

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

ALLINA HEALTH SYSTEM d/b/a UNITED  
HOSPITAL

Employer  
and

SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 113

Union/Petitioner

Case 18-UC-393

**DECISION AND ORDER**

The Union/Petitioner (Union) seeks to clarify the existing bargaining unit to include the position of the Cash and Quality Specialists (CQS). Contrary to the Union, the Employer contends that the CQS employees should properly be excluded from the bargaining unit. Based on an administrative investigation, I conclude that the CQS employees have been historically excluded from the bargaining unit and the unit should be clarified to exclude the CQS position.

Under Section 3(b) of the Act, I have the authority to decide this matter on behalf of the National Labor Relations Board. Upon the entire file in this case, I find:

1. 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>1</sup>

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<sup>1</sup> The Employer, Allina Health System d/b/a United Hospital, is a Minnesota corporation with an office and place of business in St. Paul, Minnesota, where it operates an acute care hospital. During the calendar year ending December 31, 2003, a representative period, the Employer received gross revenues from all

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Petitioner currently represents a non-professional, multi-facility Allina Health Systems unit. The Petitioner and Employer are parties to a collective bargaining agreement which is effective by its terms from March 1, 2003 through February 28, 2006.<sup>2</sup>

## **BACKGROUND**

In this section I will describe first the creation of the CQS position and then I will discuss the collective bargaining and procedural history as it relates to the instant petition.

### *The Creation of the Cash and Quality Specialist Position*

The Employer contends that the CQS job title was created on August 22, 1993 when three employees previously classified as cashier supervisors acquired the new job title. The three employees continued to perform the same work and report to the same manager. A fourth employee was added on September 13, 1993 and another began working in the position on August 4, 1994. The Union's records, however, indicate that the position was created in 2001.

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sales or performances of services in excess of \$500,000. During that same time period, the Employer purchased and received at its St. Paul, Minnesota facility goods and services valued in excess of \$50,000 directly from suppliers outside the State of Minnesota.

<sup>2</sup> The collective bargaining agreement covers the Employer's Abbot Northwestern Hospital, Metropolitan Linen Services, Phillips Eye Institute, and United Hospital locations. The agreement contains a 22-page Appendix A which lists out the various classifications of employees at each facility that are included in the bargaining unit.

Currently, there are four CQS employees. The CQS employees perform most of their work in the cafeteria at United Hospital and all report to the cafeteria manager. According to the CQS position description which was provided by the Employer and is dated August 29, 1996, and reviewed on February 1999, the major responsibilities of the CQS employees include recording daily temperatures, performing taste tests for every meal, preparing daily cash sheets, and conducting monthly audits. There is no evidence to indicate that the job duties have changed since the 1996 job description (or since 2001 when the Union contends it first became aware of the position).

### *Collective Bargaining and Procedural History*

The Employer and Union have been parties to several successive collective bargaining agreements. The contract in effect immediately prior to the current contract was effective from March 1, 1999 through February 28, 2003 and the one prior to that was effective March 1, 1996 through February 28, 1999.

At some point during the term of the 1999-2003 contract, a non-Board election was conducted among the cashiers and the position was added to the bargaining unit.<sup>3</sup> The CQS employees were not encompassed by the election. In letters to the Employer dated October 8 and November 30, 2001, the Union acknowledged that “the Cash Quality Specialist should have been included with the others” and “[i]n hindsight, they probably should have been included in the cashier election.”

In addition to the two letters noted above, the Union contends that it has been in

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<sup>3</sup> It is not clear from the file whether the election was limited to cashiers at the United Hospital location or if it covered multiple facilities.

talks with the Employer about the CQS position since it became aware of the position. On August 15, 2002, the Union filed a grievance contending that the CQS employees were performing bargaining unit work thereby depriving bargaining unit employees of the extra hours. The grievance is still pending.

Despite the Union's October and November 2001 letters contending that the CQS employees should have been included in the cashier election and the outstanding grievance, the Union concedes that there was no discussion regarding the CQS position during the negotiations for the current 2003-2006 contract. There is therefore no basis for concluding that the Union reserved the right to seek inclusion of the CQS position through a unit clarification petition.

## **LEGAL ANALYSIS**

In Robert Wood Johnson University Hospital, 328 NLRB 912, 914 (1999), the Board repeated its long-standing rule regarding the appropriateness of unit clarification when positions have been historically excluded from the unit:

Unit clarification may be appropriate where an employee classification has been newly created or has undergone recent substantial changes so as to create doubt regarding whether that classification should be accreted to an existing unit. But, unit clarification may not be used to add to a unit an employee classification which historically has been excluded from the unit (citations omitted).

The Board has also stated that its rule requiring the parties to timely address the status of employees in newly created positions stands, even if the result might be instability arising from the existence of a group of employees who have interests in common with unit employees but who are excluded from the unit. UPS, 303 NLRB 326, 327 (1991).

The investigation established that the CQS position may have been created as early as 1993 and was clearly in existence and known to the Union at the time the Union sought to add the cashiers to the bargaining unit during the 1999-2003 contract. Despite the Union's letters in October and November 2001, contending that it should have included the CQS positions in the cashier election, the investigation established that the parties did not discuss the position during negotiations for the 2003-2006 contract, which became effective March 1, 2003. Thus, since the Union had notice of the CQS classification prior to executing the 2003-2006 contract, unit clarification may not be used to add the CQS position to the existing unit unless there have been recent and substantial changes in the duties and responsibility of the position. Robert Wood Johnson University Hospital, 328 NLRB 912, 915 (1999); Union Electric Co., 217 NLRB 666, 667 (1975). The investigation reveals no evidence of any such changes to the CQS position.

Based on the foregoing, I find that the CQS position has been historically excluded from the unit. While in some circumstances this historical exclusion would result in dismissal of the petition, because the Union has filed a grievance over the issue of whether CQS work is bargaining unit work, I am ordering the unit clarified to exclude the CQS position. See Ziegler, Inc., 333 NLRB 949 (2001).

### **ORDER**

**IT IS HEREBY ORDERED** that the bargaining unit exclusively represented by the **Service Employees International Union, Local 113** be, and hereby is, clarified to

specifically exclude Cash and Quality Specialist position.<sup>4</sup>

Signed at Minneapolis, Minnesota, this 12<sup>th</sup> day of January, 2004.

/s/ Ronald M. Sharp

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Index #385-7533-2020

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<sup>4</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 – 14<sup>th</sup> Street N.W., Washington, DC 20570. This request must be received by the Board in Washington by **January 26, 2004**.