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

BELL MEDICAL CENTER Employer and UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC Petitioner	Case 18-UC-404 (formerly 30-UC-407)

DECISION AND ORDER

Petitioner seeks to clarify an existing bargaining unit to include employees employed by the Employer in three medical practices. The Employer objects to their inclusion and contends that the employees sought by Petitioner do not share a community of interest with the existing unit. I conclude that Petitioner's request to include the employees in the unit should be granted with regard to two of the three medical practices in dispute, and clarify them into the existing unit. I do so solely on the basis that the two newly created practices are nothing more than an expansion of the Employer's existing operation, and all employees of the Employer in the existing operation are currently represented by Petitioner. On the other hand, with regard to the third medical practice located in Harvey, Michigan, I conclude that the employees employed in that practice should be excluded from the unit currently represented by Petitioner.

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

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.[1]

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

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The first section of this decision is a summary of the Employer's operation. Second, I will review the history of the Employer's relationship with Petitioner, including a detailed description of the existing unit. The third section will summarize record evidence regarding the medical practices in dispute, and will also summarize the Employer's position. Finally, I will explain my conclusion as described above.

THE EMPLOYER'S OPERATION

The Employer is part of an organization known as Superior Health Care Systems. Superior Health Care Systems consists of three subsidiaries, which are Bell Hospital, Bell Foundation and Superior Enterprises. The Employer is a subsidiary of Bell Hospital.

The Employer owns medical practices. These medical practices are housed in three buildings. These buildings are designated the Tobin Building (or Tobin Clinic), the Teal Lake

[1] The Employer, Bell Medical Center, is a corporation engaged in providing health care services at its clinics in Ishpeming, Neguanee, and Harvey, Michigan. During its fiscal year ending July 1, 2004, the Employer's gross revenues exceeded $250,000 and the Employer purchased and received goods and services valued in excess of $50,000 directly from suppliers located outside the State of Michigan.

Medical Clinic, and the Harvey Building. The Tobin Clinic is located in Ishpeming, Michigan, and the Teal Medical Clinic is located in Negaunee, Michigan. These two clinics are about 1½ miles from one another. The Harvey Medical Clinic is in Harvey, Michigan, which is about 18-20 miles from both the Teal Lake Medical and Tobin Clinics. The Tobin Clinic is adjacent to Bell Hospital, and separated from Bell Hospital by a parking lot.

The Employer continues to open new medical practices. It either buys an existing practice by purchasing equipment and entering into employment agreements with the physicians who have been operating the existing practice, or it supplies an office for a newly graduated doctor. In either case, the physicians in the Employer's medical practices are employees of the Employer. The record is also clear that at times practices have closed. Thus, while the reasons for the closures are not contained in the record, in the last few years some practices ceased operating, apparently when the doctor(s) employed in the practice left his/her employment with the Employer.

At the time of the hearing, the Employer had four practice groups at the Tobin Clinic. Of the four practices, two (Phillips and Currie) employ an unknown number of employees who are not employees of the Employer, but instead are employees of the physicians. The record is silent as to why or how this occurred – but apparently these employees are not represented by Petitioner. The record contains no other evidence regarding the employees of the Phillips and Currie practices. Another of the four practices is designated as the Irish/Lackey practice. Its employees are in the unit represented by Petitioner. The fourth practice is the Prevost practice,

and this is one of the three groups of employees in dispute.[2]

Also at the time of the hearing, the Employer had five practice groups at the Teal Lake Medical Clinic. The employees of four of the practice groups are in the unit represented by the Employer. The fifth practice group (the Lehman practice) is another of the three groups of employees in dispute.

Finally, the Employer has one doctor in Harvey, Michigan. She is Dr. Sonaglia, and whether the employees employed in her office should be in the unit is also in dispute.

The record is clear that all of the Employer's medical practices, whether in dispute or not, employ licensed practical nurses and clerical employees, including receptionists. The record is also clear that these employees, whether in the unit or in dispute, have exactly the same educational and certification requirements, require the same skills, and the employees perform the same type of work.

THE EMPLOYER'S RELATIONSHIP WITH PETITIONER

On August 27, 1999, in Case 30-RC-6129, the National Labor Relations Board certified Petitioner to represent employees in the following unit:

> All full-time and regular part-time licensed practical nurses, clerical employees and receptionist employees employed by Bell Medical Center at its Ishpeming and Negaunee Michigan clinics, including the Teal Lake Medical Center, the Bell Medical Center Building and Family Hearing Center; excluding all Ishpeming Medical employees, salaried employees, maintenance employees, professional employees, guards and supervisors as defined in the Act.

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[2] Petitioner did not include the employees of the Prevost practice when it filed the instant unit clarification petition. Instead, Petitioner moved to amend the petition at the hearing, and maintains that employees of this practice, like the employees of the two practices it initially included in the petition, should be clarified in the unit. The Employer objects to the amendment. Because the evidence and issue are the same for all three practices, the hearing officer's decision to allow the amendment is affirmed.

Since 1999, the Employer and Petitioner have agreed to at least two collective bargaining agreements. One was effective from June 1, 2002 through May 31, 2004. Petitioner and the Employer have also reached agreement on a successor contract effective June 1, 2004 through May 31, 2007. While this successor contract has been ratified, it has not been signed by either party. Rather, in evidence is the Employer's draft of this agreement, which has yet to be reviewed by Petitioner. Both the 2002-2004 agreement and the draft successor agreement contain the same unit description, which modifies the unit as described above and as certified by the Board. The unit in these agreements reads as follows:

> All full-time and regular part-time LPN, clerical and receptionist employees at Bell Medical Center; excluding all other professional employees, administrators, department heads, guards and supervisors as defined in the Act.

According to the Employer, during negotiations for the most recent contract, Petitioner took the position that the Lehmann and Sonaglia practices should be included in the unit. The Employer disagreed, and confirmed its disagreement in writing. The Employer did not hear anything else on this issue, until the instant petition was filed on August 2, 2004.

THE MEDICAL PRACTICES IN DISPUTE AND THE EMPLOYER'S POSITION

The three medical practices in dispute will be referred to as the Lehmann, Sonaglia and Prevost practices. The Lehmann practice involves one doctor, whose specialty is pediatrics. Dr. Lehmann has practiced medicine for 18-19 years, and has had his practice in the Teal Lake Medical Clinic for a number of years. The Employer acquired the Lehmann practice in April, 2004. The office manager for the Lehmann practice is Julie Lehmann, wife of Dr. Lehmann. She has been the office manager for the Lehmann practice for years, and limits her duties to the Lehmann practice only. The Lehmann practice employs two LPNs and a receptionist. One of

the LPNs and the receptionist have been employed by Dr. Lehmann for years. The other LPN was recently hired by Dr. and Julie Lehmann from a unit position. Thus, that LPN was employed in a practice where the Employer has recognized Petitioner as the collective bargaining agent.

With regard to the Songalia practice, Dr. Songalia's specialty is obstetrics/gynecology. Dr. Songalia began her practice with the Employer in April 2003. Before this time, she was employed in private practice in the State of Florida. The Employer purchased some of the assets of Dr. Songalia's private practice, and moved the practice to Harvey, Michigan. Dr. Songalia employs one LPN and one receptionist. Dr. Songalia's LPN worked at Bell Hospital prior to her employment with the doctor. One of the Employer's chief operating officers suggested to Songalia that she hire this LPN. Since April 2003, Dr. Songalia has employed at least two receptionists (at different times). She has fired at least one and hired at least two. However, while only alluded to in the record, the Employer has not been satisfied with Dr. Sangalia's failure to involve the Employer's Human Resources area in these decisions. At the present time Dr. Songalia does not have an office manager. The intention is that Dr. Songalia's sister, who is still in the State of Florida attempting to resolve personal issues, will move to Harvey to be office manager (a role she served when Dr. Songalia practiced in Florida). For now, Dr. Songalia has an assistant office manager, who reports to both Songalia and one of the Employer's chief operating officers. The record is silent regarding what happens to the assistant office manager in the event Dr. Songalia's sister resolves her personal issues and relocates to Harvey.

The Prevost practice was established by the Employer in July 2004. Prior to joining the Employer, Dr. Prevost had a practice in Cody, Wyoming. The Employer did not purchase any equipment from Dr. Prevost. Rather, it bought some items and moved some items from a

practice that had been part of the Employer but then had closed. Dr. Prevost is a Family Practice physician. The practice employs one office manager/LPN and two part-time receptionists. The office manager/LPN and one of the part-time receptionists were previously employed in Dr. Madjar's practice, which is no longer associated with the Employer. Employees employed in Dr. Madjar's practice were in the unit. The remaining part-time receptionist worked for the Employer as a non-unit contingent employee.

The Employer contends, and the record evidence largely supports, that the Lehmann, Prevost and Songalia practices are independently managed by the doctor and/or office manager associated with each practice. That is, each doctor and/or office manager schedules employees' hours of work, approves employee's requests for time off, reviews time cards, orders supplies, and supervises the performance of employees. It is also clear that Dr. Songalia and Julie Lehmann on behalf of Dr. Lehmann have hired employees on their own, and in Dr. Songalia's case, discharged an employee on her own. Julie Lehmann has also recommended a wage rate for a new hire to one of the Employer's chief operating officers, who not only approved the rate but contends he would always follow recommendations of office managers/doctors. The record contains inconsistent evidence with regard to the discipline of employees, but it appears that one of the chief operating officers of the Employer is to be involved in discipline decisions, especially with regard to the LPNs. Finally, the record is clear that employees employed in the three practices in dispute do not work at practices other than the one for which they are hired.

Billing for all practices is centralized, and the Employer employs billing clerks who work with different practices. For example, one billing clerk currently is assigned to the Lehmann and Songalia practices, and she will also be assigned to the Prevost practice. These billing employees report to a manager not assigned to any particular practice or clinic. All employees

use the same system to record their hours of work. All employees, whether in the unit or in dispute, are paid similar wages, except that Dr. Songalia's LPN is paid $1.47 per hour more than the highest paid unit LPN. Because the Employer does not consider the employees employed in the Lehmann, Songalia and Prevost practices to be unit employees, their fringe benefits differ from those of employees represented by Petitioner. There is no evidence in the record that employees employed in practices other than the three currently in dispute have ever been excluded from the unit represented by Petitioner, including with regard to practices that are no longer associated with the Employer.

The Employer contends that the employees in the Lehmann, Songalia and Prevost practices do not share a community of interest with the employees in the practices represented by Petitioner. The Employer cites the separate supervision, lack of interchange, different fringe benefits, and independence of each practice in support of its contention. However, what the Employer ignores is that all practices – whether employing unit employees or whether employing employees who are the subject of this petition – operate in the same fashion. That is, all practices are run according to the wishes of the doctor(s) associated with the practices, including the method and type of supervision. There is also no evidence of interchange of employees among any of the practices.[3] Finally, there is no evidence that the practices have been run any differently than they are now, at any time since Petitioner was certified in 1999.

CONCLUSION

The Board has described the purpose of unit clarification proceedings as follows:

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[3] A billing employee (therefore someone not employed by a specific practice) testified that she "has seen" workers in the bargaining unit "who worked for more than one practice," and "interchanged between the two." This testimony is too vague and too unclear for me to conclude that unit employees interchange among various practices.

> Unit clarification … is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement, or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals …

Union Electric Co., 217 NLRB 666, 667 (1975).

In this case, at least with regard to the Lehmann and Prevost practices, it is clear that the Employer's opposition to inclusion of the disputed employees is inconsistent with both the agreement and the established practice of the Employer and Petitioner. First, the unit set forth in the parties' contract is clear – included in the unit are all LPN, clerical and receptionist employees employed by the Employer. Second, the established practice of the parties is also clear – included in the unit (until this dispute) have been all LPN, clerical and receptionist employees employed by the Employer in all practices owned and operated by the Employer. Thus, I conclude that the addition of the Lehmann and Prevost practices is nothing more than an expansion or enlargement of the existing Employer operation, which required the hiring of new employees to staff the expansion. Moreover, it is also clear that the additions of Dr. Lehmann and Dr. Prevost to the Employer's staff, is akin to a change in managerial/supervisory employees. Therefore, the additions of the Lehmann and Prevost practices fall within the present unit description and are merely additions to the existing contractual unit, not unlike an employer's decision to add a department to a production unit in a manufacturing plant.

Supporting my conclusion that the disputed employees are new hires falling within the present unit description and are merely additions to the existing contractual unit are the following

facts: (1) The new hires have the same job titles as unit employees, and their job titles are included in the unit description agreed upon by the Employer and Petitioner; (2) The new hires have exactly the same qualifications, educational levels and certifications; (3) The new hires perform exactly the same jobs; and (4) The new hires work in the same buildings as existing unit employees. I acknowledge, as the Employer contends, that the new hires do not interchange with unit employees, are separately supervised from unit employees, and have little or no contact with unit employees.[4] However, those same facts are true for existing unit employees. That is, each practice within the unit is separately supervised, insofar as the doctor(s) associated with each practice determines how he/she wishes the practice run. Moreover, there is no evidence of interchange or interaction among unit employees employed in different practices within the unit. Thus, the factors the Employer contends make the disputed practices unique are factors that exist in all practices within the Employer's purview.

Also supporting my conclusion that the disputed employees are new hires falling within the present unit description and merely additions to the existing contractual unit is the fact that the Employer's proposed exclusion would result in a fractured unit. That is, employees in some practices in the Tobin and Teal buildings would be unit employees, while employees in other practices would not be, in spite of the facts that the practices are in the same buildings, and operate in exactly the same fashion. Thus, to deny this unit clarification petition would result in a combination of employees that makes no sense. See Seaboard Marine, Ltd., 327 NLRB 556 (1999).

[4] In my view the differences in benefits is irrelevant as the Employer's failure to apply the contract to the new hires is the only reason these differences exist.

Finally, I believe that my conclusion to grant clarification as to the Lehmann and Prevost practices is consistent with the Board's decision in Meyer's Café & Kondeitorei, 282 NLRB 1 (1986). In that case the Board held that the addition of a delicatessen sales area to a café "is nothing more than an expansion or enlargement of the existing restaurant operation, which required the hiring of new employees …", and that "… the new hires fall within the present unit description and are merely additions to the existing contractual unit" 282 NLRB at 1, fn. 1. I recognize that the Meyer's case involved allegations that the employer violated the Act by refusing to recognize the union as the delicatessen employees' collective bargaining representative, but the case is significant insofar as the Board rejected application of accretion principles to situations involving additions to existing contractual units. Thus, I do not add the employees employed in the Lehmann and Prevost practices to the existing unit because they constitute an accretion. Rather, I do so because no question concerning representation exists as those employees are new hires falling within the present unit description. Armco Steel Co., 312 NLRB 257 (1993) (unit clarification procedures not limited to unit placement issues involving accretion).

Unlike the Lehmann and Prevost practices, the Songalia practice is not simply an expansion of the existing operation. It is located in a different building, and is 18-20 miles away from the buildings where unit employees are employed. The Employer (through Songalia) has hired new employees for this practice who were not previously unit employees. Thus, I conclude that the opening of a practice in Harvey, Michigan is not simply expanding an existing operation. Super Valu Stores, 283 NLRB 134 (1987). In view of this conclusion, I must determine whether the employees in Harvey constitute an accretion to the existing unit. The record is clear that they do not. While the Harvey employees share the same skills, functions, and educational

requirements as unit employees, the distance between the Harvey facility and the two facilities housing unit employees, the lack of interchange and the separate day-to-day supervision strongly militate against finding accretion. Id. Moreover, the record does not reveal any type of integration between the Harvey practice and the practices located in Ishpeming and Negaunee.

ORDER

IT IS HEREBY ORDERED that the unit, exclusively represented for purposes of collective bargaining by United Steelworkers of America, AFL-CIO, CLC, be, and it hereby is clarified to include all full-time and regular part-time LPN, clerical and receptionist employees employed by the Employer in the Lehmann practice located in the Teal Lake Medical Clinic and in the Prevost practice in the Tobin Building.

IT IS FURTHER ORDERED that this unit is clarified to specifically exclude all full-time and regular part-time LPN, clerical and receptionist employees employed by the Employer in the Sonaglia practice located in Harvey, Michigan.[5]

Signed at Minneapolis, Minnesota, this 23rd day of September, 2004.

/s/Ronald M. Sharp

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[5] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **October 7, 2004**.