

R.D. # 0010-04  
Jersey City, N.J.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**RADIOLOGY PROFESSIONAL  
ASSOCIATION**

Employer

and

**CASE 22-RC-12490**

**INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 641, AFL-CIO<sup>1</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

The Petitioner seeks to represent a unit of about 26 employees including all full-time and regular part-time office clerical employees and technologists employed by the Employer at its 142 Palisades Avenue, Jersey City, New Jersey facility (herein 142 Palisades), excluding all professional employees, guards and supervisors as defined in the Act.

The Employer agrees that all full-time and regular part-time office clerical employees and technologists are correctly included in the unit, but further seeks to include office clerical employees employed at its 176 Palisades Avenue, Jersey City, New Jersey location (herein 176 Palisades), because, it contends, they share a

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<sup>1</sup> The name of the Petitioner appears as corrected at the hearing.

community of interests with the petitioned-for employees and must therefore be included in the directed unit. Finally, although the parties agree to the inclusion of regular part time employees in the unit, the Employer, contrary to the Petitioner, contends that four (4) on-call employees are “regular” and eligible to vote.

Based on the following facts and analysis, I find appropriate a multi-location unit of employees at the Employer’s 142 Palisades and 176 Palisades facilities. Further, applying the formula set forth in *Marquette General Hospital, Inc.*, 218 NLRB 713 (1975) to determine the voter eligibility of on-call employees, I find that the four on-call employees are casual employees who are not eligible to vote in the election to be directed here.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>

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<sup>2</sup> A brief filed by the Employer has been considered. No other briefs were filed.

<sup>3</sup> The Employer is a New Jersey Corporation engaged in providing medical diagnostic services at its two Jersey City, New Jersey locations, the only facilities involved herein.

<sup>4</sup> The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:<sup>5</sup>

**All full-time and regular part-time office clerical employees and technologists employed by the Employer at its 142 Palisades Avenue and 176 Palisades Avenue, Jersey City, New Jersey facilities, excluding all professional employees, guards and supervisors as defined by the Act, and all other employees.**

## **II. BACKGROUND**

The Employer is engaged in the provision of diagnostic medical testing services including X-rays, MRIs, mammographys, sonograms, bone density tests and ultrasounds. Technologists administer these tests, performing the prescribed diagnostic procedures. Radiologists and doctors interpret the tests results, write reports and submit them to referring physicians. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

## **III. SINGLE FACILITY v. MULTI-FACILITY UNIT**

### **A. Facts**

The Employer has two facilities, located at 142 Palisades and 176 Palisades, approximately a block apart, in Jersey City, New Jersey, where it performs inpatient and outpatient diagnostic testing for individuals referred by doctors. The Employer's facility at 176 Palisades is within Christ Hospital, for whose patients the Employer also performs inpatient and outpatient diagnostic testing. The Employer performs all

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<sup>5</sup> At hearing, the Petitioner agreed to proceed to an election in the alternative bargaining unit directed herein.

its testing procedures at 142 Palisades, where it employs approximately 15 technologists and 11 office clerical employees. At 176 Palisades, within Christ Hospital, it employs approximately 11 office clerical employees, who perform the Employer's billing, mailing, dictation, secretarial and transcription work. Also at 176 Palisades, a doctor's office is used for reading and interpreting tests.

The record reveals that the Employer's three partners - Dr. Eileen ConCannon, Medical Administrator, Dr. Allan Hirsh, Administrator and Dr Allan Shaiman, President - read and interpret results of the medical tests performed at its diagnostic testing facility at 142 Palisades. Dr. Hirsh has an office at 142 Palisades, where he performs most of his work, whereas Drs. ConCannon and Shaiman primarily work at the 176 Palisades location, although they also perform some work at 142 Palisades. The Employer's Executive Director, Landy Hogan, has offices at both locations and is in charge of the Employer's day-to-day non-medical operations. In this regard, Hogan supervises all office clerical employees and technologists employed at both locations.

The doctors dictate most of their reports electronically; the reports are then transcribed by transcription employees employed at 176 Palisades; written reports are subsequently generated, copied, filed and faxed to referring physicians by office clerical employees at both locations.

Technologists at 142 Palisades perform and administer the diagnostic tests including X-rays, MRIs, mammographys, sonograms, bone density tests and ultrasounds. They help patients undress and dress and ensure that patients are not released until a doctor determines that the test has been properly administered.

The office clerical employees at 142 Palisades register patients upon arrival, gather certain information including insurance information from patients, accept payment from self-paying patients, answer phones, schedule appointments and maintain patient medical records. They use computers to access and update patient data, including insurance information. Their computers are networked to those used by office clerical employees at 176 Palisades. Office clerical employees at 142 Palisades copy patient insurance cards, call insurance companies when pre-authorization for certain procedures are needed, type doctors notes, maintain patient charts and file documents.

The office clerical employees at 176 Palisades generate bills for all procedures performed by the Employer on behalf of Christ Hospital. They also bill for office procedures performed on patients sent by referring physicians. Office clerical employees at 176 Palisades do all mailings. Transcriptionists perform their typing at 176 Palisades from either dictation or electronic dictation generated by doctors. Office clerical employees at 176 Palisades copy, fax, mail and file reports.

One or twice daily, office clerical employees at 176 Palisades go to 142 Palisades to pick up and/or deliver documents - patient registration sheets, dictation or other records. Office clerical employees at 176 Palisades use computers, copiers, fax machines and phones, as do their counterparts at 142 Palisades. The record also discloses that there is daily contact among office clerical employees at both locations regarding billing questions, insurance issues and patient records. Office clerical employees from both locations (1) attend meetings at 142 Palisades, (2) eat lunch at 176 Palisades, (3) park in the garage at 142 Palisades and (4) have an annual off-

premises joint Christmas party. Employees based at 176 Palisades wear Christ Hospital IDs for security reasons; employees at 142 Palisades do not wear Christ Hospital IDs, although some 142 Palisades employees possess Christ Hospital IDs.

All employees are hourly, punch a time clock, share the same benefits<sup>6</sup> and work the same hours. In this regard, the Employer is open from 8 am to 6 pm, Monday through Friday and from 8 am to 4 pm on Saturday. Office clerical employees at both locations opt for either 10 or 8 hour shifts. All employees receive the same employee manual.

The record reveals that there have been three permanent transfers between the two locations. As to temporary transfers, the evidence discloses that this occurs weekly during the winter season and at least monthly during other periods of the year. In addition, although the Employer maintains supplies at both locations, there appears to be a commingling of supplies, such as paper, used at both facilities. In this connection, office clerical employees based at one location retrieve supplies from the other location, as needed. As noted above, employees at both locations are jointly supervised by Executive Director Hogan and the three doctors.

**B. Analysis**

Section 9(b) of the Act states that the “Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.”

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<sup>6</sup> These benefits include vacations, health care, pension, bereavement sick and personal leave.

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather, the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

Here, the Petitioner has requested a unit composed only of certain non-professional employees at 142 Palisades. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit.” *Id.* The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol’s*, 272 NLRB 621 (1984). These factors must be weighed in resolving the unit contentions of the parties. The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, above at 429.

Based upon a review of the record, I find that the Employer has presented evidence sufficient to overcome the presumption in favor of a single-facility unit. In this regard, the evidence reveals that there is significant centralized control of labor

policies: common supervision, rates of pay, hours of work and benefits (including vacations, health care, pension, bereavement, sick and personal leave) and a single handbook for employees.

As the Petitioner contends, a unit less than employer-wide can be appropriate, notwithstanding a high degree of centralized administration. *L'EGGS Products Inc.*, 236 NLRB 354 (1978). Indeed, centralized administration and control of some labor relations policies and procedures is not inconsistent with a finding that there exists sufficient local autonomy to support the single-location presumption. Here, however, the evidence clearly shows that the employees are commonly supervised and that the Employer's operations are reliant upon each other on a day-to-day basis. The evidence depicts a functionally integrated operation that does not support the single-location presumption. In this regard, the day-to-day contact among employees supports a conclusion that these operations are fully integrated, except that they are a city block apart.

I also find that the record supports a finding that there has been substantial and significant employee interchange. The evidence shows that there have been at least three permanent transfers and that temporary transfers occur on a weekly and monthly basis, depending on the time of year.<sup>7</sup> As noted above, office clerical employees at both locations have significant daily work-related contact with each other.

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<sup>7</sup> In a recent case, *Trane*, 339 NLRB No. 106 (July 29, 2003), the Board found that an employer overcame the presumptive appropriateness of a single facility unit, despite evidence of employee interchange that was of only a general nature. However, in *Trane*, the Board determined that the lack of specific evidence as to interchange was combined with other factors, including the absence of any local management or supervision at one facility indicating that there was no local autonomy at that facility. That is also the case here. In *Trane*, as here, the

In sum, I find that the single-location presumption has been rebutted by substantial employee interchange and the Employer's centralized control of labor policies, common supervision, daily employee contact and geographical proximity. Thus, I find that the requested unit is not appropriate. The only appropriate unit herein would be one including technologists and office clerical employees based at both locations.

The Petitioner expressly indicated that it wished to participate in a broader unit than that petitioned for. Therefore, as the Petitioner has clearly indicated that it would proceed to an election in any other unit if the unit it sought were deemed inappropriate, I shall direct an election in the broader unit. *The Folger Coffee Co.*, 250 NLRB 1 (1980) (petitioner expressed willingness to proceed to election in any broader unit found appropriate).

#### **IV. REGULAR PART-TIME CALCULATION**

The parties agree that regular part-time employees should be included in the unit. In this regard, the record discloses that there are approximately 10 employees who regularly work a minimum of 8 hours and up to 30 hours per week. However, the parties disagree as to the status of 4 on-call employees, namely Joan Veltri, Tish Patel, Durgeeh Khanna and Christine Bagley. The Petitioner contends that these four individuals work insufficient hours to be considered regular part-time employees. The Employer, on the other hand, contends that they share a sufficient community of

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employer's witness testified to many transfers between facilities each year, an easily observable pattern that, if true, the Board described as 'unchallenged.'

interest with other employees to warrant their inclusion in the unit. I will discuss the four individuals in dispute below:

1. Joan Veltri

Veltri was a full-time transcriptionist with the Employer at 176 Palisades until May 1, 2004, when she left the Employer to work elsewhere full-time. The Employer contends that she remains an on-call employee who is not scheduled for work with the Employer but who will be utilized in the future as needed. It is undisputed that Veltri has not worked any hours for the Employer since May 1<sup>st</sup>.

2. Tish Patel

Patel is a technologist who is called into work by the Employer during “an emergency.” Patel had no work hours with the Employer during May 2004 and has worked one or two hours total in the past two quarters for the Employer. She is not scheduled to work any specific amount of time.

3. Durgeeh Khanna

Khanna is a technologist who has worked no hours for the Employer during the month of May 2004. The Employer contends that she has worked between 16 to 30 hours over the past two quarters.

4. Christine Bagley

Bagley has worked 6 to 9 hours “over the last month”, no hours during the last quarter and for the quarter prior to that “she was full-time.”<sup>8</sup>

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<sup>8</sup> The record does not indicate whether Bagley was employed regularly or worked as an on-call employee with a full-time workload. Further there is no indication over which duration this occurred.

The Employer acknowledges that each of these employees is free to reject an assignment, is not scheduled to work, and receives no benefits from the Employer. Further, no documentary evidence, such as payroll records, was introduced at the hearing describing their employment history with the Employer.

In determining the status of on-call employees in the health care industry, the Board has utilized various eligibility formulae as guidelines to distinguish “regular” part-time employees from those whose job history with an employer is sufficiently sporadic that it is most accurately described as “casual.” *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990). In *Marquette General Hospital*, 218 NLRB 713, 714 (1975), the Board devised an equitable formula that was designed to determine eligibility where the facts indicated there was significant disparity in the number of hours worked by that employer's on-call nurses. For instance, in *Marquette*, some on-call nurses worked as many as 540.5 hours per quarter, while others worked as few as 23. Under the *Marquette* formula, employees are only eligible to vote in the election if they work at least 120 hours in either of the quarters immediately preceding the election. *Id.* at 714. However, where the on-call employees, as a group, all appear to work on a regular basis, the Board usually has found a more liberal standard applicable. *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970); *V.I.P. Movers*, 232 NLRB 14, 15 (1977); *Riverside Community Memorial Hospital*, 250 NLRB 1355, 1356 (1980); *West Virginia Newspaper Publishing Co.*, 265 NLRB 446 (1982). See also *Newton-Wellesley Hospital*, 219 NLRB 699, 703 (1975). In *Sisters of Mercy*, where the on-call nurses worked on a regular basis and there was no evidence of the significant disparity in the hours worked of the on-call nurses as found in *Marquette*,

the Board found the *Davison-Paxon* formula to be more appropriate. As a result, on-call employees were found to be eligible if they regularly averaged 4 hours or more per workweek during the quarter prior to the eligibility date. *Sisters of Mercy*, above at 484.

As noted above, the Employer introduced no documentary evidence that lists the hours of the four on-call employees at issue here. However, the testimony concerning their work hours, although sparse, would indicate that, as in *Marquette*, above, they exhibit a significant disparity in their work hours. Therefore, I find that it is appropriate to apply that formula in the instant situation. Based on this, it is clear that there is no evidence that these four on-call employees have worked at least 120 hours within the last quarters prior to the election that will be directed here. Accordingly, I find that the evidence does not support a conclusion that these on-call employees work sufficient hours to be deemed regular part-time employees. Therefore, they are casual employees and are not eligible to vote in the election.<sup>9</sup>

### **DIRECTION OF ELECTION**<sup>10</sup>

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules

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<sup>9</sup> In view of this determination, it is unnecessary to decide whether the on-call employees share a sufficient community of interest with other unit employees. *Milwaukee Children's Hospital Assn.*, 255 NLRB 1009 (1981); *Newton-Wellesley Hospital*, above.

<sup>10</sup> As the unit found appropriate is larger than that requested, the Petitioner is accorded a period of 14 days in which to submit any additional showing of interest to support an election, if necessary. In the event Petitioner does not wish to proceed to an election, it may withdraw its petition without prejudice by notice to the undersigned within seven (7) days from the date of this Decision and Direction of Election. *Folger Coffee*, above.

and Regulations. 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. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. 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. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Local 641, AFL-CIO**.

#### **LIST OF VOTERS**

In order 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 in 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 seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **June 29, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

#### **VII. 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 20570-0001. The Board in Washington must receive this request by **July 6, 2004**.

Signed at Newark, New Jersey this 22<sup>nd</sup> day of June, 2004.

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Gary T. Kendellen, Regional Director  
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