

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

**WHP HEALTH INITIATIVES, INC.,  
d/b/a WALGREENS HEALTH INITIATIVES,  
Petitioner-Employer**

**13-RM-1737**

**And**

**NATIONAL PHARMACISTS ASSOCIATION,  
Union**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on August 5 and 6, 2004 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine whether the petition should continue to be processed.<sup>1</sup>

**I. ISSUE**

WHP Health Initiatives, Inc., d/b/a Walgreens Health Initiatives (hereafter “WHI”) seeks to have an election to determine whether registered pharmacists and residents employed at its Deerfield and Elmhurst, Illinois facilities<sup>2</sup> wish to be represented by National Pharmacists Association (hereafter “Union”). The Union argues that the instant petition should be dismissed because no question concerning representation exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act since it does not seek to represent in a separate unit the employees in the petitioned-for unit. It further argues that even if the petition raises a question concerning representation, there is a contract bar to an election in this case. Alternatively, the Union argues that this matter should be deferred to the parties’ arbitration procedure.

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from error and are hereby affirmed.
- b. 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.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. No 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 for the reasons set forth below.

<sup>2</sup> At the hearing, WHI amended its petition to exclude registered pharmacists employed at its Bannockburn facility because they are all either statutory supervisors or managers.

## **II. DECISION**

For the reasons discussed in detail below, I find that the instant Petition does not present a question concerning representation. Moreover, the issues present in this case require interpretation of the parties' contract, and are thus more appropriately handled by an arbitrator. Therefore, the petition should be dismissed by the Region. Based on this finding,

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

## **III. STATEMENT OF FACTS**

Walgreen Co. (hereafter "Walgreens") operates approximately 400 retail drug stores in the Chicagoland area. Walgreens and the Union are parties to a collective bargaining agreement, which is effective from May 23, 2001, to May 22, 2005. Under Article I of the contract, the bargaining unit is defined as "all full-time, part-time, and Extra Board Registered Pharmacists and Pharmacy Interns employed at the Employer's stores located in the Employer's Chicago administrative districts . . . and stores located in the Employer's Illiana administrative district, excluding all other employees, Store Managers, Executive Assistant Managers Registered, Assistant Managers Registered who are scheduled to be in sole charge of a store for more than 10 hours in any two-week period or who are in charge of a single entire shift during a two-week period, Pharmacy Managers, Supervisors and Guards as defined in the Act." There are currently about 1,200 pharmacists and interns in the unit who are primarily responsible for receiving, filling, verifying, and dispensing prescriptions for customers.

In about 1991, WHI, a wholly-owned subsidiary of Walgreens, began to employ pharmacists at its corporate headquarters located in Deerfield, Illinois. There are currently 12 pharmacists and two residents who are assigned to work in one of the following sections within this facility: (1) Pharmacy Benefit Management (PBM); (2) Home Health Care; and (3) Retrospective Drug Utilization Review (RDUR). These pharmacists do not fill prescriptions for customers, but rather have other duties such as developing clinical and patient education programs, researching new data about drugs and their side effects, and reviewing medical and pharmacy records as part of RDUR. The two residents are employed for one-year stints during which time they are assigned to perform a research project or develop some type of product. In about early 1996, WHI also opened a "closed shop" pharmacy in Elmhurst, Illinois, where currently two specially trained pharmacists receive doctor's orders for IV drugs and other parenteral drugs (injectable drugs), which cannot be compounded in Walgreens' retail stores. Because this facility is not open to the public, the patient's doctor or healthcare provider must call in any such prescription and then it is individually compounded by one of these pharmacists. There is no history of collective bargaining for the pharmacists and residents employed at WHI's Deerfield and Elmhurst facilities.

Following WHI's employment of pharmacists and residents at its two facilities, the Union did not learn of these new positions until late January or early February 2002. At that time, a Walgreens' pharmacist named Patricia Doherty called the Union to inquire as to whether

she remained a part of the unit after accepting a position with WHI. Charles Sauer, Executive Director of the Union, promptly contacted Walgreens' counsel to inquire about the matter. He then followed up on these initial inquiries with a written request for information, dated February 22, 2002.<sup>3</sup> When Walgreens failed to furnish all of the information requested, the Union filed an unfair labor practice charge, which was eventually withdrawn after the information was provided in late August 2002. Thereafter, on September 27, 2002, the Union filed a grievance alleging that Walgreen violated Articles I and II of the Agreement by failing to apply the terms of the contract to pharmacists employed at WHI's facilities. This grievance is scheduled to be heard by an arbitrator on October 21, 2004.

#### **IV. ANALYSIS:**

The Union contends that the instant petition should be dismissed because it has never made a demand to represent the employees in the petitioned-for unit (i.e. the pharmacists and residents employed by WHI) as a separate unit. I find merit to the Union's position because under well-established Board law, where a union does not seek to represent the employees in the unit in which the employer seeks an election, no question concerning representation exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. *Central Parking System*, 335 NLRB 390, 390-91 (2001) (citing *Woolwich, Inc.*, 185 NLRB 783, 784 (1970); *Bowman Building Products Division*, 170 NLRB 312, 313 (1968); *Carr-Gottstein Foods Co.*, 307 NLRB 1318 (1992); *United Hospitals, Inc.*, 249 NLRB 562 (1980)). The record in this case clearly establishes that Union has never sought to represent the pharmacists and residents employed by WHI in a separate unit. It has instead consistently asserted that these employees are already included in an existing unit of approximately 1200 pharmacists and interns employed at Walgreens' stores. Indeed, the Union has filed a grievance alleging that Walgreens has violated Article I and II of their contract by refusing and failing to apply the terms of the contract to the 16 pharmacists and residents employed by WHI. The mere fact that the Union has filed this grievance does not form a sufficient basis to file an RM petition and demand an election under Section 9(c)(1)(B). See *Central Parking System*, 335 NLRB at 390.

Due to the fact that I have already concluded that the petition should be dismissed because no question concerning representation has been raised in this case, it is unnecessary to address the Union's alternative argument that the parties' contract bars an election. I am also mindful that by dismissing this petition, representation issues raised in this case are potentially being left to an arbitral forum. Although the Board only infrequently defers to arbitration in representation proceedings, the Board will find deferral appropriate when the resolution of the issues "turns solely on the proper interpretation of the parties contract." *St. Mary's Medical Center*, 322 NLRB 954, 954 (1997). Here the issues presented by the parties turn on contract interpretation since it must be determined whether the language in the recognition clause (Article I) of the contract between Walgreens and the Union covers the pharmacists and residents employed at WHI's Deerfield and Elmhurst facilities.

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<sup>3</sup> The Union's request sought the following information about WHI: (1) a job description for any/all pharmacist positions; (2) addresses of all work locations; (3) identification of pay rate, salary, benefits and/or any other compensation for such pharmacists; and (4) identification of all pharmacists so employed.

The Union contends that the pharmacists and residents employed at WHI's facilities are in fact covered by the recognition clause because they work in "stores" within Walgreens' Chicago administrative districts. It argues that similar to Walgreens' retail stores, these facilities have a National Association Board of Pharmacy number, which is only assigned to pharmacies that fill prescriptions. These facilities likewise have a tax ID number and pay sales taxes like any other retail establishment. They also have a Division I Illinois Pharmacy license and are arguably considered a "pharmacy" or "drugstore" with the meaning of the Illinois Pharmacy Act. In contrast, Walgreens asserts that WHI's two facilities do not constitute "stores" because unlike Walgreens' retail stores, the facilities at issue are not open to the public, do not fill prescriptions or carry merchandise, and do not employ "pharmacy managers" or "store managers." Walgreens further argues that even if WHI's facilities were found to be "stores," the pharmacists and residents employed there would still not be covered by the contract because the facilities are not part of Walgreens' Drug Store Operations Division and consequently cannot be found to be "located in the Employer's Chicago administrative districts."

Accordingly, the arbitrator must decide which of these two competing interpretations of the contract is proper. If the arbitrator agrees with the Union's interpretation of the recognition clause such that WHI's Deerfield and Elmhurst facilities constitute "stores" within Walgreens' Chicago administrative districts, the 16 pharmacists and residents employed at these facilities will be added to the existing unit. If the arbitrator instead accepts Walgreens' interpretation and finds that these facilities are not "stores" within the meaning of the recognition clause, there will be no existing question concerning representation of those employees by the Union. In either case, the arbitrator's award will resolve the issues presently raised by the instant petition.

## V. 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, DC 20570. This request must be received by the Board in Washington by **September 7, 2004**.

DATED at Chicago, Illinois this 24<sup>th</sup> day of August 2004.

/s/Roberto G. Chavarry

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