospital service technicians are located in Paducah, Kentucky.

The hospital service couriers are responsible for delivering the packaged products to the various hospitals or agencies the Employer services. A hospital services courier also makes a nightly run from Paducah to bring all the collected blood to the Charlotte Avenue facility in Nashville. The courier then returns to Paducah with supplies. The Employer also utilizes paid contractors and volunteers to deliver products. Volunteers are responsible for 40 percent of the deliveries.

Education: The education coordinator in the technical operations department is responsible for staff training for the entire region and has contact with all of the departments. The education coordinator maintains all training records and ensures that employees in other departments receive materials relating to revised procedures. Either she or a training specialist conducts training for collections employees.

E. Operations Support

The operations support department includes facilities management, document control, records management, donor health, and validation functions.

Facilities Management: The facilities management functions are performed by two stock inventory assistants, two biomedical equipment technicians, three general maintenance equipment technicians, and the security guard. The general maintenance technicians make repairs such as clogged drains and broken windows. They also fill in for the security guard which involves carrying a cell phone and ensuring employees get to their vehicles safely in the dark. They do not carry a gun.

The stock inventory assistants, who work in the warehouse, are responsible for ordering, receiving, stocking, monitoring, and distributing supplies for the entire region. Once supplies are purchased, they are stored in the warehouse at the Charlotte Avenue location.

The biomedical equipment technicians are responsible for performing preventative maintenance and repairs on equipment other than the apheresis equipment.¹⁵ One of the biomedical equipment technicians works mainly at night and focuses primarily on collections equipment. The other biomedical equipment technician works during the day and focuses primarily on equipment in the laboratory and hospital services area.

Donor health: Two donor health counselors, one donor health specialist, one compliance specialist III, and a records management specialist work to address matters involving products that are unsuitable for distribution. In that regard, they speak with donors who have had abnormal test results, and manage the products that cannot be distributed. They also review deferral BDRs and work with collections compliance specialists to resolve any issues. They manage autologous donors that have abnormal test results, they contact the physician and the hospital to ensure that the physician still wants to receive those units and the hospital wants to receive them. They coordinate with the laboratory techs and the administrative assistants or supervisor in special collections to ensure those units get handled appropriately.

Records management: The two primary functions of the records management function are (1) archiving and managing the document retention for all departments in the region; and (2) data entry of the blood donation records. Three clerical assistants I's are responsible for

¹⁵ Because of the complexity of the apheresis equipment, apheresis staff perform the preventive maintenance on their equipment.

maintaining and researching records. Nine clerical assistant II's perform data entry of the blood donation records and download the information into the electronic blood donation records which are used by collections staff at the mobile sites.

Document control: The document control specialist is responsible for maintaining and distributing all documents utilized by the region. She ensures that all obsolete documents are destroyed and that staff have current versions of all documents. While the document control specialist maintains necessary documents or forms, the records management specialist is responsible for maintaining records relating to blood donations.

Validation: The quality effects specialist tracks when preventive maintenance is due on all equipment. He then prints a document that tells the biomedical technicians or apheresis employees what preventive maintenance services must be performed.

II. CHANGES IN THE EMPLOYER'S OPERATIONS SINCE THE PRIOR DECISIONS

Although the job duties and responsibilities of the employees at issue have essentially remained the same, the Employer has made some changes in its operations since the issuance of the last Decision and Direction of Election. First, collections and apheresis are in separate departments, reporting to separate management. Additionally, the Employer now holds quarterly staff meetings attended by staff from all departments. The Employer also holds regular cross-functional meetings, which are primarily attended by management and supervisory personnel. Non-supervisory employees only attend these meetings if there is some issue that requires input from them. The Employer has also made changes with respect to the physical location of certain department or areas at the main facility. It also appears that the Employer is conducting more

blood drives than it did in the past. Accordingly, site supervisors appear to spend more time in charge on blood drives than they did in the past.

III. ANALYSIS

A. *Scope of the Unit*

Although two elections have been conducted involving the petitioned-for employees, there is no history of collective bargaining between the Employer and the Petitioner. Moreover, the unit sought by the Petitioner here is somewhat different from the units involved in the prior elections. There is nothing in the Act that requires the unit for bargaining be the only, ultimate, or most appropriate unit. Rather, the Act only requires that it be an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). In *Faribault Clinic*, 308 NLRB 131, 133 (1992), the Board held that in the health care industry, as in any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit – they need only select an appropriate unit. Thus, I must decide if a unit limited to collections technicians, MUAs, and MUA-Fs is an appropriate unit.

Since the Employer is a non-acute health care facility, the proper test to determine the appropriate bargaining unit is the "empirical community of interest test." *CGE CareSystems, Inc.*, 328 NLRB 748 (1999) citing *Park Manor Care Center*, 305 NLRB 872 (1991). See also, *Allen Health Care Services*, 332 NLRB 1308 fn. 4(2000). Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on Collective-Bargaining Units in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 Fed.Reg. 33900 (Sept. 1, 1988), reprinted at 284 NLRB 1528, and Final Rule, 54 Fed.Reg. 16336 (Apr. 21, 1989), reprinted at 284 NLRB

1580 and codified at Section 103.30 of the Board's Rules. The Board further considers the evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute. *CGE Careystems*, supra.

In *Park Manor* the Board also noted that certain general principles set forth in the rulemaking procedure are equally applicable to unit determinations in non-acute care facilities. The Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize, and when organized, will contain too diversified a constituency which may generate conflicts of interest and dissatisfaction among constituent groups, making it difficult for the union to represent. On the other hand, if the unit is too small, it may be costly for the employer to deal with because of repetitious bargaining, and/or frequent strikes, jurisdictional disputes and wage whipsawing, and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength. The Board's goal is to find a middle-ground position, to allocate power between labor and management by "striking the balance" in the appropriate place, with units that are neither too large nor too small. *Park Manor*, supra, at 876 quoting 53 Fed.Reg. 33904, 284 NLRB at 1534. See also *McLean Hospital Corp.*, 311 NLRB 1100, 1111 (1993).

Applying the empirical community of interest test here, I find that the collections technicians, MUAs (including the MUA-Fs), site supervisors, and collections specialist share a community of interest and constitute an appropriate bargaining unit. These employees work together in teams to collect blood at blood drives. Their hours vary each day, they work on the

weekends, and most spend the vast majority of their working time away from the Charlotte Avenue facility where most other employees work. Because of their work at blood drives they regularly have significant personal contact and interaction with donors. They also engage in job functions that require them to come into contact with donor blood and other fluids. Thus, they have interests and concerns that are different from other employees.

With regard to the collection specialists, their job duties are similar to those of the collection technicians. They work under conditions similar to the collections technicians and assist in on-the-job training of new staff. Accordingly, I will include the collection specialists in the petitioned-for unit.

As explained below, I have found that the site supervisors are not statutory supervisors. Since the site supervisors are an integral part of the blood collection team, I will also include the site supervisors in the petitioned-for unit.

Turning to the Employer's contention that an election should be directed in a wall-to-wall unit, the fact that an election might be directed in a broader unit does not mean that a narrower unit is not appropriate. *Overnite Transportation Co*, supra; *Faribault Clinic*, supra. The Employer argues that because its operations are so functionally integrated, a wall-to-wall unit is appropriate and that the community of interest between all its employees is so strong that a broader unit is required. This argument has been rejected twice before and I find the changes that have occurred since the last decision are insufficient to require a different result, particularly where as here, the primary factors relied upon in the prior Decisions have not changed. Additionally, while there are some similarities between the working conditions of the employees in the petitioned-for unit and employees in the disputed classifications, the majority of the employees in

the petitioned-for unit do not work at the fixed site locations and have job duties different from other employees in the disputed classifications. While other employees receive bonuses, they are calculated in a different manner than those for the employees in the petitioned-for unit. Moreover, the uniform policy is different for the employees in the petitioned-for unit. Also, interaction is limited between employees in the petitioned-for unit and employees in the disputed classifications. Although there is movement or interchange from the collection department to other departments, there is minimal evidence that employees transfer from other departments into collections. The evidence reveals that in the past when collections technicians have been placed on restricted duty, they have worked as DRD representative. However, in view of the fact that only 5 employees out of a unit of 117 have worked as DRD representatives, and the fact that not every collections technicians who is placed on light duty goes to the donor recruitment department, I do not think this limited interchange is sufficient to warrant including Donor Recruitment employees in the unit. Accordingly, I do not find that the community of interest of the other employees is strong enough to mandate their inclusion in the petitioned-for unit.

J.C. Penney Co., 328 NLRB 766 (1999), relied upon by the Employer to support its request for a broader unit, is distinguishable for two reasons. First, that case did not involve a non-acute care health facility and thus did not apply the same standard as must be applied here. Second, in adding telerecruiters to the unit, the Board relied upon the fact that the telerecruiters worked in the same building, had similar skills, performed similar functions, and had substantial contact with the other employees included in the unit. That is not true here.

Regarding the Employer's alternative contention that the unit must include all employees in the collections department, I find that contention without merit for two reasons. First, the other

employees in the collections department are not directly involved in collecting blood from donors and do not perform their primary job duties away from the fixed location sites. Second, such a unit would still include the apheresis employees who are part of the technical operations department but would not include other employees in the technical operations department. However, the other employees in the technical operations department also are not directly involved in collecting blood from donors and do not perform their primary job duties away from the fixed location sites. Accordingly, I decline to direct an election in the alternative unit proposed by the Employer.

B. Supervisory Status of the Site Supervisors

The burden of proving that an employee is a statutory supervisor is on the party alleging such status. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712 (2001). To support a finding of supervisory status, an individual must possess one or more of the indicia set forth in Section 2(11) of the Act and exercise that authority in a manner which is not merely routine or clerical in nature. *Williamette Industries, Inc.*, 336 NLRB 743 (2001) citing *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999). However, only individuals with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen ... and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985), enfd. in relevant part 794 F.2d 527 (9th Cir. 1986). Therefore, an individual who exercises some "supervisory authority" only in a routine, clerical, or perfunctory manner will not be found to be a supervisor. *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99, slip op. at 2 (2003) citing *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986).

The Petitioner contends that the site supervisors are statutory supervisors. The Petitioner also argues that Marie Felder is a site supervisor and thus, a statutory supervisor. The Petitioner presented no evidence that the actual job duties of the site supervisors have changed since the prior determination, wherein they were found not to be statutory supervisors and were included in the unit. However, the Petitioner argues that because the site supervisors work as the sole supervisor on a blood drive from 50 to 75 percent of the time, a factor not present when the prior decision was rendered, a departure from the prior determination is warranted. Other factors not relied upon in the prior decision include the fact that the site supervisors are paid at a higher rate than the collections technicians, regardless of whether they are in charge of a blood drive.

Site supervisors may have the authority to ask an intoxicated employee to leave the site and allow an employee to leave prior to the conclusion of the drive. However, the Employer testified that normal procedure is for the site supervisor to contact the collections manger before taking any action. The Petitioner presented no evidence of a site supervisor ever asking an employee to leave the job. While the evidence establishes that site supervisors are responsible for rotating employees' job functions, not only are the job duties routine in nature and do not require the site supervisor to assess the skill level of the employee, but the evidence from the 2000 hearing reflects that the Employer's has recommended guidelines for rotations. Thus, employees are generally rotated between doing donor health histories and performing phlebotomy duties after 1½ hours. This ensures that they are not performing any one function for an extended period of time. Inasmuch as there has been no material change in the duties and authorities of the site supervisors since the previous decision, and the evidence presented fails to establish that the site supervisors exercise nothing more than routine authority, I have concluded that the site

supervisors are not supervisors within the meaning of Section 2(11) of the Act and should be included in the unit.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner 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:

INCLUDED: All collection technicians, mobile unit assistants, mobile unit assistant-Fs, collection specialists, and site supervisors, including per diem employees in those classifications, employed in the collections and apheresis departments at the Employer's facility on Charlotte Avenue, at Vanderbilt Hospital, in Nashville, Tennessee; and at the Employer's facility in Paducah, Kentucky.

EXCLUDED: All other employees including confidential employees, office clerical and professional employees, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they

wish to be represented for purposes of collective bargaining by United Food and Commercial Workers, Local 1995, AFL-CIO, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

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 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 within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **December 1, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or at (615) 736-7761. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) 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.

VI. 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. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 8, 2003**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 24th day of November 2003.

/ S /

Thomas H. Smith
Acting Regional Director
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(901) 544-0018

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