

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Owensboro, KY

OWENSBORO MEDICAL HEALTH SYSTEM¹

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC²

Cases 25-RC-10217
25-RC-10218
25-RC-10219

DECISION AND DIRECTION OF ELECTION

Upon three petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held February 17, 18, 19 and 20, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.³

¹ The name of the Employer appears as stipulated by the parties.

² The name of the Petitioner has been corrected to reflect its full legal name.

³ 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. 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.

I. ISSUES

A. The Single-Facility Issue

The Petitioner, United Steelworkers of America, AFL-CIO, CLC, seeks an election within three units comprised of employees located at the acute care hospital of the Owensboro Medical Health System (the "Employer"), located at 811 East Parrish Avenue, Owensboro, Kentucky (hereinafter referred to as the Hospital). The first petition, Case 25-RC-10217, seeks an election within a unit of full-time and regular part-time nonprofessional employees (the nonprofessional unit); the second petition, Case 25-RC-10218, seeks a unit of full-time and regular part-time skilled maintenance workers (the skilled maintenance unit); and the third petition, Case 25-RC-10219, seeks a unit of full-time and regular part-time direct care registered nurses (the registered nurse unit). The above-described petitions exclude physicians, other professional employees, technical employees, business office clerical employees, security officers, and supervisors within the meaning of the Act. According to the Petitioner, the nonprofessional unit is comprised of approximately 733 hospital employees in 71 job classifications; the skilled maintenance unit is comprised of approximately 30 employees in seven job classifications; and the registered nurse unit is composed of approximately 644 employees in 26 registered nurses job classifications.

The Employer contends that the only appropriate units are employer-wide units which should include, in addition to those employees who work in the hospital, in excess of 137 additional employees who work in free-standing buildings owned by the Employer, located in various areas of Owensboro. These include the Breckenridge Medical Office Building, a Wound Care Center, a Convenient Care Center, the McAuley Clinic, an Outpatient Addiction Services Center, a Mercy Medical Plaza, a HealthPark which includes a cafeteria, chapel and fitness center, among others.

B. The Placement of Certain Positions Within the Bargaining Units

In addition to the single-facility issue, the Employer contends that approximately 38 employees in the following nine classifications located in the hospital should be included in the nonprofessional unit: Admitting Educator, Customer Support Specialist, Engineering Technician, Nurse Extern, Quality Management Specialist, Administrative Data Retrieval Specialist, Student Medical Technician, Technician-Echo Technologist (also referred to herein as Echocardiographic Technologist), and Typesetting Specialist. The Petitioner contends that none of the above positions should be included in the nonprofessional unit on grounds that they lack a community of interest with members of the petitioned unit. The Petitioner further contends that the positions of Pharmacy Technician and Narcotic Technician should be included in the nonprofessional unit. Moreover, the Petitioner would exclude from the nonprofessional unit the positions of Assistant Fund Development, Grants and Research Coordinator, and Occupational Therapy Assistant on grounds that not only are employees in these classifications located outside of the hospital, but also these classifications are more appropriately characterized as either supervisory or technical. The Employer contends that approximately 11 employees in the positions of Biomedical Electronic Specialists I, II, and III, Electronic Engineering Specialist III, Network Engineer, and Network Technician should be included in the skilled maintenance unit.

In addition, it urges that employees who work at the HealthPark in the position of Maintenance/Security should also be included in the skilled maintenance unit. In sum, the Employer envisions a nonprofessional unit of approximately 845 employees in 100 job classifications; a skilled maintenance unit of approximately 45 employees in 14 job classifications; and a registered nurse unit of approximately 703 employees in 32 job classifications.⁴

II. SUMMARY OF DECISION

A. The Single-Facility Issue

For the reasons discussed in detail below, including the minimal amount of contact between the employees at each location; insignificant employee interchange; the autonomous operations and management of facilities outside of the hospital; and the geographic distance separating the hospital from the other Employer facilities, it is concluded that the Employer has failed to rebut the presumptive appropriateness of the single-facility unit sought by the Petitioner. Accordingly, it is concluded that the employees employed in nonprofessional positions, skilled maintenance positions, and employed as registered nurses at the Employer's acute care hospital located at 811 East Parrish Avenue, Owensboro, Kentucky, constitute units appropriate for purposes of collective bargaining.⁵

⁴ Employee estimates and job classification numbers are drawn from figures in the comprehensive compilations of personnel in dispute which have been introduced into evidence as the Employer's Exhibits 3, 4, and 5.

⁵ Nonprofessional Unit

The parties have stipulated, and I find, that employees employed at the hospital in the following job classifications are nonprofessional and should therefore be included in the unit herein found appropriate: Activity Specialist, Anesthesia Assistant, Bed Control Specialist, Buyer-Pharmacy, Cancer Registry Clerk, Cath Lab Scheduler/Secretary, Cath Lab Holding Room Technician, Central Scheduling Specialist, Chart Deficiency Analyst, HIM Chart Scan/Prep Technician, Ward Clerk (Unit Clerk), Communication Specialist, Courier, Distribution Clerk, E. D. Technician, Equipment Operator - Laundry, Floral Designer (Gift Shop), Gift Shop Supervisor, Groundskeeper, Guest Relations Specialist, ED; Health Assistant/ED Tech, House Assistant, Housekeeper, Physical Plant Interior Finishing Specialist, Laboratory Assistant/ Phlebotomist, Lab Processor, Unit Clerk - Cytology, Laundry Aide, Materials Inventory Clerk, Materials Transporter, Medical Staff Support, Medical Staff Specialist, Medical Transcriptionist, Mental Health Technician, Monitor Tech/Unit Clerk, NAI Endo Tech, Non-Licensed Electrician, Ward Clerk/Nursing Assistant (Department/Position: 6045-511), Ward Clerk/Nursing Assistant (Department/Position: Medical/Surgical-511), Nursing Assistant (Department/Position: 6450-500); Nursing Assistant (Department/Position: 6090-500), Nursing Assistant (Department/Position: 6045-500), Nursing Assistant (Department/Position: Medical/Surgical-500), E.D. Office Assistant, Pastoral Communication Specialist, Patient Care Technician, Patient Relations Specialist, Patient Transport, Payroll Practitioner, Surgery

Scheduler/Secretary, Physician Relations Specialist, Registration Specialist, Purchasing Agent, Purchasing Specialist, Records Technician, Secretary, Department Secretary (Departments Number 6211, 7091, 8375, 7185, 6450, 7010, 6231, 6011, 8060), Secretary/Receptionist/Credentialing Assistant, Secretary Wellness, Secretary Receptionist, Secretary Case Management, Senior Purchasing Agent, Data Retrieval Specialist, Materials Management Specialist, Perioperative Specialist, Sterile Processing Tech, Support Technician - Rehab, EKG Technician, Physical Therapy Technician, Transcriptionist, Transcriptionist – Laboratory, Work Order Dispatcher.

The parties also stipulated, and no evidence exists to the contrary, that the following job classifications lack a community of interest with members of the nonprofessional unit: Counselor - Assoc. Addiction Services, Assistant Clinical Audit, Health Room Technician, Training IS Facilitator, Press Operator, Safety Specialist. Accordingly, they are excluded from the nonprofessional unit found appropriate herein.

Skilled Maintenance Unit

The parties have stipulated, and I find, that the employees employed at the hospital in the following job classifications shall be included in the skilled maintenance unit: Electrician (Licensed), HVAC Technician (Licensed), Plumber (Licensed), Maintenance Mechanic, Construction Worker II, Construction Worker III (Crew Leader), and Construction Worker (Licensed Tradesman). In addition, the parties have stipulated that the job classification of Maintenance Trainee/HP is not a skilled maintenance position, and therefore it is excluded from the skilled maintenance unit.

Registered Nurses Unit

The parties have stipulated, and I find, that employees employed at the hospital in the following job classifications are registered nurses and therefore shall be included in the registered nurse unit: Admission Nurse, Case Management Specialist, Certified Nurse-Midwife, Clinical Educator, Clinical Nurse Specialist (Wound, Ostomy, Continence), Emergency Department Educator, Service Line Educator, Prenatal Educator, Employee Health Nurse, Registered Nurse Graduate, Infection Control Specialist, Lactation Consultant Clinical Instructor, MDS Coordinator, Registered Nurse - Modified Weekend Option, Nurse Liaison, Advanced Registered Nurse Practitioner, Palliative Care Assessment, Patient Services Educator, Perioperative Specialist/RN, PPS Coordinator- RN, Pre-Admission Nurse, Quality Management Specialist, Quality Support Specialist, RN-Pool Level 3, RN Special Staffing Team, Clinical Supervisors, Project Specialist, and Registered Nurses in departments: medical/surgical, 6022, 6035, 6051, 6120, 6140, 6211, 6217, 6231, 7128, 6080, 6090, 6192, 7150, 6045, 6450.

The parties have stipulated, and I find, that the Employer's employees in the following job classifications lack a community of interest with, and shall not be included in the registered nurse unit: Clinical Review Auditor, and School Nurse/ NSG Outreach.

B. The Placement of Certain Positions Within the Bargaining Units

Based on the facts and analysis discussed below, it is concluded that the disputed job classifications will be included or excluded from the petitioned units as follows:

1. Nonprofessional Unit

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:

All full-time and regular part-time⁶ nonprofessional employees employed by the Employer at its acute care hospital located at 811 East Parrish Avenue in Owensboro, Kentucky; BUT EXCLUDING all physicians, registered nurses, professional employees, technical employees, skilled maintenance employees, business office clerical employees, guards, supervisors as defined in the Act, and all employees employed in facilities located outside of the hospital.

The above unit consists of approximately 764 employees for whom no history of collective bargaining exists.

For the reasons discussed fully below, it is concluded that the following disputed classifications located in the hospital shall be included in the nonprofessional unit: Admitting Educator, Customer Support Specialist, Engineering Technician, Nurse Extern, Data Retrieval Specialist, Medical Technology Student, Echocardiographic Technologist, Typesetting Specialist, Pharmacy Technician, and Narcotic Technician.

However, for the reasons discussed fully below, the Occupational Therapy Assistant and the Quality Management Specialist classifications shall be excluded from the nonprofessional unit found appropriate herein.

Even though the parties stipulated to include the Medical Office Coordinator classification in the nonprofessional unit, for the reasons discussed herein, the employees in this classification shall be allowed to vote subject to challenge. A review of this classification's job description appears to indicate that the position is not located at the hospital but that it is only located at the Breckenridge facility. Since it is unknown whether any persons in this position are employed in the hospital, employees in this classification shall be permitted to vote subject to

⁶ Part-time employees are individuals who work for an employer on a regular basis for a sufficient period of time to develop a community of interest with their full-time counterparts, Fleming Foods, 313 NLRB 948 (1994); Pat's Blue Ribbons, 286 NLRB 918 (1987). There is no magic formula which specifies the number of hours per pay period or other appropriate calendar period, which individuals must work in order to constitute a part-time employees. So long as their employment is regular and not sporadic or intermittent, they will meet the definition.

challenge in the nonprofessional unit, and their voting eligibility will be determined, if necessary, in post-election proceedings.

The evidence concerning the classification of Radiology Technology Assistant indicates that there are persons in this classification located at the hospital and at the Breckenridge facility. The Employer asserts that this classification should be included in the nonprofessional unit while the Petitioner contends that only those employees located at the hospital be included. It is concluded that since the evidence is insufficient to make a reasoned determination of the appropriate unit placement of the Radiology Technology Assistant classification; and since the number of employees occupying this classification appears to be less than 10% of the total number of members of the nonprofessional unit, the approximately 13 employees in this classification shall be permitted to vote subject to challenge in the nonprofessional unit, and their voting eligibility will be determined, if necessary, in post-election proceedings.

Although the parties did not include the position of Department Secretary – Department 8022 (located in the hospital) in their stipulation of the nonprofessional unit, and did not take a position as to this classification's placement in the petitioned units, the record included a job description which indicates that this position exists in the hospital and shares terms and conditions of employment similar to those of other stipulated members of the nonprofessional unit. Accordingly, this position shall be included in the nonprofessional unit.

Finally, since it is concluded that a single-facility unit is appropriate, it is further concluded that employees occupying the following classifications, who work in the hospital, shall be included in the nonprofessional unit: Phlebotomist, Registration Specialist, Department Secretary, Clerical Worker/Ward Clerk, and Housekeeper.

2. Skilled Maintenance Unit

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:

All full-time and regular part-time skilled maintenance employees employed by the Employer at its acute care hospital located at 811 East Parrish Avenue in Owensboro, Kentucky; BUT EXCLUDING all physicians, registered nurses, professional employees, technical employees, nonprofessional employees, business office clerical employees, guards, supervisors as defined in the Act, and all employees employed in facilities located outside of the hospital.

The unit found appropriate herein consists of approximately 41 employees for whom no history of collective bargaining exists.

It is concluded that insufficient evidence exists to determine the appropriate unit placement of the positions of Network Engineer and Network Technician. Accordingly, employees in these positions shall be permitted to vote subject to challenge in the skilled

maintenance unit, and their voting eligibility shall be determined, if necessary, in post-election proceedings.

Additionally, it is concluded that the positions of Biomedical Specialist I, II and III and Electronic Engineering Specialist shall be included in the skilled maintenance unit. The position of Maintenance/Security Officer shall be excluded from the skilled maintenance unit since this position exists in the HealthPark.

3. Registered Nurses Unit

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:

All full-time and regular part-time registered nurses employed by the Employer at its acute care hospital located at 811 East Parrish Avenue in Owensboro, Kentucky; BUT EXCLUDING all physicians, professional employees, technical employees, skilled maintenance employees, nonprofessional employees, business office clerical employees, guards, supervisors as defined in the Act, and all employees employed in facilities located outside of the hospital.

The unit found appropriate herein consists of approximately 644 employees for whom no history of collective bargaining exists.

III. BACKGROUND FACTS

A. Overview of Employer's Operations

The Employer, Owensboro Medical Health System, is engaged in the operation of an acute care hospital and numerous facilities which provide a wide range of medical services in Owensboro, Kentucky. The hospital is located at 811 East Parrish Avenue, which encompasses one building which houses inpatient acute care departments, such as the emergency room, surgery, radiology, laboratory, behavioral health, a central pharmacy, and various therapy departments.

The Employer contends that the employees located at all of the following locations, except for those specifically indicated in the discussion below, should be included in the petitioned units. Connected to the hospital by a walkway is the four-story Breckenridge Medical Office Building (herein called Breckenridge) located at 1000 Breckenridge Street. The Breckenridge building houses private medical offices, the Employer's Ambulatory Surgical Center,⁷ the Employer's Breast and Diagnostic Center, the Outpatient Behavioral Health Center,

and the Women's Pavilion. Also located at Breckenridge are two laboratory draw sites, where blood specimens are collected, one at the Breast and Diagnostic Center and the other at the Women's Pavilion.

The Employer also operates a Wound Care Center located in a building at 1325 Triplett Street, which is located across the street from the hospital. This building also houses private medical offices and an Infectious Disease office.⁸ The Employer also has a laboratory draw site located in one of the private medical offices in this building.

The McAuley Clinic provides medical services to the indigent community, and is located at 501 Walnut Street. Its distance from the hospital is not known.

An Outpatient Addiction Services Center is located in a building at 2816 Veach Road.⁹ The Employer has no other operations at this location. This center is approximately 1.4 miles from the hospital.

The Mercy Medical Plaza (herein Medical Plaza) is located at 2211 Mayfair Avenue. The Medical Plaza is a four-story medical-office building which houses private medical offices, the Employer's Home Care Services Department, and The Foundation for Health (herein the Foundation). The Medical Plaza building is considered part of the Employer's HealthPark, discussed below, and it is located approximately 1.8 miles from the hospital.

The Employer operates a wholly-owned subsidiary called Cooperative Health Services (herein Health Services). Health Services operates the Health and Fitness Center located at the HealthPark, and the Convenient Care and Occupational Medicine Center (herein Convenient Care Center) located in a building on 608 Frederica Street. In addition, Health Services manages the Owensboro Medical Center Laboratory. At the Frederica building the Employer also operates a Speech and Hearing, Audiology Clinic and a billing department.¹⁰ The Convenient Care Center is located approximately one mile from the hospital.

The HealthPark is a complex of several inter-connected buildings located at 1006 Ford Avenue, and includes a Health and Fitness Center, a Child Care Center, a Health Resource Center, a Chapel, a Cornerstone Café, an Outpatient Therapies department, and an

⁷ The parties agreed at hearing that no employees located at this location should be included in any of the petitioned units.

⁸ The parties agreed at hearing that no employees who work in the Infectious Disease office should properly be included in any of the petitioned units.

⁹ The Outpatient Addiction Services Center was also referred to interchangeably in the record and in the parties' briefs as the Outpatient Behavioral Health-Addiction Services Center.

¹⁰ The parties agreed at hearing that no employees located at the Speech and Hearing, Audiology Clinic or in the billing department should be included in any of the petitioned units.

Outpatient Diagnostic Center. The Outpatient Diagnostic Center has a laboratory draw site and offers radiology services. The HealthPark is located approximately 1.8 miles from the hospital.

The Employer also operates a joint venture called the Owensboro Community Health Network (herein the Health Network) whose ownership is equally shared by the Employer and the Ohio Valley Physician's Association. The Health Network is located in a building on Fourth and Frederica Street. The record does not reflect information as to the approximate distance between this building and the hospital.

The Employer also operates a draw site located at a private medical office in a building on Highway 54 East, Owensboro. The record does not reflect the approximate distance between this building and the hospital. Finally, there is a medical office building known as the Parrish Medical Plaza on 815 Parrish Avenue, which has a parking lot whose attendant is employed by the Employer.¹¹ The Parrish Medical Plaza is located in a separate building next to the hospital, but the parking lot is designed for patients visiting the Medical Plaza, not the hospital.

B. Overview of Employer's Organizational Structure

The Employer's President/CEO oversees all of the Employer's operations and reports to a Board of Directors. Five individuals report directly to the President: a Vice President of Organizational Development; a Vice President of Finance; a Vice President of Operations and Chief Operating Officer (COO), a Vice President of Medical Staff Affairs; and a Director of Facilities. The offices of all of these executives are located in the hospital located at 811 East Parrish Avenue. These executives have company-wide responsibilities. Each oversees functions performed at the Employer's various facilities as well as the hospital. Most of the Employer's facilities are also overseen by a local supervisor or manager who reports to one of these executives.

The Human Resources function is centralized. One Human Resources Department serves all other departments and locations. An employee handbook which describes Employer policies is applicable to all employees regardless of their work location. The handbook also describes common fringe benefits applicable to all employees. The Human Resources Department also oversees employee compensation, an employee health program, and a workmen's compensation program for all employees. Hiring and firing decisions are shared between the Human Resources Department and the managers of the various facilities. For example, Human Resources personnel will review decisions to terminate employees. However, local management retains ultimate authority to make such decisions and may reject Human Resources' recommendations. Employee training and development as well as corporate communications are centralized under the auspices of the Human Resources Department. New employees, regardless of the facility at which they will work, attend an orientation program held at the hospital. The orientation program lasts three days, and on the last afternoon it is conducted at the HealthPark.

¹¹ The record does not indicate that the Employer seeks to include this location within the petitioned units, and there is no evidence that the Employer operates any departments or facilities within this building. However, the Employer seeks to include the Parking Attendant position in the nonprofessional unit.

All employees, regardless of their work location, are required to wear the same employee identification badge which has a picture of the employee and the Employer's logo on it.

Job vacancies at any of the Employer's locations are posted both in the affected department, and community-wide via bulletin boards, the internet, the local newspaper, and television. Employees who work at any facility may apply for vacant positions at any other facility. The record reflects that between March 2002 and December 2003, there were 37 permanent transfers of employees from one department to another among the Employer's various departments and facilities.¹² Some of these transfers appear to be from one department located outside of the hospital to another department located outside of the hospital. In addition, some of the transfers appear to be from an outlying facility to the hospital location. However, the record fails to indicate with specificity the location from which the employee was transferred or the location to which the employee was transferred. These 37 transfers represent about 2 % of the total 1,593 employees whom the Employer contends should be included in the petitioned units.

There are other centralized functions located at the hospital which provide services to all facilities. The accounting and finance function is centralized at the hospital. There is one capital budget for all facilities, and one operational budget which is composed of separate departmental budgets. Laundry services are located at the hospital and provide services to the hospital, Convenient Care Center, and the Wound Care Center. Other laundry is presumably cleaned at the other facilities. In addition, there are job classifications which the parties stipulated should be included in the units, which provide services to other locations. For example, individuals who occupy the Buyer-Pharmacy position, a position which is included in the nonprofessional unit and whose office is located at the hospital, purchases drugs for the McAuley Clinic and the hospital. The Central Scheduling Specialist located in the hospital also schedules services for the Health Resource Center at the HealthPark.

IV. DISCUSSION: SINGLE-FACILITY ISSUE

A. Statement of Law

In 1989 the Board finalized its rule establishing eight appropriate units in acute care hospitals,¹³ which was subsequently upheld by the Supreme Court in American Hospital Association v. National Labor Relations Board, 499 U.S. 606, 111 S.Ct. 1539 (1991). Each of the three units in which the Petitioner seeks an election comports with this rule: a unit of registered nurses, a skilled maintenance unit, and a unit comprised of nonprofessional employees. Two primary issues are presented for resolution herein, however: whether a unit whose scope is restricted to the Employer's hospital, is appropriate; and if so, whether that unit

¹² The employee transfers' numbers are drawn from figures which were introduced into evidence as Employer's Exhibit 7.

¹³ This rule is set forth at 29 CFR Part 103, 54 Federal Register No. 76, pp. 16347-48, 284 NLRB 1579 (1989).

should include any of those job classifications located in the hospital which are in dispute between the parties.

In Manor Healthcare Corp., 285 NLRB 224 (1987), the Board reaffirmed the rebuttable presumption of single-facility bargaining units in the health care industry, even though a broader unit might also be appropriate. This presumption may be rebutted by a showing that additional employees have little or no separate identity, and share a sufficient community of interest with employees of the single facility to overcome the presumption. In Manor Healthcare the Board also stated that it would continue to weigh traditional factors in deciding whether the presumption has been overcome. These factors include geographic proximity, extent of employee interchange and contact, similarity of employee functions and skills, the extent of functional integration and administrative centralization, common supervision, and bargaining history, West Jersey Health System, 293 NLRB 749 (1989); Passavant Retirement and Health Center, 313 NLRB 1216, 1218 (1994). In the healthcare industry, the Board has also examined an additional factor in determining the appropriateness of a single-facility unit; namely, whether such a unit creates an increased risk of work disruption or other adverse impact upon patient care should a labor dispute arise, Manor Healthcare, *Supra*, at 226.

Even where several facilities are physically located close together and operate under administrative centralization with uniform policies for all employees, these factors are insufficient to rebut the single-facility presumption in the absence of substantial employee interchange and contact, O'Brien Memorial, Inc., 308 NLRB 553, 554 (1992). A lack of employee interchange militates against a multi-facility unit even where facilities are located on the same campus, or are fairly close together, Passavant Retirement and Health Center, *Supra*, 1218 (1994).

The Board has recognized that certain factors such as common daily supervision have a greater impact upon creating a community of interest among employees than other factors such as common indirect supervision. Common daily supervision has a greater impact upon the creation of a community of interest than other factors because it has a direct impact upon employees' work lives, and employees with different supervisors may not necessarily share similar problems or concerns, D & L Transportation, Inc., *Supra*; Towne Ford Sales, 270 NLRB 311 (1984).

B. Statement of Facts, Analysis and Conclusions Regarding Locations in Dispute

1. The Hospital

a. Statement of Facts: General Background

As previously discussed, the Employer contends that the employees located in the hospital should be included in the petitioned units along with employees in all other locations described above, while the Petitioner asserts that only the employees located in the hospital should be included in the petitioned units. The Employer possesses an acute care license from the Commonwealth of Kentucky which includes operations at the hospital, Breckenridge, the Convenient Care Center, the Outpatient Addiction Services Center, the Wound Center and the

HealthPark.¹⁴ The hospital is the only location which operates on a twenty-four a day, seven-day a week work schedule.

Patients can register and receive health care services at any of the non-hospital facilities without having to interact with hospital personnel. Patients who receive services at outlying facilities do not require a referral from the hospital. Similarly, the hospital provides acute care services to patients independent of the outlying facilities. Patients are referred to the hospital by a number of independent physicians and health care providers unrelated to the outlying Employer facilities.

The Employer submitted payroll records for the payroll period of February 1 through 14, 2004, reflecting the hours worked by all the employees that the Employer asserts should be included in the petitioned units. This document shows that 215 employees worked in a department other than their home department.¹⁵ The record does not reflect the reasons these employees worked in a different department: whether they volunteered to do so; were “floated;” or worked there on “PRN” status.¹⁶ In addition, a majority of the 215 employees who were paid for work outside of their home departments, were employees whose home department was located in the hospital and who also worked these payroll hours in the hospital, but in a department other than their "home" department. Only 40 employees appear to have worked in a department at a facility other than their home facility. However, the record indicates that some department numbers exist at multiple facilities. Thus, the record is unclear as to whether the 40 employees in fact worked at a facility different than their home facility. For example, an employee whose home department was number 6051, described as "psych-inpatient," located in the hospital, worked 12.50 hours in department 8241, described as an admitting department, and a department which exists in multiple facilities, including the hospital. Therefore, in this example it is unclear whether this employee worked in a department different than his/her home department, but located within the same facility, or whether s/he worked in a different facility. Assuming, however, that all 40 employees worked at a different facility than their home facility, they represent only 2.3% of the total employees in this report, and their respective payroll hours represent only .60% of total payroll hours. Moreover, 18 of these 40 employees worked in a home department at a facility other than the hospital, and during this payroll period, were

¹⁴ The evidence is undisputed that only the hospital provides inpatient services; therefore, it is unclear why the Employer's acute care license also applies to facilities which provide only outpatient services.

¹⁵ The numbers herein are drawn from the payroll report of Employer Exhibit 8. This report reflects that 114,360.17 payroll hours were worked during these 14 days by a total of 1,740 employees. The report does not identify the facilities in which each of the numbered departments are located, however. Employer Exhibit 12 is a list of department numbers which identifies the facility(ies) at which each department is located. As indicated therein, some departments are located at multiple facilities.

¹⁶ The record reflects that PRN means on an “as needed” basis, however, it does not reflect what specifically these letters stand for.

assigned to work in a facility other than the hospital. Therefore, if these 18 employees are excluded from the above calculation, the record indicates that only 22 employees, representing 1.26% of total employees and .32% of payroll hours, may have worked hours during this payroll period at a facility different from their home facility. Thus, the first two weeks of February 2004 show that little interchange or contact occurred between employees whose home department is located in the hospital, and those whose home department is outside the hospital.

b. Statement of Facts, Analysis and Conclusion: Special Issues within the Hospital

There are a number of job classifications that exist in the hospital that also exist in other locations performing the same type of work as their hospital counterparts. Each job classification located outside of the hospital that the Employer contends should be included in the petitioned units is discussed below under the heading for each location. However, the following are four job classifications with special circumstances that are located both in the hospital and also in one of the outlying facilities:

i. Laboratory Assistants/Phlebotomists

Although the parties stipulated that Laboratory Assistants/Phlebotomists (Phlebotomists) who work in the hospital should properly be included in the nonprofessional unit, the unit placement of seven Phlebotomists who work at outpatient draw sites is in dispute because their work location lies outside the hospital.¹⁷ Phlebotomists are responsible for collecting phlebotomy specimens, e.g. blood samples, from patients at the different draw sites. The Employer's main laboratory is located in the hospital, with several draw sites located at other facilities. The laboratory function for the entire organization is overseen by the Laboratory Director, whose office is located in the hospital. There are a total of seven draw sites at which blood samples are collected. Two sites are located in the hospital. Of the five remaining sites, two are located in the Breckenridge Office Building, one at the Outpatient Diagnostic center in the HealthPark, and two at private medical offices. The seven Phlebotomists work at their assigned locations on a permanent basis. The only time that employees from the outlying sites might work at the hospital, or the hospital Phlebotomists might work at the draw sites, is to substitute for an absent Phlebotomist, or if the hospital laboratory is short staffed. The record does not reflect the frequency of such substitutions.

Based upon the foregoing facts, it is concluded that the Phlebotomists located outside of the hospital, at the seven outpatient draw sites, shall be excluded from the nonprofessional unit. The Employer failed to prove that the Phlebotomists at the outpatient draw sites have any substantial interchange or contact, or otherwise share a community of interest with their counterparts at the hospital. The Phlebotomists report on a daily basis to their work location, not

¹⁷ The record indicates that approximately 29 Phlebotomists work in the hospital, two at the Breckenridge Medical Office Building, three at the Outpatient Diagnostic Center in the HealthPark, and two at draw sites located in private medical offices.

to the hospital. Thus, only the Phlebotomists located at the hospital shall be included in the nonprofessional unit.

ii. Radiology Technology Assistants

Much like the laboratory function, the Radiology Department is housed at the hospital and is overseen by the Employer's Director of Radiology, whose office is located at the hospital. There are three distinct radiology centers: one in the hospital, one in the Breckenridge Office Building, and one at the HealthPark. The radiology centers are staffed by Radiology Technologists and Radiology Technology Assistants. Neither party contends that the Radiology Technologists should be included in any of the petitioned units. In dispute, however, are the placement of the approximately 13 Radiology Technology Assistants (herein RTA). The Employer asserts that they should be included in the nonprofessional unit and the Petitioner contends that only those employed at the hospital should be included in the unit.

Of the approximate 13 RTAs, four are full-time; two are part-time radiology students, and seven additional radiology students work on a PRN status with a limited work schedule. The RTAs are not assigned to any specific radiology location at any given time. Usually there are two RTAs assigned to work at the hospital, and four RTAs scheduled to work at the Breckenridge office building. Currently, there are no RTAs scheduled to work at the HealthPark location due to the fact that this center is new and does not have the need at this time. Hospital assignments may be rotated among the RTAs, and the number assigned to work at the Breckenridge facility is dependent upon patient load. On weekends all of the RTAs rotate working at the hospital. The Director of Radiology posts a three-week work schedule at each of the three facilities offering radiology services. The Radiology Department is staffed seven days a week. RTAs may work at one location one week and at another the next week. These employees may also work at two different locations on the same day since their work schedules may change based on workload. The PRN employees are scheduled to work a maximum of sixteen hours per week with most of those hours falling on weekends. The RTAs who are radiology students do not receive school credit for their hours of work. However, the students also perform unpaid clinical work at the hospital for which they do receive school credit.

Based upon the foregoing facts, it is concluded that the Radiology Technology Assistants shall be allowed to vote subject to challenge in the nonprofessional unit. The record reflects that employees in this classification work in the hospital, in the Breckenridge Medical Office Building, and in the HealthPark. The record does not indicate whether any of the RTAs are permanently assigned to the hospital. Testimony indicates, however, that RTAs are rotated between the hospital and the Breckenridge facility. It is not known whether the RTAs who work in the HealthPark also work in the hospital. Since the evidence is insufficient from which to make a determination concerning the correct unit placement of the Radiology Technology Assistants, in order to effectuate the purposes of the Act through expeditiously providing for a representation election, all Radiology Technology Assistants shall be allowed to vote subject to challenge in the nonprofessional unit, and their eligibility to vote shall ultimately be determined, if necessary, in post-election proceedings.

iii. Ward Clerk

The record reflects that there are about 54 employees in the position of Ward Clerk. Although the parties stipulated to include this classification in the nonprofessional unit, the Petitioner objects to the inclusion of any employees whose work location is outside of the hospital. However, the record does not reflect the number, if any, of Ward/Unit Clerks who are located outside of the hospital, other than the fact that there might be some employees in this classification who work in the non-hospital facilities. The employees who occupy the Ward Clerk (Unit Clerk) position are responsible for coordinating the clerical functions of the nursing unit; transferring medical orders with speed and accuracy; and coordinating oral and written communications for physicians, families and other nursing units. The job requires a high school degree.

Based upon the foregoing facts, it is concluded that only those employees located in the hospital in the classification of Ward Clerk shall be included in the nonprofessional unit.

iv. The Registered Nurses

Approximately 644 Registered Nurses work in the hospital, and approximately fifty work at other locations.¹⁸ There are also Registered Nurses employed at the Convenient Care Center, the Breckenridge Medical Office Building, the Wound Care Center, the McAuley Clinic, Home Care Services located at the Medical Plaza, and other facilities at the HealthPark, such as Health Resources and Golden Partners. There are no Registered Nurses at the Breast and Diagnostic Center, the Chapel, Cornerstone Café, and the Health and Fitness Center. The specific job duties and responsibilities of the Registered Nurses at these outlying locations will be discussed below under each respective location. However, there are certain committees and forums which affect all Registered Nurses that are conducted at the hospital. There exists a Nursing Executive Council in which nurses in management positions meet once a month to discuss issues relevant to the nursing profession company-wide. Only Registered Nurses who occupy managerial positions participate in Council meetings, and thus, potential members of the registered nurse unit are not involved. The record does not identify the number of nurses who participate in this Council, or the number from each outlying facility. A Standards Committee ensures that certain standards of patient care are followed at all facilities and develops policies related to patient care. This committee meets monthly and Registered Nurses from different departments serve on the committee. The record does not reflect the number of Registered Nurses who are members of this Committee; the facility at which they work; or how they are selected to serve on the Committee. The Employer has also created The Pride Team, which is a group of staff nurses who select the Nurse of the Year. All Registered Nurses are eligible to be selected for this award. There is also a Nursing Forum held quarterly to which all nurses are invited to attend,

¹⁸ The parties agreed to include in the registered nurse unit a number of job classifications (including their department numbers) located in the hospital (see footnote 5). However, there are a number of Registered Nurses employed outside of the hospital, some of whom work in unidentified departments, which remain in dispute.

which is sponsored by the Nursing Executive Committee and The Pride Team. The record does not reflect the topics discussed at these forums. Registered Nurses also participate in a Nursing Performance Improvement Program which is chaired by nurses in managerial positions. The Program reviews quality of care indicators and commissions projects in areas identified for improvement. Registered Nurses participate on sub-teams which are created to carry out these projects. The Employer also offers health fairs to the community, in which Registered Nurses participate.

In addition to nurses who may have permanently transferred from one facility to another, Registered Nurses who are regularly scheduled to work at one facility may work at another facility on a temporary basis.¹⁹ Some nurses work on a "PRN" basis in a department other than their home department, if they are qualified in that department. "PRN" means on an as-needed basis, and, as noted earlier in footnote 17, the record does not reflect what these letters represent. Nurses may sign one of two types of PRN agreements: a casual or a regular PRN agreement. Casual PRN agreements provide that the Registered Nurse will work one schedule within a six-month period with no guaranteed hours, with a higher rate of pay, but no benefits. The regular PRN agreement provides that the nurse will work one shift every four weeks, one winter holiday, and one summer holiday, again with no guaranteed hours, a higher rate of pay, but no benefits. Usually employees accept a PRN assignment to supplement their income with additional pay. Participation in the PRN program is totally voluntary. PRN agreements apply not only to work in a different department than a nurse's home department, but the program also applies to nurses who agree to work hours in addition to their regularly scheduled work hours, in their home departments.

The record reflects that as of February 14, 2004, there were 85 Registered Nurses who had executed a casual PRN contract, and 41 who had executed a regular PRN contract. Combined, this represents 18% of the total 703 Registered Nurses employed by the Employer. These contracts are usually effective for one year. All but five nurses who signed a PRN contract work in the hospital as their permanently assigned work location. The record does not indicate the number of these contracts in which nurses agreed only to work additional hours in their home departments, as opposed to working in departments other than their home department. The record also fails to reflect the number of hospital nurses, if any, who agreed to work at a facility outside the hospital. Registered Nurses are not required to sign a PRN contract as a condition of work; however, once they sign a contract, they are expected to fulfill its terms. In addition, some nurses' employment relationship with the Employer may be exclusively on a PRN basis and others may occupy a full-time Registered Nurses position and also have a PRN contract. Finally, Registered Nurses might pick up extra work hours even if they have not signed a PRN contract.

¹⁹ In addition to the programs pursuant to which Registered Nurses may work on a temporary basis discussed above, nurses occasionally volunteer their services on a not-for-pay basis at such locations as the McAuley Clinic, which provides medical services to the indigent, and at community health fairs.

Registered Nurses may also be “floated” to other departments. For example, if the volume of work in one department is low and a nurse has skills in another area in which additional manpower is needed, the nurse may be loaned to the department in need of personnel. If the nurse refuses to float, s/he may be permitted to go home without pay on a “low census” status, or may be approved for accrued paid leave. Low census status is based upon a staffing matrix which the Employer maintains that reflects the number of employees necessary to meet patient needs at any point in time, based upon the patient census. The record contains no information concerning the frequency with which nurses are loaned to other departments, or the work locations from which and to which they were floated in the recent past.

Conclusions regarding the placement of the job classifications that the Employer contends should be included in the Registered Nurses unit will be discussed separately under each location in dispute.

2. The Breckenridge Medical Office Building

a. Statement of Facts

The Employer contends that the following job classifications located in the Breckenridge Medical Office Building should be included in the nonprofessional unit: the Registration Specialist; four Radiology Technician Assistants who work in the Breast and Diagnostic Center; and two Phlebotomists, (one who is employed in the Breast and Diagnostic Center and the other in the Women’s Pavilion). In addition, the Employer contends that the Registered Nurse who works in the Outpatient Behavioral Health Center located in the Breckenridge Medical Office Building should be included in the registered nurse unit. The Petitioner contends that no employees who are employed in the Breckenridge Building should be included in the petitioned units.

The Breckenridge site is a four-story medical office building which is connected to the hospital by a walkway. At issue are employees who work in three offices located within this building: a Breast and Diagnostic Center, an Outpatient Behavioral Health Center, and a blood drawing site located in the Women’s Pavilion. The Breast and Diagnostic Center offers laboratory, radiology, and cardiac diagnostic services for patients who are usually referred by independent physicians. The center’s Supervisor coordinates the various services offered by the center. Ultimate responsibility for the radiology area rests with the Employer’s Radiology Director, while the laboratory and cardiac diagnostic areas are within the purview of the Employer’s Laboratory Director. Employees working at the Breast and Diagnostic Center are interviewed and hired by the center’s Supervisor and by one of the above directors depending upon the area in which the job vacancy exists. Unlike the hospital, this diagnostic center is not open twenty-four hours, seven days a week. The record does not reflect, however, the days and hours of operation for the offices within the Breckenridge Building.

Registration Specialists are responsible for collecting information from patients, including insurance information; assisting patients in obtaining the highest level of insurance coverage possible; entering information in the Employer’s registration computer program; appropriately coding services for billing purposes; and obtaining necessary signatures on forms

according to established procedures. Most of the Registration Specialists work in the hospital, but there is one who works in the Breckenridge Building.²⁰ All Registration Specialists who work outside of the hospital nonetheless report indirectly to the hospital's Admitting Manager. Three supervisors who work under the Manager prepare work schedules for the Registration Specialists. The Admitting Manager's office is located in the hospital, but the record does not reflect the location of the supervisors' offices. The Registration Specialist who works in the Breast and Diagnostic Center works four ten-hour days each week. On the fifth day of the week the registration function at the Breast and Diagnostic Center is handled by a Registration Specialist employed at the hospital, who also substitutes for the Registration Specialist at the Breckenridge Building during lunch and break periods.

The four Radiology Technician Assistants (RTA) are responsible for preparing x-ray exam rooms, assisting Radiology Technologists in working with patients, ordering and logging exams into the computer system, and preparing and filing films. The job description for the RTA position states that the job requires a high school diploma and CPR certification, with previous experience as a Radiology Aide helpful, while previous experience as a Certified Nurse Assistant is preferred. As previously discussed, there are approximately 13 RTAs, four of whom are assigned to work in the Breckenridge site. The record does not indicate whether RTAs are permanently assigned to any one location, only that RTAs are rotated between the hospital and Breckenridge.

The two Phlebotomists who work in the Breckenridge Building collect blood samples from patients at draw sites located at the Breast and Diagnostic Center and the Women's Pavilion. They report to work on a daily basis to these locations. They do not report to the hospital. As previously discussed, the only time that employees from the outlying sites might work at the hospital, or the hospital Phlebotomists might work at the draw sites, is to substitute for an absent Phlebotomist, or if the hospital laboratory is short staffed. However, the record does not reflect the frequency of such substitutions.

The sole Registered Nurse who works in the Breckenridge Building works in the Outpatient Behavioral Health Center, which is a center that provides mental health counseling. This center is overseen by the Director of Behavioral Health Services, whose office is located in the hospital. There are less than five employees located at this center with no on-site supervisor. One physician, one Registered Nurse, and two clerical employees work in the Center. Of these five employees the Employer contends only the Registered Nurse should be included in the petitioned units. The record does not identify the job duties or work schedules of either the Registered Nurse or the clerical employees who work in this center located in the Breckenridge Building.

b. Analysis and Conclusion

Based upon the foregoing facts, it is concluded that insubstantial contact occurs between employees at the Breckenridge Building and employees located at the hospital. At the

²⁰ As indicated in footnote 5, the parties stipulated that the Registration Specialists located at the hospital should be included in the nonprofessional unit.

Breckenridge Building, for example, the Registration Specialist function is performed one day a week by a Registration Specialist who is otherwise employed at the hospital, and who also substitutes for the Breckenridge Registration Specialist during her lunch and break periods. There is no evidence, however, that the Breckenridge Registration Specialist performs any work at the hospital or has contact with any other hospital personnel. Similarly, there is no evidence that the Registered Nurse working at Breckenridge's Outpatient Behavioral Health Center has any interchange or contact with the Registered Nurses who work at the hospital. Although the Phlebotomists at Breckenridge may be assigned to work at the hospital and vice versa, the record fails to indicate the frequency with which this interchange may occur. In addition, there is no evidence that the Phlebotomists who work at the other outpatient draw sites have any regular contact or interchange with hospital Phlebotomists. Thus, it is concluded that the Employer failed to rebut the single-facility presumption with regard to the employees located at the Breckenridge Building. Accordingly, the classifications in dispute herein located at the Breckenridge location will not be included in the petitioned units.

In regard to the Radiology Technology Assistant classification, as concluded above in the hospital section, the RTAs will be allowed to vote subject to challenge in the nonprofessional unit because there was insufficient evidence from which to make an appropriate determination as to their placement.

3. The Wound Care Center

a. Statement of Facts

The Wound Care Center is located in a free-standing building across the street from the hospital on Triplett Street. The Employer contends that the five Registered Nurses and one Clinical Supervisor who work in the Wound Care Center should be included in the registered nurse unit. The Petitioner contends that only nurses who work in the hospital should be included within the petitioned unit.

The Wound Care Center is an outpatient facility for treating wounds. The center is wholly owned by the Employer but it is managed by the Praxis Corporation, a national wound treatment organization. The Director of the center is a Praxis employee; however, all other employees at this location are employed by the Employer (except for some self-employed physicians). The Wound Center's Director reports to the Employer's Vice-President of HealthPark. The Wound Center is currently located across from the hospital, but the Employer plans to move it to the HealthPark by the end of May, 2004. The center operates Monday through Friday from 8:00 a.m. to 4:30 p.m., but personnel are on call 24-hours a day, seven days a week. Its patients may be referred to the center by independent physicians, and by the hospital. No patients remain in the center overnight, and it exclusively offers outpatient services. The center's budget is a part of the Employer's total operational budget.

Although employed by the Employer, the Registered Nurses who work at the Wound Center, like all of its other employees, are interviewed, hired, and disciplined by the center's Director, a Praxis employee. She works closely with the Employer's Human Resources Department. The Director also prepares the work schedules for these employees. The job

descriptions for the Nurses at the Wound Center apparently are the same as for Registered Nurses at the other facilities. Wound Center Nurses may provide advice to Registered Nurses working in the hospital concerning the treatment of patients who have wounds which are not readily healing. The center also employs one Registered Nurse who occupies the Clinical Supervisor position. The record does not describe his/her job functions. As in other locations, Registered Nurses working at the Wound Center may also work at the hospital on a PRN basis, and vice-versa.

b. Analysis and Conclusion

Based upon the foregoing facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the Wound Care Center employees. The record reflects insufficient evidence of meaningful contact and interchange among the employees from the Wound Care Center and the hospital. For example, the Wound Care Center Registered Nurses are supervised by the Center's director, a Praxis employee, unlike nurses who work at the hospital. Accordingly, the classifications in dispute herein located at the Wound Care Center location will not be included in the petitioned units.

4. The Convenient Care and Occupational Medicine Center

a. Statement of Facts

The Convenient Care and Occupational Medicine Center is an urgent care walk-in clinic, which also offers occupational medicine services. This center is located at about one mile from the hospital. Testimony indicated, however, plans to move it to the Mercy Medical Plaza (which is part of the HealthPark), by the end of May, 2004.²¹ The Convenient Care Center is managed by a Clinical Services Manager and a Business Manager, both of whom report to the Employer's Vice President of HealthPark. The Convenient Care Center operates seven days a week from 8:00 a.m. to 8:00 p.m., and the occupational medicine area is open for business Monday to Friday from 8:00 a.m. to 4:30 p.m. The billing function for the center is performed by the outpatient billing department of the hospital.

The center employs approximately 22 employees, 15 in the convenient care area and seven in the work health/occupational medicine area. Physicians, Registered Nurses, Licensed Practical Nurses, Registration Specialists, a Radiology Technician, an Outpatient Billing Specialist, a Receptionist and secretarial staff work in the center.

The Employer contends that the Registered Nurses who work at its Convenient Care and Occupational Medicine Center should be included in the registered nurse unit. Additionally, the Employer asserts that Registration Specialists employed in the Center should be included in the nonprofessional unit. There are five or six Registered Nurses and an undetermined number of

²¹ As mentioned previously, the HealthPark is located approximately 1.8 miles from the hospital.

Registration Specialists employed at this Center. The Petitioner contends that since none of these employees work in the hospital, they should not be appropriately included in the units.²²

Registered Nurses work in both the Occupational Medicine and the Convenient Care areas. These nurses sometimes work in the emergency room and in the pediatrics department of the hospital on a PRN basis, although the frequency of such hospital work is not known. Approximately five to six Registered Nurses work in this location.²³

b. Analysis and Conclusion

Based upon the foregoing facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the Convenient Care and Occupational Medicine Center employees. Although the Center is geographically close to the hospital, the record did not reflect evidence as to the frequency with which Registered Nurses and Registration Specialists in the Center had contact or interchange, if any, with hospital employees. Accordingly, the classifications in dispute herein located at the Convenient Care and Occupational Medicine Center location will not be included in the petitioned units.

5. The McAuley Clinic

a. Statement of Facts

The McAuley Clinic is a free clinic for indigent patients which provides medical care and medicines for patients who cannot afford to pay for them. The clinic is located on Walnut Street, although its distance from the hospital is not known. The clinic is overseen by the Employer's Director of Community Health and Outpatient Clinical Services, who reports to the Vice President of the HealthPark. This Vice President in turn reports to the Senior Vice President of Operations. There is a physician, nurses (both those who work on a voluntary and paid basis), a Clinic Coordinator, a Receptionist and a technician working at this location. The clinic is open Monday through Friday, from 8:00 a.m. to 4:30 p.m., and occasionally in the evenings and Saturdays. The clinic's Director has her office at the HealthPark rather than the Clinic. The Clinic Coordinator, a Registered Nurse, is the highest-ranking staff member on site. All employees of the clinic, however, are supervised by its Director.

The Employer contends that the Registered Nurses who work at the McAuley Clinic should be included in the registered nurse unit. There are approximately two Registered Nurses at this clinic, one of whom occupies the position of Clinic Coordinator, and the other of whom occupies the position of Registered Nurse (in Department 8332).²⁴ The Petitioner contends that

²² The Petitioner contends in its brief that there are Occupational Therapy Assistants at the Convenient Care Center, however, the record does not support this contention.

²³ There is some testimonial conflict concerning the precise number of nurses who work at this location.

these employees should be excluded from the unit on the basis of location. In addition, the Petitioner contends that the Coordinator should be excluded from the unit because she is a statutory supervisor. The Employer also asserts that the Assistance Program Technician working at the Clinic should be included in the nonprofessional unit.

The Clinic Coordinator's job description states that this position is responsible for coordinating the services offered at the clinic; monitoring needed orientation and education of staff and volunteers; and providing nursing care. The position requires an associate degree in Nursing, with a "BSN" degree preferred, three years of nursing experience, a nursing license, and a current nurse's registration with the Commonwealth of Kentucky. According to the clinic's Director, the Coordinator is responsible for scheduling the work hours of volunteers within the clinic's hours of operation. The clinic's Receptionist and Technician report to the Coordinator, but the Coordinator cannot approve overtime or grant time off to these employees. The Coordinator provides input for these employees' evaluations but the evaluations are issued by the Director. The Coordinator also may make recommendations to the Director concerning hiring and firing decisions, and work schedule changes. It is not known, however, what weight is given to these recommendations.

The Registered Nurse in Department 8332 is employed on a full-time basis at the clinic. There is no job description in the record for the Registered Nurse in Department 8332. However, there are numerous job descriptions for Registered Nurses in other areas, all of which have similar job requirements, and it is reasonable to conclude that the nurse in Department 8332 performs similar functions and requirements.

The Assistance Program Technician's job description states that this person is responsible for assessing patients' financial needs and their eligibility for patient assistance programs. This employee reports to the clinic's Coordinator. She has no regular contact with hospital personnel.

b. Analysis and Conclusion

Based upon the above facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the McAuley Clinic employees. The record indicates that the employees report to the Clinic to work, and there is no evidence that there is substantial, if any, interchange between employees of the Clinic and hospital employees. Additionally, the Clinic is managed by a Director of Community Health who also supervises a number of departments, all of which are located outside of the hospital.²⁴ Accordingly, the classifications in dispute herein located at the McAuley Clinic location will not be included in the petitioned units.

²⁴ The Employer's proposed registered nurse unit includes one nurse in the position of RN/Dismas Charities. However, the evidence indicates that this position has been eliminated and that the nurse who had occupied the position was transferred to the position of "Registered Nurse in Department 8332."

²⁵ Since it is concluded that a unit comprised of Registered Nurses employed at the hospital is appropriate and need not include nurses employed at outlying facilities, it is not necessary to decide the Petitioner's contention that the Clinic Coordinator (a Registered Nurse) employed at the Clinic should also be excluded on grounds that she is a statutory supervisor.

6. The Outpatient Addiction Services Center

a. Statement of Facts

As its name connotes, the Outpatient Addiction Services Center is an outpatient clinic for substance abuse treatment. The center is located approximately 1.4 miles from the hospital and is within the Behavioral Health Services Department, which is supervised by the Director of Behavioral Health Services. The Center employs a Mental Health Technician and a Social Worker. The parties stipulated that the Mental Health Technicians who work in the hospital are appropriately included in the nonprofessional unit (see footnote 5). The Employer contends that the Technician who works at the Outpatient Center should also be included in the unit. Only one job description for the Mental Health Technician position was placed into the record, and it indicates that the position exists in the hospital's psychiatric unit. There is no testimony regarding the job duties or responsibilities of this position at the Center. Therefore, the functions of this position are unknown. Nor is there any evidence of employee interchange between the Mental Health Technician at the Outpatient Center and the technicians who work in the hospital. In addition, neither party contends that the Social Worker should be included in any of the petitioned units.

b. Analysis and Conclusion

Based upon the above facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the Outpatient Addiction Services Center employees. In regard to the Mental Health Technician who works in the Outpatient Addiction Services Center, there is no evidence of employee interchange between this classification and the members of the nonprofessional unit who work in the hospital. Accordingly, the employees in the classification in dispute herein located at the Outpatient Addiction Services Center location will not be included in the petitioned units.

7. The Mercy Medical Plaza

a. The Foundation for Health

Both the Employer's Foundation and its Home Health Care Department are in the Mercy Medical Plaza office building located in the HealthPark, about 1.8 miles from the hospital. The Employer contends that employees of its Foundation for Health should be included in the nonprofessional unit. In question are two employees who occupy the positions of Grants and Research Coordinator and Fund Development Assistant. The Petitioner contends these positions should not be included in the nonprofessional unit since they are not located in the hospital, and in the case of the Coordinator, on the basis that she is a statutory supervisor.

The Foundation is an entity operated by the Employer whose objective is to raise money to fund services and programs for patients and for facilities of the Employer. The Foundation is separately incorporated, with its own articles of incorporation. It has a nineteen-member Board of Trustees whose members are nominated by a nominating committee composed of members of

the Board of Trustees, and who are ultimately appointed by the Employer's Board of Directors. Two of the Foundation's Trustees are also members of the Employer's Board of Directors. The Foundation's Executive Director reports both to the Employer's President/CEO and to the Employer's Board of Directors. The Foundation also has a Development Manager. The Grants and Research Coordinator and the Fund Development Assistant report to this Manager and their offices are located at the Foundation. As mentioned previously, the Foundation is located in the Mercy Medical Plaza building, which also houses private medical offices, and is part of the HealthPark.

The Grants and Research Coordinator's job description states that this position is responsible for performing research regarding donor prospects and the availability of grant funds from public and private sources. This person also researches, writes, and submits grant applications. The job requires an associate degree, with a baccalaureate degree preferred, and a high level of written communication skills is required. In addition, the job requires this person to be a member of the American Prospect Research Association (APRA), a professional association that offers training for prospect researchers nationally. The Coordinator meets with people at the hospital and at other Employer locations, such as the McAuley Clinic, when she is in the process of preparing a grant proposal. She has written grant proposals for departments within the hospital, and for the McAuley Clinic. Grant proposals must be approved by the Foundation's Executive Director and/or the Development Manager before submission to a prospective grantor.

The Fund Development Assistant's job description states that this position is responsible for managing the Foundation's corporate records and correspondence, and for posting, depositing, and recognizing all donations received. This position also coordinates meetings and takes the minutes of the Board of Trustees' meetings as well as meetings of their various committees. In addition, this person coordinates the preparation of monthly financial reports and reconciles the monthly income and expenses for the Foundation. An associate degree in business or a related field is required, with three to five years of secretarial experience, and accounting experience is preferred. According to record testimony, this person is also currently responsible for keeping the Employer's "Baby Web" which is an on-line program to view newborns born at the hospital. The Fund Development Assistant visits the hospital as part of her financial and accounting duties; however, the record does not indicate the frequency of such visits.

b. Home Care Services

The Employer's Home Care Services Department is also located in the Mercy Medical Plaza at the HealthPark. Home Care Services offers skilled nursing, physical therapy, occupational therapy, social services, and personal care on a part-time basis to patients in their homes. This department falls within the auspices of the Director of Extended Care Services, whose office is located in the hospital. There is an on-site Home Care Manager who has hiring, firing, and discipline authority over employees at this site. There are Registered Nurses, a secretary, a Performance Improvement Specialist, a Lifeline Coordinator, physical therapists, occupational therapists, speech therapists, certified nurse's assistants, and social workers employed in this center.

The Employer contends that the Registered Nurses who work in Home Care Services (Department 7150) and the PI (Performance Improvement) Specialist should be included in the registered nurse unit. There are approximately fourteen Registered Nurses and one PI Specialist who work in Home Care Services Department. The Employer also contends that the Life Line Coordinator should be included in the nonprofessional unit. There is one employee in this position. The Petitioner contends that employees working at this location should not be included in any of its petitioned units. The Employer does not contend that persons in any other positions at this site should be included in any of the petitioned units.

The Registered Nurses provide wound care, IV therapy, education, and other types of medical services to patients in their homes. They are assigned to work in this department and receive their work assignments and supplies from Home Care. There are twelve daytime Registered Nurses, one evening nurse, and one weekend option nurse. Although a witness at hearing referred to these Registered Nurses as "case managers," they have no relation with the case managers employed in the hospital and their job description depicts them as Registered Nurses.

The PI Specialist is a Registered Nurse who is responsible for planning, implementing, and evaluating the Home Care's performance improvement activities; assisting with monthly auditing charts to ensure correct billing; and providing patient care as assigned. This job requires a nursing degree, a Registered Nurse license, and two years of experience as a staff Registered Nurse. The job description states that "QA Specialists"²⁶ report to this position, although the record contains no evidence that this assertion is correct. The incumbent employee in this position sees an average of six patients per month. This employee reviews Medicare forms for billing purposes; gathers statistical information; performs trends analyses; and manages patient information obtained from monitors placed in patient's homes.

The Lifeline Coordinator provides emergency response services for adult and geriatric age groups.²⁷ This employee responds to phone calls relating to the Lifeline Service and interacts with patient and family members; provides for the installation of the Lifeline communicator at patient's homes; and provides instructions on its use. This position is also responsible for billing patients on a monthly basis for the Lifeline services. This job requires a high school degree with some experience in behavioral science or health care. The record does not reflect the work hours of this employee, nor the extent, if any, of interchange between the Lifeline Coordinator and members of nonprofessional unit who are employed in the hospital.

²⁶ The record does not explain what "QA" means.

²⁷ The record does not clearly describe the functions performed by the Lifeline program. It appears from this position's job description that this is a private (paid-for) home monitoring program for patients of Home Care Services.

c. Analysis and Conclusions

Based upon the above facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the employees located at the Mercy Medical Plaza, including the Foundation and the Home Care Services employees. The Employer's Foundation for Health is separately incorporated with its own Board of Trustees. It does not offer any type of clinical service, nor do either of the job classifications in contention at this location exist in the hospital. Its mission is to raise funds for the Employer's medical programs. The only contact the record indicates that the Grants and Research Coordinator may have with hospital personnel, is when s/he meets with hospital staff to prepare a grant proposal. It is unknown, however, whether the staff with whom s/he meets, are members of any of the three units found appropriate herein. The employees of the Foundation do not share any common direct supervision with hospital personnel; Foundation employees are supervised by the Fund Development Manager. There is no evidence of employee interchange between the Foundation's employees and the hospital's employees.²⁸

The Employer contends that the Registered Nurses and Performance Improvement Specialist who work in its Home Care Services Department located in the Mercy Plaza should be included within the registered nurse unit, and that its Life Line Coordinator should be included in the nonprofessional unit. All employees in this department, however, have different direct supervision than members of the petitioned units who work in the hospital, and the Home Care Manager possesses the authority to hire, fire and discipline employees who work in this department. There is no evidence that employees of this Department have any contact or interchange with employees who work in the hospital, with the possible exception of Registered Nurses who may work at either location on a PRN basis. However, there is no evidence actually indicating whether any Home Care Services nurses work in the hospital on such a basis, or vice versa. Accordingly, the classification in dispute herein located at the Mercy Medical Plaza location will not be included in the petitioned units.

8. The HealthPark

a. Statement of Facts

i. Background Facts

The HealthPark is an 110,000 square feet complex of buildings owned by the Employer and located about 1.8 miles from the hospital. Included within the HealthPark, as previously discussed, are the Mercy Medical Plaza, plus a variety of other buildings. Among the Employer's facilities located in the Park are a Health Resource Center, a Diabetes Resource

²⁸ Since it is concluded herein that employees of the Foundation shall not be included within the petitioned units, it is unnecessary to determine whether, as alleged by the Petitioner, the Foundation's Grants and Research Coordinator should also be excluded from the nonprofessional unit on grounds that s/he is a statutory supervisor.

Center, an Outpatient Diagnostic Center (which houses a draw site), an Outpatient Occupational Therapy Center, a Radiology Department, a Community Health Services Center, a Fitness Center, a Cafeteria, and a Chapel. The Vice President who oversees the McAuley Clinic, the Convenient Care Center, and the Wound Care Center, also oversees all services offered in the HealthPark. The Vice President's office is located in the Park. Also located in the Park in the Health Resource Center is the office of the Director of Community Health and Outpatient Clinical Services. This Director reports to the Vice President and also apparently oversees the Convenient Care Center and the McAuley Clinic, in addition to the Outpatient Diagnostic Center, and Community Health Services. Community Health Services encompasses several areas, including the Golden Partners program, Health Resource Center, Diabetes Resource Center, Outpatient Nutrition, the Employee Assistance Program (EAP), and Counseling Services. Life Spring is a support group program for breast cancer patients that meets at the Chapel and is also coordinated through Community Health.

The Employer contends that employees in the position of Maintenance/Security located at the HealthPark should be included in the skilled maintenance unit. There are approximately four employees in this position. The Employer also contends that the positions of Diabetes Educator, Health Promotion Specialist, and Registered Nurse located at the HealthPark should be included in the Registered Nurses unit. There are at least six Registered Nurses employed in these classifications. In addition, the Employer asserts that the positions of Aquatic Exercise Instructor, Child Care Team Member, Clerical/ Scheduler/ Registration, Dance Instructor, Fitness Specialist Staff, Food Service Assistant, Health and Fitness Instructor, HealthPark Reception Team Member, Housekeepers, Lifeguard, Locker Room Attendant, Membership Service Staff, Membership Service Assistant, Occupational Therapy Assistant, Radiology Technician Assistants, Receptionist, Registration Specialist, Department Secretary, Van Driver, and Housekeeping/Maintenance Trainee, and Clerical Worker located at the HealthPark should be included in the nonprofessional unit. The Petitioner contends that all employees working at the HealthPark should be excluded from the petitioned for units on grounds that they lack a community of interest with employees who work in the hospital. In addition, the Petitioner objects to the inclusion of the Health and Fitness Instructors, Dance Instructor and Aquatic Instructors on grounds that these positions are more appropriately characterized as technical. For the reasons discussed below, it is concluded that the Employer has failed to rebut the single-facility presumption, and therefore employees located in the HealthPark shall not be included in the petitioned units.

ii. The Health Resource Center

The Health Resource Center (Department 8022) provides clinical and educational programs, such as CPR training, multiple sclerosis clinics, and the school nurse program. Approximately eight Registered Nurses work in this Center,²⁹ three Health Promotion

²⁹ Although there is testimonial reference to eight Registered Nurses being employed at the Resource Center, it appears that the witness may have been referring to the three Health Promotion Specialists and the three Diabetes Educators (who work in the Diabetes Resource Center), all of whom are registered nurses, since no other mention is made in the record of

Specialists, one Secretary, and two Receptionists. It is unknown whether the Center is a free-standing building, or in an office located in one of the buildings in the Park.

The Health Promotion Specialists develop, implement and evaluate community health and education programs for employees, corporate clients, and community members. They provide services at health fairs and screening activities offered to the community. There are six Health Promotion Specialists, of whom three are Registered Nurses. The job description for this position requires either that an applicant be actively pursuing a degree or possess a four-year baccalaureate degree in any one of various fields: a Registered Nurse degree, or a degree in business, marketing, education or in a health-related field. It also requires at least three years of clinical experience. The Health Promotion Specialists who are Registered Nurses are responsible for conducting diabetes and stroke screenings, taking blood pressure, and offering smoke cessation classes. They may also respond to “STAT” (emergency) calls from within the HealthPark in the event a client suffers a medical emergency while at the Park. The record indicates two STAT calls may occur per week. The non-nurse Health Promotion Specialists assist in the distribution of educational pamphlets; handle paperwork and registration; and assist with community events. Another activity coordinated by the Health Promotion Specialists and employee volunteers are community health fairs at the hospital for employees as part of the Employer’s corporate wellness program. A health fair is conducted at the hospital about once every quarter.

The Golden Partners program is available for senior citizens by the Health Resource Center. Golden Partners currently has approximately 4,000 members. One of the Health Promotion Specialists who is a Registered Nurse works in this program. The Life Spring program is also a program offered by the Center. This program is coordinated by a Health Promotion Specialist who receives assistance from other Health Promotion Specialists.

The Receptionists at the Health Resource Center perform day-to-day administrative and reception functions at the Center. There are approximately three employees in this position, one full-time, one part-time and one on PRN status. These employees report to the Director of Community Health and Outpatient Clinical Services. The record indicates that the Receptionists may have contact with hospital personnel weekly to provide information, but more specific information about the nature of this contact is not provided. The Health Resource Center also has a Department Secretary who reports to the Director as well. The record does not reflect the work hours of the Receptionists or of the Department Secretary.

iii. The Diabetes Resource Center

The Diabetes Resource Center located at the HealthPark is staffed by four Diabetes Educators. Three of the Diabetes Educators are Registered Nurses and one is a Registered Dietician.³⁰ According to the job description for the Diabetes Educator position, an associate

additional eight Registered Nurses working at the Center, in addition to the Health Promotion Specialists and Diabetes Educators.

³⁰ Neither party contends that the Dietitian should be included in any of the petitioned units.

degree is required, with a baccalaureate degree in nursing preferred. In addition, a minimum of five years of clinical nursing experience is required. The description further indicates that a certificate in Diabetes Education is required "upon eligibility." The Diabetes Educators assess, plan, implement and evaluate educational programs for diabetic patients, including assisting them with general health management and nutrition. They visit patients in the hospital pursuant to the request of a patient's physician. They also interact with the Wound Care Center to provide foot screenings and patient consultations. At times Diabetes Educators see patients at the Wound Care Center, but more often patients are sent from the Center to the Diabetes Resource Center for information and services. The nature and frequency of contact the Educators may have with members of the registered nurse unit who work at the hospital is not indicated in the record.

iv. The Outpatient Diagnostic Center

The Outpatient Diagnostic Center provides radiology services at the HealthPark. There is an onsite Radiology Supervisor who reports to the Director of Community Health and Clinical Services. There are four to six Registration Specialists located at this center who are directly supervised by the Radiology Supervisor. They are also indirectly supervised by the Admitting Manager whose office is in the hospital. These employees perform the same functions as the Registration Specialists at other locations. They are permanently assigned to work at the Outpatient Diagnostic Center, but may be assigned to work at the hospital to substitute for absent Registration Specialists who work at the hospital. The record does not reflect the frequency with which such interchange occurs, however. Also, any questions related to billing and coding for registration purposes are directed to personnel in the registration department at the hospital.

There is a laboratory draw site located in the Outpatient Diagnostic Center where the Laboratory Assistant/Phlebotomist work. The functions of the Phlebotomist classification have been previously discussed above, under the discussion of the Breckenridge facility. As in the discussion regarding Phlebotomists located at Breckenridge, the record did not indicate the frequency of interchange or contact that the Phlebotomists located at the Outpatient Diagnostic Center might have, if any, with their counterparts located at the hospital.

A Radiology Department is also located in the Outpatient Diagnostic Center. A Clerical Worker position exists in this department and the individual in this position is responsible for clerical x-ray functions, which include reports, film retrieval, and filing. The job requires a high school degree. The same position exists in a number of departments within the hospital. The record does not reflect the number of Clerical Workers who are employed at HealthPark. The record lacks any testimony or additional information concerning this position, and there is no indication whether any Clerical Worker employed at the HealthPark has any contact or interchange with those who work in the hospital.

v. Outpatient Occupational Therapy Center

Also located in HealthPark is an Outpatient Occupational Therapy Center. Occupational Therapy Assistants may work at the Center occasionally. The Employer contends that Occupational Therapy Assistants located at the HealthPark should be included in the nonprofessional unit while the Petitioner contends that this classification should be excluded

from the nonprofessional unit because it is more appropriately a technical position, and in the case of the employees located at the HealthPark, also on the basis of location. Since it is concluded that this classification shall be excluded from the nonprofessional unit on the basis that it is more appropriately a technical position, it will be fully discussed under the section regarding disputed job classifications in the hospital.

vi. The Fitness Center

The Fitness Center located in the HealthPark is part of Cooperative Health Services, a wholly-owned subsidiary of the Employer. Its membership is available for patients and the general public. The Fitness Center currently has approximately 4,500 members. There is an approximate \$150 enrollment fee and a monthly fee of \$40 - \$50 that varies depending upon whether it is an individual, family or physician referred (therapeutic) membership.³¹ It also offers corporate membership rates. A Child Care Center is located within the Fitness Center and provides child care services to anyone visiting the HealthPark for a fee. The Fitness Center maintains an Action Center located in the hospital which houses health and fitness equipment, such as treadmills and weights, so that employees located at the hospital can exercise. However, no Fitness Center employees staff this Action Center.

There are several managerial staff members at the Fitness Center, including a Manager of Health and Fitness. The Fitness Specialists, the Health and Fitness Instructors, and the Dance Instructor report to her. There are approximately 12 Fitness Specialists and 14 Health and Fitness Instructors. There is one Dance Instructor. The Fitness Specialists perform fitness tests and provide personal training to clients. The job requires a baccalaureate degree in health education, exercise physiology or a related field, with a minimum of two years of experience. A certification from the American College of Sports Medicine (ACSM) is preferred. One of the employees who currently occupies this position works part-time in the hospital with rehabilitation patients. The Fitness Specialists may upon occasion provide special workshops such as stress reduction, flexibility, and strength classes, at the hospital. They will also go to the hospital to promote fitness classes or after-birth classes to pregnant patients. However, these classes are held at the Fitness Center. The Fitness Specialists also visit the hospital to inspect the condition of the equipment in the Action Center. One of the Fitness Specialists is involved in developing exercise programs for cancer patients in the Life Spring program. Pulmonary and cardiac rehabilitation patients from the hospital are encouraged to join the Fitness Center and enroll in an exercise class developed especially for them.

The Health and Fitness Instructors and the Dance Instructor teach group and individual classes, and maintain aerobics programs. These two positions require a high school degree and a certification from a recognized organization in exercise physiology, aquatics, aerobics dance or other applicable certification. One of the current instructors works part-time as a nurse in the

³¹ Although the Employer contends that the Fitness Center offers “medically based” programs and services, members do not have to have a medical need or physician referral to join the Center.

hospital. Neither the Fitness Specialists nor the Health and Fitness Instructors have frequent interaction with the hospital in conjunction with their job duties.

Other positions and employees working at the Fitness Center are two Aquatic Exercise Instructors, two Lifeguards, four Locker Room Attendants, one Membership Services Staff and one Membership Services Assistant. All of these employees work exclusively at the Fitness Center. The Fitness Center has a swimming pool where the Aquatic Exercise Instructors and the Lifeguards work. The Aquatic Exercise Instructors are required to possess a certification from a recognized aquatic exercise organization and the Lifeguards are required to have a current lifeguard certification along with CPR and First Aid training. The Locker Room Attendants are responsible for the day-to-day maintenance of the Fitness Center's locker room, including ensuring that adequate towels and other supplies are available. The position requires completion of sophomore year of high school. The Membership Services Staff provides customer service to clients and contributes to the new member sales effort and membership retention. This position requires an associate degree in business with a baccalaureate degree preferred. The Membership Services Assistant provides customer service and performs administrative and reception functions at the Fitness Center. This position requires a high school degree with one year clerical experience.

The Fitness Center also has a child care center. The child care center employs four Child Care Team Members, one full-time and three part-time, who plan child care programs and care for the children. This position requires a high school degree with an associate degree in the area of child care preferred, but not required. A minimum of two years of experience in a child care facility is also required. There is no evidence that Child Care Team Members have any contact or interchange with employees who work at the hospital.

vii. The Cafeteria

The HealthPark houses a cafeteria which is open to employees and members of the general public who visit facilities at the HealthPark. There are four Food Service Assistants employed in the Café. These employees prepare and serve the Café's food, and they report to the Café Supervisor. The record does not contain any other evidence concerning this classification.

viii. The Chapel

The record does not indicate whether any members of the prospective units work in the Chapel. The record only indicates that some support groups, such as the Life Spring Program, meet at the Chapel. As discussed above, the Life Spring Program is coordinated by a Health Promotion Specialist, whose job classification was fully discussed above under the Health Resource Center facts. Thus, the record does not reflect that any job classification in dispute is located at the Chapel.

ix. Other HealthPark Departments

1. Maintenance

As described above, the HealthPark encompasses several interconnected buildings. Some of the employees at issue are employed in one of the various facilities or departments within these buildings, but some report directly to the HealthPark authority. Two of the job classifications in dispute fall within the HealthPark maintenance department: the Maintenance/Security Officer position and the Housekeeper/Maintenance Trainee position. The Employer contends that the Maintenance/Security Officers should be included in the skilled maintenance unit, and that the Housekeeper/Maintenance Trainee should be included in the nonprofessional unit. The Maintenance/Security and Housekeeper/Maintenance Trainee employees work exclusively at the HealthPark. They are directly supervised by the HealthPark Maintenance Team Leader, and indirectly by the Director of Facilities.

Between 90% and 95% of the duties of the Maintenance/Security position relate to maintenance, while 10% to 5% relate to security. The four employees currently in this classification perform minor heating and air-conditioning maintenance, and minor electrical, mechanical, carpentry, painting, and plumbing tasks at all the facilities at the HealthPark except for Mercy Plaza, whose maintenance is outsourced. No licensure of any kind is required for employment in this position; only a high school diploma is required. The security aspect of the Maintenance/Security position involves maintaining order on the basketball court at the Fitness Center and locking the buildings at night. The Maintenance/Security employees are not armed and are not bonded. Their uniforms consist of khaki pants and black shirts that state "Maintenance/Security." There is a night shift, from 5:00 p.m. to 1:30 a.m., and the employee who works this shift performs routine security rounds of the building (but not the parking lots), and performs minor equipment maintenance. The Maintenance/Security personnel escort unauthorized people out of the HealthPark, and they undergo annual security training as do security personnel employed at the hospital.

There is currently one person employed as a Housekeeper/Maintenance Trainee at the HealthPark who is a student at the Owensboro Community Vocational School who performs housekeeping functions and who is learning to perform some maintenance functions. According to the Manager of Facility Services, the individual spends approximately 80% of his workweek performing housekeeping chores, and 20% learning and performing maintenance tasks.

2. Housekeeping

The parties stipulated that the Housekeeper position should be included within the nonprofessional unit, but dispute whether unit members should be limited only to those Housekeepers who work at the hospital. The record indicates the Employer employs a total of approximately 88 Housekeepers, five of whom work at the HealthPark. The record contains no additional information concerning the duties performed by these individuals or their terms and

conditions of employment. Nor is there any evidence whether there exists any employee interchange or contact between Housekeepers employed at the hospital and HealthPark.

3. Clerical/Scheduling/Registration

The three individuals who occupy the Clerical/Scheduling/Registration position report to a Director of Therapeutic Services. Although this Director has dual offices, one at the hospital and one at HealthPark, the three disputed clerks work exclusively at the HealthPark. The record does not identify in which of the HealthPark buildings each employee works. Their duties are to process the admittance, referral, care and discharge of patients at the HealthPark. One of the clerks is employed on a full-time basis, while the other two are employed part-time. One of these part-time employees also works as a part-time Certified Nurse's Assistant (CNA) at the hospital, but there is no evidence that her work as a CNA is required by her clerical position. The secretary to the Director of Therapeutic Services, whose office is located in the hospital, sometimes substitutes in the absence of a Clerical/Scheduling/Registration clerk.

4. HealthPark Reception

There are eight individuals who occupy the position of HealthPark Reception Team Member. They report to the Manager of Membership Services and are responsible for providing customer service, and performing the day-to-day administrative and reception functions at the HealthPark. The record does not identify in which buildings these employees work other than at the HealthPark, nor does it indicate any other evidence concerning their job functions. The Employer failed to prove nor does the record contain any information concerning whether these employees have any contact or interchange with members of the petitioned units who work in the hospital.

5. Department Secretary

The parties stipulated that the position of Department Secretary should be included within the nonprofessional unit, but dispute whether the unit should include employees in this classification who work outside of the hospital. The record does not indicate the number of employees who are employed as departmental secretaries at the HealthPark, or the offices in which they work. However, the record indicates that one of the 11 job descriptions for departmental secretaries received into evidence at hearing exists at the HealthPark; notably, a Department Secretary (Education) for Department 8375 (Patient Services Education). This job description indicates that the Secretary manages the clerical functions related to Patient Services Education. This includes the scheduling of meetings and appointments, the preparation of continuing education reports, and the maintenance of "CEU" records or the Kentucky Board of Nursing. Minimum qualifications include a high school diploma although an associate degree in secretarial/business related field is preferred. The Employer failed to show nor does the record indicate whether Departmental Secretaries who are employed at the HealthPark have any work-related contact with other potential members of the nonprofessional unit who work in the hospital.

6. Van Driver

The Employer contends that the Van Driver position be included in the nonprofessional unit. Currently there is one person in this classification who is located at the HealthPark. The Van Driver transports patients, clients, materials and supplies among the Employer's facilities. The job description for this position states that the driver is responsible for driving the Employer's Golden Partners van service. The van is physically located at the HealthPark. The driver transports mail twice a day from the hospital to other locations and goes to the McAuley Clinic once a week. He also transports people in the community to their physician's offices. He makes approximately five trips a day transporting people. During the last three years, he may have transported a patient to the hospital once.

b. Analysis and Conclusion

Based upon the above facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the employees located in the HealthPark. The record reflects insufficient evidence of employee interchange, contact, and common supervision between the employees located at the HealthPark and employees located at the hospital. The HealthPark has its own management and supervisory team, and functions autonomously from the hospital's operations. The evidence that some HealthPark employees may work at the hospital on a PRN basis, or visit diabetic patients in the hospital, or substitute for absent Registration Specialists at the hospital, lacks sufficient specificity to determine with any degree of accuracy the frequency with which contact or interchange occurs between HealthPark and hospital employees. Job classifications such as Health and Fitness Instructor, Fitness Specialist, Dance Instructor, Aquatic Exercise Instructor, Lifeguard, Locker Room Attendant, Membership Services Staff, and Membership Services Assistant exist only in the HealthPark and have no counterparts in the hospital. The work functions performed and skills possessed by these employees differ substantially from employees in the hospital who provide services related directly or indirectly to patient care. In addition, there is no evidence that these employees have any contact with hospital staff in the normal course of their work life.

The Maintenance/Security and Maintenance Trainee Employees who work at the HealthPark work exclusively at the Park and are directly supervised by a HealthPark Maintenance Team Leader. There is no evidence that persons in either of these positions have any contact or interchange with members of the skilled maintenance unit or with members of the registered nurse or nonprofessional unit who work in the hospital. Although members of the skilled maintenance unit who the parties stipulated to be included in the unit perform work throughout the Employer's network of buildings, it is not inconsistent to include only them in the single-facility unit. Their "home base" is the hospital. None of the stipulated skilled maintenance employees are permanently assigned to facilities located outside the hospital. There is no evidence that stipulated skilled maintenance employees have any substantial or meaningful contact with employees who work in the outlying facilities, while they perform work in these facilities. Therefore, it is unlikely that members of the skilled maintenance unit have developed a camaraderie or community of interest with employees who work in the outlying facilities.

Regarding the Housekeepers who work at the HealthPark, the record fails to demonstrate that these Housekeepers share common supervision with those employed in the hospital, work similar hours, or experience any contact with hospital staff.

Although the Van Driver stationed at the HealthPark transports mail twice a day between the hospital and Park, and transports patients, material and supplies among the Employer's facilities, the degree of contact s/he may experience with members of the nonprofessional unit who work in the hospital, while performing these duties is unknown.

Based upon the foregoing, it is concluded that the Employer failed to rebut the single-facility presumption as to the employees located in the HealthPark, and thus, employees located in the HealthPark shall not be included in the petitioned units.

9. Other Locations

a. The Parrish Medical Plaza

The Parrish Medical Plaza is a medical office building which is separated by a parking lot from the hospital. The Employer contends that the one Parking Attendant who works at the Parrish Medical Plaza's parking lot should be included in the nonprofessional unit. The Petitioner contends that since this employee does not work in the hospital, he should be excluded from the unit. The Parking Attendant reports to the Medical Plaza's Property Manager who in turn reports to the Employer's Director of Facilities. The parking lot services patients and customers visiting the Parrish Medical Plaza. The record does not identify the Attendant's work hours or whether s/he has any interaction with employees who work in the hospital.

b. The Community Health Network

The Community Health Network is a joint venture between the Employer and a physician's association and it provides networks of healthcare providers to businesses for insurance contract purposes. The Network appears to offer insurance plans to members of the public. It is located on Fourth and Frederica Street, but it is unknown how far this location is from the hospital. The Employer contends that the position of Secretary who works for the Community Health Network should be included in the nonprofessional unit. The Petitioner contends to the contrary. There is currently one employee in this position.

The record does not identify the job duties or minimum qualifications required for hire into the Secretary position at the Community Health Network. The Secretary's work schedule is not known; nor did the Employer proffer evidence that the individual has any contact or interchange with members of the nonprofessional unit who work in the hospital. The record does not reflect whether the Employer operates any other business in the building which houses the Community Health Network.

c. Analysis and Conclusion

Based upon the above facts, it is concluded that the Employer has failed to rebut the single-facility presumption as to the employees located in the Parrish Medical Plaza and the Community Health Network. The record reflected that the Parking Attendant who works in the Parrish Medical Plaza's parking lot has different direct supervision than nonprofessional employees who work in the hospital, and there is no evidence that this employee has any contact or interchange with members of the nonprofessional unit who work in the hospital. Similarly, there is no evidence that the Secretary employed in the Community Health Network shares any common supervision, work hours, contact, or interchange with members of the nonprofessional unit who work in the hospital. Like the Foundation for Health, the Health Network does not appear to provide any clinical services to the public, and is also distinguishable from hospital personnel in this respect. Accordingly, the classifications in dispute herein located at the Parrish Medical Plaza and the Community Health Network locations will not be included in the petitioned units.

C. Single-Facility Issue Analysis and Conclusion

As concluded above, the Employer failed to rebut the single-facility presumption as to the employees located in the non-hospital locations in dispute. In the present case, there is no prior bargaining history. Employee wages, benefits and other terms of employment are established centrally by the Employer's Human Resources department. Common indirect supervision exists over most employees³² in the person of the Vice President of Organizational Development. Other factors, however, such as separate local supervision; the relative autonomy of that supervision; the lack of meaningful contact and interchange among employees of the various facilities; and the geographic distance between facilities, fail to establish that the employees of the outlying facilities have become so effectively merged with employees of the hospital, that hospital employees have lost their separate identity, J & L Plate, Inc., 310 NLRB 429 (1993); Foodland of Ravenswood., 323 NLRB 665 (1997). Additionally, the evidence fails to show that a bargaining unit limited to the hospital would create "an increased risk of work disruption or other adverse consequence" for the outlying facilities or the hospital.

In regard to the common supervision factor under Manor Healthcare, in this case the supervisors at each facility enjoy autonomy in their selection of applicants for hire; their scheduling of employees' work hours; their approval of leave requests; their issuance of minor discipline; and their ability to resolve employee conflicts and complaints. Furthermore, even though the Employer's highest-ranking executives have company-wide responsibilities, each of the facilities has local managers and supervisors. In particular, the Wound Care Center, the Convenient Care Center, the McAuley Clinic, and the HealthPark have a separate Vice-President overseeing these operations, with local directors and managers reporting to her.

³² It does not appear that even indirect supervision is common for those employees employed by the Foundation for Health, since it is a separate corporation with its own Board of Trustees and management staff.

Although several of the facilities are located fairly close to the hospital, most of the employees at these facilities report to work each day at locations to which they are assigned, and have little, if any, interchange or contact with employees located at the hospital. Evidence of interchange between nonprofessional employees, skilled maintenance employees and Registered Nurses who work at the hospital and those who work at other facilities is insufficient to rebut the single-facility presumption. As mentioned earlier, payroll records for the first two weeks of February, 2004 indicate that only approximately 2.3% of the total number of disputed employees who work in the hospital, also worked at some other location. During the same month, only 18% of all Registered Nurses executed PRN contracts. Even if every contract involved work at a location outside of the hospital, this represents meager interchange. Employment on a PRN basis is voluntary, and the contractual commitment generally extends for one year. Thus, the number of nurses who perform PRN work may vary from year to year, and the statistics for February 2004 may not be representative of other periods of time. In addition, evidence of permanent transfers between the hospital and outlying facilities is also minimal. Between March of 2002 and December 2003, only 37 permanent transfers occurred; this represents .02% of the total number of prospective members of the three petitioned units. Thus, the evidence fails to establish that persons employed in the hospital have regular and substantial contact or interchange with employees who work at other locations.

The Employer contends that there is sufficient evidence in this case to rebut the single-facility presumption and cites in its support three Board cases, Lutheran Welfare Services, 319 NLRB 886 (1995), Child's Hospital, 307 NLRB 90 (1992), and Stormont-Vail Healthcare, 340 NLRB No. 143 (2003). These cases are clearly distinguishable from the case at hand. In Stormont-Vail Healthcare, the Board decided that the single-facility presumption did not apply since the parties in that case had agreed on a multi-facility unit to begin with. Thus, since the parties in that case had already agreed on an employer-wide multi-facility unit the Board held that the Regional Director there had arbitrarily excluded other employees from other facilities. In the case at hand, the Petitioner is clearly seeking to exclusively represent employees from the hospital and the petitioned units clearly entail a single-facility. In Child's Hospital the Board held that the two facilities at issue there were not only physically contiguous but there was also a considerable degree of integration of operations and a high degree of contact among the employees. Similarly, in Lutheran Welfare Services the Board found a multi-facility unit appropriate based on the evidence that the two buildings at issue there were only 100-200 feet apart, only separated by a parking lot, there was a high degree of employee interchange, common supervision among the employees, and the employees floated and worked at either facility. In the present case, as discussed above, the evidence of employee interchange and interaction is minimal. In addition, even though many of the facilities the Employer seeks to include in the petitioned units are located within 2 miles of the hospital, they are not contiguous to it. Moreover, there are employees who work at facilities located outside the hospital which the Employer stipulated should not be included in an employer-wide unit. The parties stipulated at hearing that employees who work at the Employer's Speech and Hearing, Audiology Clinic, its Ambulatory Surgical Center, and its Infectious Disease office should be excluded from any units found appropriate. Although the record does not identify the job classifications which exist at these locations, it is likely that some of the classifications which exist in the hospital and other facilities, such as Registered Nurse and Department Secretary, also exist in these Centers. Absent an explanation from the Employer regarding its desire to exclude these employees from

its proposed employer-wide unit, their exclusion appears inconsistent with its contention that an employer-wide unit is appropriate.

Based upon the minimal degree of contact and interchange between hospital employees and employees who work in the outlying facilities, their autonomous operations and separate supervision, their distinct day-to-day working conditions, and the geographic separation between the hospital and the outlying facilities, it is concluded that units comprised of registered nurses and nonprofessional employees who work in the hospital, along with a unit of all skilled maintenance employees, are appropriate units for purposes of collective-bargaining

Additionally, there are several job classifications which the parties stipulated should be included within the registered nurse or nonprofessional units, the only issue in dispute being the fact that the classifications exist both in the single-facility unit sought by the Petitioner, and the employer-wide unit sought by the Employer. Since it is concluded that a single facility unit limited to employees who work in the hospital is a unit appropriate for purposes of collective bargaining, it is further concluded that all employees who occupy the position of Registered Nurse who work at the hospital shall be included within the registered nurse unit; and that all employees who occupy any of the following classifications and who work in the hospital, shall be included in the nonprofessional unit: Phlebotomist, Registration Specialist, Department Secretary, Clerical Worker/Ward Clerk, and Housekeeper.

Accordingly, it is concluded that nonprofessional employees, registered nurses, and skilled maintenance employees employed by the Employer at its acute care hospital located at 811 East Parrish Avenue, constitute three separate units appropriate for purposes of collective bargaining.

V. DISCUSSION: THE PLACEMENT OF CERTAIN HOSPITAL POSITIONS WITHIN THE BARGAINING UNITS

A. Statement of Law

Having concluded that only those employees located in the hospital in nonprofessional, skilled maintenance, and registered nurses positions constitute appropriate units herein, the only matter left to determine is the appropriate placement of certain disputed positions located in the hospital. These disputed positions only concern classifications in the nonprofessional unit and the skilled maintenance unit.

In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to require their joinder within one unit. Alois Box Co., Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In determining whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well

as the degree of employee contact; and the history of bargaining, NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In regards to the skilled maintenance unit in the healthcare industry the Board in its Second Notice of Proposed Rule Making described skilled maintenance employees as employees who deal with highly complex and sophisticated systems and equipment, and who are generally engaged in the operation, maintenance, and repair of a hospital's physical plant systems such as heating, ventilation, air-conditioning, refrigeration, electrical, plumbing, and mechanical, as well as their trainees, helpers, and assistants, 29 CFR Part 103, 54 Federal Register No. 76, 284 NLRB 1556-1562. The Board also noted that skilled maintenance classifications typically require completion of high school, post-secondary training such as vocational or trade school in a specialty field, formal or informal apprenticeship programs; or an associate or baccalaureate degree, and also require continued education in technological changes in building maintenance, Jewish Hospital of St. Louis, 305 NLRB 955, 956 (1991).

The Board identified six factors which distinguish skilled maintenance employees from other employees. These factors are essentially the same factors used to identify a community of interest among employees, Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). They include: functions and skill level; education, licensing and training; supervision; wages, hours, and working conditions; interaction with other employees; and labor market and career path, Second Notice of Proposed Rule Making, *Supra*, 1556-1559. Further, the Board has held that a distinguishing feature of skilled maintenance employees is that their work tasks involve equipment and systems rather than direct patient care tasks, Jewish Hospital of St. Louis, 305 NLRB 955 (1991). The Board has placed certain classifications of employees in a skilled maintenance unit even though they have been administratively placed in a different department and/or have different supervision by their employer, The Toledo Hospital, 312 NLRB 652 (1993); San Juan Regional Medical Center, 307 NLRB 117 (1992); Jewish Hospital of St. Louis, *Supra*.

B. Facts, Analysis and Conclusions Regarding Classifications in Dispute

1. The Nonprofessional Unit

As mentioned above, the Employer contends that employees in the following job classifications located in the hospital should be included in the nonprofessional unit: Admitting Educator, Customer Support Specialist, Engineering Technician, Nurse Extern, Quality Management Specialist, Administrative Data Retrieval Specialist, Medical Technology Student, Echocardiographic Technologist, and Typesetting Specialist. On the other hand, the Petitioner contends that none of the above positions should be included in the nonprofessional unit, on grounds that they lack a community of interest with members of the petitioned unit and in addition that these positions should be excluded as either professional or technical employees. The Petitioner further contends that the positions of Pharmacy Technician and Narcotic Technician should be included in the unit. Finally, the Petitioner would exclude from the nonprofessional unit the positions of Assistant Fund Development, Grants and Research Coordinator, and Occupational Therapy Assistant on the basis of both location and job requirements. The above classifications represent approximately 72 employees.

a. Admitting Educator

i. Statement of Facts

According to the job description for the position of Admitting Educator,³³ individuals in this position assess, evaluate, develop plans and implement educational programs for Registration Specialists. There is currently one employee in this position who works in the hospital and she reports to the hospital's Admitting Manager. This employee is responsible for initial and ongoing training of an estimated thirty-five Registration Specialists, but no employees report to her. Her primary duty is to train the Registration Specialists regarding the data entry of information required by Medicare and private insurance companies to ensure that the hospital receives the maximum payment possible for each service provided. She also trains the Registration Specialists concerning the completion of physician order forms and fact sheets, which identify patients. The individual also acts as a training resource for Patient Financial Services in order to assure high quality demographic and insurance information. The individual also maintains teaching expertise through activities deemed appropriate by the Director of Patient Financial Services and the Admitting Manager. The position requires an associate degree in business or a related field, or two years of experience in Patient Financial Services, plus three years of experience in a related area with at least one year of experience in either a supervisory or teaching position preferred. The Admitting Educator works one to two days each week as a Registration Specialist, performing the functions of that position. However, the Admitting Educator does not report to the Registration Supervisors to whom the full-time Registration Specialists report. Additionally, the Admitting Educator is required to have much more extensive knowledge concerning financial and billing processes than is required of the Registration Specialists.

ii. Analysis and Conclusion

A review of traditional community-of-interest factors such as skills, education, job duties, employee interchange, and contact, reveals that the Admitting Educator position should be included in the nonprofessional unit. The Admitting Educator provides training to the approximately 35 Registration Specialists employed by the Employer. The parties are in agreement that the Registration Specialists who work in the hospital should be included in the nonprofessional unit. Moreover, the Admitting Educator performs the job duties of Registration Specialist one or two days each week. The Admitting Educator position, like that of Registration Specialist, requires an associate degree. Although the Admitting Educator position requires more years of experience than the Registration Specialist position and a more extensive understanding of the Employer's financial and billing processes, these characteristics are insufficient to exclude the position from the unit. In this regard, there are other classifications such as the Activity Specialist, Medical Staff Support Specialist, Medical Staff Specialist, and

³³ The Admitting Educator position exists in the hospital. However, the Petitioner asserts that the position does not belong in the nonprofessional unit even if the undersigned concludes that the unit should be restricted to employees of the hospital only.

Physician Relation Representative, whom the parties agree should be included in the unit and which also require an associate degree (and two to five years of experience in their field). Additionally, the Admitting Educator and the Registration Specialists are both indirectly supervised by the Admitting Manager. Accordingly, the Admitting Educator position which exists in the hospital shall be included in the nonprofessional unit.

b. Customer Support Specialist

i. Statement of Facts

The Customer Support Specialist position performs a support function to the Employer's Information System's help desk by troubleshooting computer problems; supporting software and hardware in the Local Area Network (LAN) and the Wide Area Network (WAN); assisting in the installation and upgrade of operating systems; and assigning security access for electronic data (passwords). This position requires at least three years of experience and either an associate degree in information systems or a related field, or relevant experience and Microsoft (MS) certifications in lieu of education. There are two employees in this position who report to the Customer Support Supervisor of the Information Systems Department. The Customer Support Specialists provide software and hardware support to all of the Employer's facilities. The two current employees do not have an associate degree or MS certifications, but they have over thirty years of relevant experience. The job consists of approximately 80% troubleshooting, with 75% to 90% of the issues being routine. Routine issues may include resetting passwords, log-on problems, and printing problems. The Customer Support Specialists must be familiar with a variety of software programs such as Windows NT, Windows Server 2000, and Windows 2000 for PCs, and need to know how to install operating systems on the desktop computers.

ii. Analysis and Conclusion

The Customer Support Specialist is also appropriately classified as a nonprofessional employee. The Petitioner contends that this position is technical instead of nonprofessional. Typically, technical employees are those "who do not meet the strict requirements of the term 'professional employee' as defined in the Act, but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses," Barnert Memorial Hospital Center, 217 NLRB 775, 777 (1975), quoting Litton Industries of Maryland, 125 NLRB 722, 724-725 (1959). Technical status is frequently evidenced by the fact that an employee is certified, licensed, or registered, although employees may meet the standards of a technical employee without such certification, Barnert, *Supra* at 776. In the case at hand, the Customer Support Specialist spends between 75% and 90% of his/her time troubleshooting routine issues in response to phone calls about computer problems from employees at the facilities of the Employer. If this employee cannot resolve a problem, the problem is referred to the Customer Support Supervisor who may assign the problem to other personnel. The job classification requires either an associate degree or related experience and Microsoft certifications in lieu of education. In fact, the two incumbent employees do not possess associate degrees or specialized computer or software certifications. Accordingly, it is concluded that the Customer Support

Specialist position is not a technical position, and shall be included in the nonprofessional unit found appropriate herein.

c. Engineering Technician

i. Statement of Facts

The Engineering Technician position is responsible for developing, implementing, and maintaining the computer-aided drafting (CAD) systems for automated drawings of the facility, as well as assisting contractors in the preliminary design drawing for new projects. The position requires a high school degree with an associate degree in engineering technology preferred, and experience with AutoCAD, and the ability to read and interpret architectural and engineering drawings. No licensure is required. There is one employee in this position currently and she has an associate degree in mechanical drafting. This employee reports to the Director of Facilities. Included among the duties performed by this individual, is measuring the dimensions of the area to be drafted, then entering the information into the CAD system to prepare a floor plan. She also prepares utility system plans in which the drawing reflects piping in the area, and prepares drawings for new construction projects.

ii. Analysis and Conclusion

The Engineering Technician position appears to be more technical in nature than the other nonprofessional classifications in the unit. However, applying the criteria the Board utilizes to identify technical employees, this position clearly is not technical. Even though the incumbent employee in this position possesses an associate degree, the position does not require an associate degree. The job requires the ability to use computer-aided drafting systems, and to read and interpret architectural and engineering drawings. This is similar to other levels of knowledge required of other nonprofessional employees in the unit. For example, the Sterile Processing Technicians, whom the parties agreed should be included in the nonprofessional unit, are required to obtain a certification in their field within a year of hire. In contrast, the Engineering Technician is not required to have any education beyond high school and no licensing or certification is necessary for the position. The Board has excluded from technical units, positions whose level of education and skill is similar to that of the Engineering Technician, See, e.g. Mercy Health Services North, *Supra*. Accordingly, it is concluded that the Engineering Technician is not a technical position, and such position which exists within the hospital shall be included in the nonprofessional unit.

d. Nurse Extern

i. Statement of Facts

The Nurse Extern assists nurses by aiding patients with activities of daily living, including the collection of specimens, taking vital signs, and other related activities. Externs perform patient care activities under the oversight of a Registered Nurse. The job requires that the employee be enrolled in the last year of an accredited nursing program, either for an associate degree or a baccalaureate degree in nursing, and have a grade point average of 2.5 or greater,

while in the nurse extern program. There are currently approximately 14 employees who occupy this position, and they report to a Clinical Supervisor or Nurse Manager or designee. These employees do not receive educational credits for the work performed; however they must be students as a condition of employment. Also, it is the hospital's policy that these employees work a minimum of 16 hours per pay period (every two weeks). Their duties are more complex than those typically performed by a nursing assistant (or nurse's aide) and less complex than those typically performed by a Registered Nurse. They are not allowed to initiate IVs, administer medication, perform patient assessments or review treatment plans. However, at the time of hire, the schools or colleges submit to the hospital a list of competencies and skills mastered by each student, which s/he will be permitted to perform under a Registered Nurse's guidance.

ii. Analysis and Conclusion

The Nurse Extern classification shall also be included in the nonprofessional unit. These employees are required to be enrolled in the last year of either a two-year or four-year nursing degree program. However, this job is not part of their school's curriculum or their educational requirements. It is well settled that individuals who are employed, while they may be students learning their chosen medical craft, are also "employees" within the meaning of Section 2(3) of the Act, Boston Medical Center, 330 NLRB No. 30 (1999). The Board held in Boston Medical Center that interns, residents, and fellows are employees notwithstanding that a purpose of their employment at a hospital may be, in part, educational. The Board reached this conclusion based upon the fact that these employees worked for an employer, were compensated for their services, and provided direct patient care, Boston Medical Center, *Supra*. In the present case, the record establishes that the Nurse Externs perform services for the Employer just as any other employee in the hospital; are paid for their services; and provide patient care.

The fact that the Nurse Externs are also students does not warrant excluding them from the unit, and an application of community-of-interest principles also results in the conclusion that they should be included in the nonprofessional unit. The Nurse Externs assist nurses in performing patient care duties which are typically more complex than those performed by Nursing Assistants, but less complex than those performed by Registered Nurses. The parties have stipulated that the Nursing Assistant position should be in the nonprofessional unit, and the evidence establishes that the Nurse Externs share a community of interest with the Nursing Assistants. Thus, it is found that the Nurse Extern position shall be included in the nonprofessional unit.

e. Quality Management Specialist

i. Statement of Facts

The Quality Management Specialist provides support to clinical and hospital departments, committees and Performance Improvement (PI) team leaders in data collection, data analysis, and data reporting. This position prepares progress reports for different Performance Improvement teams, and assists these teams in organizing and reviewing patient records needed in the Performance Improvement process. The position requires an associate degree in nursing (with a baccalaureate degree preferred), or an associate degree in health

information management or a baccalaureate degree in health care administration, plus three years of experience in clinical nursing or medical records. The position also requires that the occupant possess either a Registered Nurse license in Kentucky or certification as an Accredited Record Technician. There are seven employees in this position, four who work full-time and three part-time. They report to the Manager of Quality Support Services. Two of the current occupants of this position are Registered Nurses; one has a baccalaureate degree in Healthcare Administration; and four are registered Health Information Technologists, which involves the completion of a two-year program. These employees are required to be familiar with medical terminology, medical procedures and medications. They provide training to hospital personnel on a specific software used by the Employer called Last Word System, which is comparable to an electronic medical record.

ii. Analysis and Conclusion

The Quality Management Specialist position shall be excluded from the nonprofessional unit. This classification requires an associate degree in nursing or health information management (with a baccalaureate degree preferred), plus three years of experience in clinical nursing or medical records. It also requires a Registered Nurse license or a certification as an Accredited Record Technician. The seven employees currently occupying this position are either Registered Nurses, Registered Health Information Technologists or possess some other baccalaureate degree. This position does not appear to share a community of interest with other employees in the nonprofessional unit. The Quality Management Specialists report to the Manager of Quality Support Services and, according to the job description, interact primarily with physicians and team members in identifying and developing trends, patterns and indicators that measure quality improvement. The only other classification in the nonprofessional unit which is also located in the Quality Support Department is the Administrative Data Retrieval Specialist position discussed below. The record reflects that Quality Management Specialists train hospital personnel concerning software programs, and assist Performance Improvement teams with their reports. However, the record lacks any additional facts regarding how often this training is offered or how often these employees interact with other employees on the Performance Improvement teams. The Board has found similar classifications to be professional. In Meriter Hospital, 306 NLRB 598 (1992), the Board held that a Utilization Review Specialist position, which required a Registered Nurse license, or certification as a Records Administrator or Records Technician, plus a minimum of two years of relevant experience, was a professional position. The Board based its finding in part upon the fact that the position required the use of independent judgment in the review and interpretation of patient medical records. In this case, of all the employees in the nonprofessional unit, only four other classifications require an associate degree and over three years of experience in their field: the Admitting Educator, the Medical Staff Support Specialist, the Medical Staff Specialist, and the Physician Relation Representative. However, based upon the lack of evidence of a community of interest with other employees in the nonprofessional unit, and consistent with Meriter Hospital, the Quality Management Specialist position shall be excluded from the nonprofessional unit on the basis that the position is either technical or professional.

f. Data Retrieval Specialist

i. Statement of Facts

The only information about the Data Retrieval Specialist classification in the record is reflected in its job description. This position's job description states that it is responsible for abstracting assigned cases; maintaining a database of information; and assisting departments, medical staff and others with retrieving information for reports and special studies. Employees in this position also assist departmental secretaries by scheduling meetings, answering phones, attending meetings, taking notes, typing minutes, and processing payroll. Employees in this position are supervised by the Manager of Clinical Resources. The position requires a high school diploma, with courses in the medical field. An associate degree is preferred, but not required. There is one employee currently in this position.

ii. Analysis and Conclusion

The parties have not expressly excluded or included the position of Data Retrieval Specialist in the nonprofessional unit. The only record evidence concerning this position is found in its job description, as previously discussed. This classification requires a high school diploma with secretarial courses and one year of experience. These are the same prerequisites for the majority of positions in the nonprofessional unit. Accordingly, the Data Retrieval Specialist shall be included in the nonprofessional unit.

g. Medical Technology Student

i. Statement of Facts

As its name connotes, the Medical Technology Student classification is a position for students who are working toward a medical technology degree. The positions exist in the hospital's laboratory. The minimum qualifications for the position indicate it is a position designed for students who have completed three years of academic coursework, and who will be eligible to take the Medical Technology (ASCP) examination within six months of hire. The job description indicates that the students perform complex clinical laboratory tests and procedures, in addition to maintaining and calibrating laboratory equipment. There are five employees in this position and they are supervised by the Laboratory Director. These student-employees work six to ten hours per week, and are in their last year of a four-year collegiate program working toward a baccalaureate degree in Medical Technology. They perform phlebotomies and assist the Medical Technologists. The Medical Technology Students work for the Employer for one year, from July through June of the following year. At the conclusion of the program they take written and practical examinations administered by the Employer's laboratory. The students receive pay for their work and also receive educational credit hours for their work.

ii. Analysis and Conclusion

It is the position of the Petitioner that persons employed as Medical Technology Students should be excluded from the nonprofessional unit because of their student status. As discussed above, however, the fact that employees are students does not alone warrant their exclusion from a bargaining unit,³⁴ Boston Medical Hospital, Supra; New York University, Supra. The Board traditionally considers whether students work in the same capacity as other employees and what their interest in the outcome of collective-bargaining negotiations would be, just as it does with every other group of employees, Boston Medical Hospital, Supra. In this case, the record indicates that the Medical Technology Students perform work and provide services for the Employer in exchange for remuneration, and not solely for educational purposes. Furthermore, these employees perform duties similar or equal to those performed by the Laboratory Assistants whom the parties have agreed to include in the nonprofessional unit. Although these employees work on a limited work schedule of six to ten hours a week for approximately a year, they are no less "employees" than part-time employees in the unit, See, e.g. Boston Medical Center, Supra. Accordingly, the Medical Technology Students shall be included in the nonprofessional unit.

h. Echocardiographic Technologist

i. Statement of Facts

The Echocardiographic Technologist³⁵ position is located in the hospital's Electrodiagnostic Laboratory. These Technologists perform transthoracic (ultrasound on chest) and transesophageal (ultrasound probe through mouth to the heart) echocardiograms, doppler and color flow velocities which measure and assess cardiac abnormalities, as requested by the medical staff. This position requires either an associate degree in cardiovascular technology, or three years of echocardiography experience in lieu of an associate degree, and at least one year of experience dealing with the public in a health care field, with one year of echocardiography experience preferred. In addition, the incumbent must complete a BLS (CPR) course within a year of hire, and it is preferred that an applicant either be a Registered Diagnostic Cardiac Sonographer, or eligible for such licensure. There are six employees in this position, three who work full-time, one part-time, and two who are working on a PRN basis. The Technologists are supervised by the hospital's Heart Center Manager. None of the incumbents have an associate degree or have obtained a certification. Four of them have taken the registry examination but have failed to pass it. These employees were trained on-the-job during a period of three to four months. They are trained to recognize parts of the heart and can measure different parts of the

³⁴ The Petitioner cites St. Claire's Hospital, 229 NLRB 1000 (1977), in support of its contention that this classification should be excluded because these employees are employed in a capacity related to their course of study. However, the Board overruled St. Claire's Hospital in its Boston Medical Center decision, *Supra*.

³⁵ This job title is indicated on the job description provided by the Employer although this position was also referred to at hearing as "Echo Technician."

heart by freezing the image from an ultrasound and clicking with a computer mouse on those parts that need to be measured. They record the study of a patient's heart on videotape, and send it to a physician for review. They also assist physicians with patient preparation and instruction when transesophageal echocardiographs are conducted. The Employer distinguishes the Echo Technologists from the Radiology Technologists (whose unit placement is not in dispute and are not in the nonprofessional unit), on grounds that the Radiology Technologist position requires an associate's degree; and that persons in the position perform more highly technical procedures and use more independent judgment.

ii. Analysis and Conclusion

The Echocardiographic Technologist (Echo Technologist) shall be included in the nonprofessional unit. This position requires an associate degree in cardiovascular technology or three years of experience in lieu of education. No license or certification is required. However, there is a certification as a Registered Diagnostic Cardiac Sonographer available which these employees may acquire, but it is not required. The six employees currently in this classification do not possess an associate degree or the certification. These employees received on-the-job training for two to three months. The employees in this position are required to have knowledge of heart anatomy and are trained to identify heart abnormalities, but all patient diagnoses are performed by physicians. Factors such as education, training, license or certification requirements are factors which determine whether a position is technical, See, e.g. Trumbull Memorial Hospital, 218 NLRB 796 (1975) (finding that the electroencephalogram technicians and the eletrocardiograph technicians were not technical employees); Trinity Memorial Hospital, 219 NLRB 215 (1975) (finding that the EKG technicians were not technical employees). The Petitioner contends that this classification is technical. However, this classification is distinguishable from similar classifications found to be technical in other Board cases. The Board has found certain technician positions to be technical when their duties include analyzing the results of the tests they administer and formulating a preliminary diagnosis, See, e.g., Rhode Island Hospital, *Supra*, (finding the cerebrovascular laboratory technicians to be technical because they not only performed scanning procedures but also preliminarily reviewed and analyzed them.); Children's Hospital of Pittsburgh, 222 NLRB 588 (1976) (finding that the echo technician was technical because the job required a college degree). In this case, the Echo Technologists are not required to have an associate degree, a license or certification, and they are not required to diagnose patient conditions. Accordingly, it is concluded that the position of Echocardiographic Technologist is not a technical position, and it shall be included in the nonprofessional unit.

i. Typesetting Specialist

i. Statement of Facts

The Typesetting Specialist reports to the Supervisor of Printing and Graphic Design within the hospital's Marketing Department. Individuals in this position review, typeset, and produce graphic design and printed products for customers. These products are varied and include brochures, fact sheets and other publications and forms used throughout the hospital. They coordinate and produce audiovisual presentations, such as Power Point presentations for

other employees. The Typesetter is also cross-trained in other aspects of printing and graphic design, and can operate machinery used in this department such as the cutter, folder, collator and binder. This employee also produces signage and banners that are posted throughout the hospital. One employee currently occupies this position. The position requires an associate degree in computer graphics or two years of experience in lieu of the degree, and a minimum of two years of relevant experience in the field.

ii. Analysis and Conclusion

The Typesetting Specialist shall be included in the nonprofessional unit. This position requires either an associate degree in computer graphics or two years of experience. There is no license or certification required. The Petitioner contends that this job is technical. However, there is no evidence that persons in this position perform work of an essentially technical nature, or that the position requires knowledge of an advanced type acquired by a prolonged course of specialized intellectual instruction. Employees in this position produce printed products in the form of brochures and publications, and operate equipment in the printing and graphic design department. However, all of the work is supervised and approved by the department supervisor before it is finalized. Since the Typesetting Specialist is not required to have a degree, license or certification, and appears to perform work that is not highly technical in nature, it is concluded that this classification is not technical, and it shall be included in the nonprofessional unit.

j. Pharmacy Technician and Narcotic Technician

ii. Statement of Facts

The hospital pharmacy employs Unit Dose Technicians, and IV/Pharmacy Technicians (herein jointly referred to as Pharmacy Technicians) and Narcotic Technicians. According to the record there are approximately 26 Pharmacy Technicians and one Narcotic Technician. These employees report to the Pharmacy Manager. The Pharmacy Technicians assist the Pharmacists in the daily receipt, processing and dispensing of physician orders. Minimum qualifications require a high school diploma, and previous pharmacy experience is preferred. It is recommended that the Unit Dose Technicians obtain certification as a Certified Pharmacy Technician (CPhT) within two years of hire, while this certification is required for the IV/Pharmacy Technician position. The pharmacy is divided in two areas, a front area where the Unit Dose Technicians work, and a rear area, where the IV/Pharmacy Technicians work. The Unit Dose Technicians answer the pharmacy telephone and date stamp prescription orders that arrive at the pharmacy. A Pharmacist, however, fills the orders. The Unit Dose Technician prints prescription labels and gives them to the Pharmacist for review. The IV/Pharmacy Technicians print a computerized list after all prescription orders have been entered by the Pharmacists, and prints labels. This position is also responsible for preparing IV bags needed for the day, and for matching the IV bags with the printed labels. Employees in this position are trained to insert prescribed medication into the IV bags; however the Pharmacist reviews this work before it is dispensed. Of the approximate 26 Pharmacy Technicians, about half possess the CPhT certification.

The Narcotic Technician assists the Pharmacists in the daily receipt, processing, dispensing, ordering, and record keeping of narcotics. The job requires a high school degree with previous pharmacy experience preferred, and becoming a Certified Pharmacy Technician (CPhT) within two years of date is required. It appears that the duties of the Narcotic Technician are rotated among the Pharmacy Technicians. Thus, the Pharmacy Technicians are cross-trained to either perform the duties of the Narcotic Technician, as well as to prepare IV mixes. The record indicates there is one Narcotic Technician position, and this individual is a CPhT. Apparently the pharmacy requires that at least one CPhT be on duty at all times during the day and on weekends.

ii. Analysis and Conclusion

The Employer contends that the Pharmacy Technician and Narcotic Technician positions are technical, and should be excluded from the nonprofessional unit. Two very similar job descriptions for Pharmacy Technicians were placed into evidence at the hearing herein: one for the Technician/Unit Dose (Unit Dose) position, and one for the Pharmacy Tech/IV (IV) position. The Unit Dose position requires a high school degree and recommends that employees become a Certified Pharmacy Technician (CPhT) within two years of hire date. The IV position requires a high school degree and encourages employees to become a CPhT within two years of hire. The record reflected that the Employer changed this requirement from solely recommending the certification to requiring it in January 2004. The Narcotic Technician position has the same requirements as the IV position, and the CPhT is also required. Thus, in making a determination of whether these positions are technical it is imperative to understand what the CPhT entails. The record reflects that this certification is obtained by passing an examination administered by the Commonwealth of Kentucky. The employee prepares for the examination by individual study of materials in a book, and once certified the individual must obtain twenty continuing education credits every two years. These continuing education credits may be obtained from online (web-based) training materials. It appears that the effort necessary to obtain these credits is not substantial. Of the 26 employees employed in these positions, only half possess the CPhT certification. It appears from the record that CPhT certification is also required for only a very limited portion of the duties performed by these employees. The employees must be certified to be able to check medicine boxes and check premix IV bags. This duty entails merely verifying that the labels on the medicines or IV bags match the labels on a computer list. These tasks are performed under the supervision of the Pharmacist. Additionally, the testimony at the hearing from a Pharmacy Technician indicates that the employees in these positions do not need to understand medical terminology and do not need to possess knowledge of the effects of drugs upon patients.

The Board has traditionally found that Pharmacy Technicians are not technical employees. In Meriter Hospital, *Supra*, the Pharmacy Technicians were required to complete eight weeks of on-the-job training and complete 18 months of service in a Technician I position before progressing to a Technician II position. The job duties of those Technicians were very similar to the ones at issue here. No degree or certification was required. The Board held there that the Technicians were not technical employees because they did not exercise independent judgment, and although the Technician II job required more extensive training, it did not reach the level required to constitute a technical position. In Duke University, 226 NLRB 470 (1976),

the Board found Pharmacy Technicians to be technical employees because the employer required employees in these positions to complete a six-month course of study and obtain a certification before being hired. The Board in Duke University also considered that the Pharmacy Technicians shared a community of interest with other technical employees. However, in a more recent case, the Board found that Pharmacy Technicians were not technical employees even though the employer required one or two years of college, or comparable experience, and the employees completed a 15-week in-house technician training program, Rhode Island Hospital, Supra. In the case at hand, the Pharmacy Technicians and Narcotic Technicians do not appear to have significant additional education or training beyond high school. Since only half of the employees in this classification possess a certification, and certification is required for only limited duties; and since these employees do not appear to use significant independent judgment in their work, it is concluded that the Pharmacy Technician and Narcotic Technician positions are not technical, and shall be included in the nonprofessional unit.

k. Occupational Therapy Assistant³⁶

i. Statement of Facts

Occupational therapy is performed by licensed Occupational Therapists, and Occupational Therapy Assistants (herein OTA). Neither party asserts that the Occupational Therapists should be included in any of the petitioned units. The unit placement of the approximately seven OTAs is in dispute, however. The Petitioner contends that this classification is technical, and should not be included in the nonprofessional unit. Occupational Therapy falls under the Therapies Department which is housed in the hospital, and which is overseen by the Director of Therapeutic Services. The Employer provides therapy services to patients at the hospital, the HealthPark, and Home Health. The Director of Therapeutic Services has offices at both the hospital and HealthPark. The OTAs report to three team leaders, two located at the hospital and one at HealthPark. The OTAs provide care to patients under the direct supervision of an Occupational Therapist. They assist patients with activities of daily living (ADL) such as dressing, feeding, grooming, and bathing. The Occupational Therapy Center at the HealthPark is on the third floor of the same building as the Fitness Center. Currently there is one Occupational Therapy Assistant assigned to the HealthPark, and this employee also serves as a team leader.³⁷ However, other OTAs may work at the HealthPark upon occasion, depending upon caseload, or

³⁶ In addition to this classification, the Petitioner asserts that the Assistant Fund Development & Grants and Research Coordinator should be excluded from the nonprofessional unit on the grounds of location and job requirements. Since it is concluded that the appropriate nonprofessional unit is limited to employees located in the hospital, it is unnecessary to discuss whether the Assistant Fund Development & Grants and Research Coordinator should be excluded from the unit on other grounds. Only the Occupational Therapy Assistant needs to be discussed here since the record reflects that this position exists at the hospital as well as at other locations.

³⁷ Although one OTA works in the HealthPark, it is not clear whether the remaining six all work in the hospital.

to substitute in the absence of an Occupational Therapist. The frequency of such temporary assignments to the HealthPark is not indicated in the record, however.

The Assistant position requires an associate degree from an accredited occupational therapy (OTA) program and a current OTA license or certification. The Occupational Therapy Assistants can make notes on a patient's chart regarding treatment, but all of their notes have to be co-signed by the Occupational Therapist with whom they work.³⁸ They implement a patient's treatment plan as designed by the Occupational Therapist and they have no discretion in making changes to that plan. If they have questions about a patient's treatment plan or have comments as to how the patient is doing, they direct such questions to the Occupational Therapist under whose auspices they are working. The seven employees currently in this position have an associate degree and the OTA license.

ii. Analysis and Conclusion

The Occupational Therapy Assistant (OTA) position shall not be included in the nonprofessional unit. This classification is technical in nature rather than nonprofessional. Thus, the OTA position requires an associate degree in occupational therapy and an OTA license. All of the seven employees currently employed by the Employer in this position possess both the required degree and the license. Even though the OTAs perform therapy under the supervision of an Occupational Therapist, it appears that they do not work in the presence of the Occupational Therapist. The OTAs can make notes on patients' charts concerning treatment provided, and refer questions about the patients' treatments to Therapists, thus further indicating that they do not work in their presence. In its brief the Employer cites Trinity Memorial Hospital, 219 NLRB 215 (1975) to support its position that the OTAs are not technical employees, and should be found nonprofessional. However, it is clear that the OTAs in Trinity Memorial were less skilled than the OTAs in this case; did not require any special education or training; did not exercise significant independent judgment; and performed duties routine in nature. In Samaritan Health Services, 238 NLRB 629 (1978), the Board found that OTAs with similar duties and requirements as those in the present case, were not professionals. In the present case the OTAs possess skills and training sufficient to find that they are technical employees. The record does not reflect any special circumstances of employee interchange or other community-of-interest factors that would otherwise weigh in favor of including this classification in the nonprofessional unit. Accordingly, it is concluded that Occupational Therapy Assistants shall be excluded from the nonprofessional unit.

2. The Skilled Maintenance Unit

The Employer asserts that the positions of Biomedical Electronics Specialist I, II, and III (Biomedical Electronic Specialists), Electronic Engineer Specialist III, Network Engineer, and

³⁸ The Director of Therapies testified that by contrast, Physical Therapists, who are not in dispute and are not in the nonprofessional unit, can make notes on patients' charts without the requirement of another employee's signature.

Network Technician should be included in the skilled maintenance unit. The Petitioner asserts that except for the Network Engineer, these positions are more appropriately technical in nature and should not be included in the unit. The Petitioner argues that the Network Engineer should also be excluded from the unit as a professional position rather than skilled maintenance. There are approximately eleven employees in dispute.

The parties stipulated, as set forth in footnote 5, that the positions of Licensed Electrician, Licensed HVAC, Licensed Plumber, Maintenance Mechanic, Construction Worker II, Construction Worker III, and Construction Worker (Licensed Tradesman) should be included in a skilled maintenance unit.

The Employer's Director of Facilities oversees the Employer's Maintenance and Construction departments, its Property Management Department, a Biomedical Electronics area, Environmental Services, Laundry, Communications and Security. His office is located in the hospital. Reporting to the Facilities Director are a Maintenance Manager (Department 8062) who oversees the maintenance and repair of the Employer's physical plant systems; a Construction Inspector Coordinator (Department 1222) who oversees renovations and construction throughout the Employer's healthcare system; and a Manager of Technical Engineering (Department 8067) who supervises Biomedical Electronics Specialists and an Electronic Engineer Specialist who install, maintain and repair equipment used in the diagnosis and treatment of patients. The Electricians, HVAC workers, Plumbers, and Maintenance Mechanics are directly supervised by the Maintenance Manager. Employees in the Construction Worker classifications are supervised by the Construction Inspector Coordinator.

The office of the Facilities Director, the three managers, and maintenance employees under their supervision are located at the hospital.³⁹ The hospital is the "home base" for potential members of the skilled maintenance unit, with the exception of the Network Engineer and Network Technicians who are members of the Employer's Information Systems Department. The hospital is the location from where these employees are dispatched throughout the Employer's healthcare system to perform repairs, construction, and maintenance work as needed.

a. Biomedical Electronic Specialists and Electronic Engineer Specialist III

i. Statement of Facts

The Biomedical Electronics Specialists are responsible for installing biomedical equipment, computer equipment, networks, and telecommunications equipment; trouble-shooting and repairing this equipment and systems; performing safety inspections and preventive maintenance; and maintaining proper documentation of services performed. There are currently six employees in this position. The Level I position requires an associate degree or technical degree in electronics with some experience, and a certification as a biomedical specialist is preferred. The Level II position requires an associate degree plus two years of experience or five

³⁹ The Director of Facilities also made a fleeting reference to a facilities building on Ford Avenue, but no further explanation of this building or its relationship, if any, to the members of the skilled maintenance unit, exists in the record.

years of demonstrated expertise as an electronic technician; and the Level III position requires four years of relevant experience. More specifically, some of the equipment these employees install and repair include telephone systems, fire alarm systems, nurse call equipment, sterilizing equipment, radiology equipment, monitoring equipment, all medical electronic equipment, and other electronic equipment such as audiovisual equipment and speaker systems. These employees need specialized training and knowledge of the Employer's telephone system. In addition, they receive vendor-specific continued education and training as new equipment is installed. Currently, only one of the Biomedical Electronics Specialists has obtained a Biomedical Specialist certification.

The Electronic Engineer Specialist III also performs work on electronic medical equipment, the telephone system, and the fire alarm system. That position requires an associate degree in an electronics related field and a minimum of four years of demonstrated expertise in one or more areas concerning the job duties. There are currently two employees in this position.

ii. Analysis and Conclusion

The Board has found that highly skilled employees such as the Biomedical Electronics Specialist I, II and III (Biomedical Specialists), and the Electronic Engineer Specialist III in the present case, who repair and calibrate sophisticated hospital equipment, are skilled maintenance employees, The Toledo Hospital, Supra; Mercy Health Services North, 311 NLRB 1091 (1993); San Juan Regional Medical Center, Id. Persons who repair equipment used to diagnose and treat patients, as opposed to a hospital's physical plant systems, nonetheless are more appropriately included in a skilled maintenance unit than a technical unit. In the case at hand, the Biomedical Specialists and Electronic Engineer Specialist, like employees whom the parties stipulated are appropriately included in a skilled maintenance unit, perform highly technical functions related to the installation, maintenance, and repair of complex equipment. In addition, these positions, like the other positions in the unit, require some type of license, specialized training or education. The Biomedical Specialist position requires an associate degree or technical degree, with levels II and III requiring from two to five years of experience. The Electronic Engineer Specialist III position requires an associate degree and four years of experience. Similarly, the Licensed Electrician, Licensed HVAC, Licensed Plumber, Maintenance Mechanic, Construction Worker II and III, and Construction Worker (Licensed Tradesman) positions require licenses or certifications in their related fields in addition to years of experience varying from one to five years.

In addition, employees in the Biomedical Specialists and the Electronic Engineer Specialist positions are indirectly supervised by the Director of Facilities, as are all other employees in the skilled maintenance unit. Even though the Biomedical Specialists and the Electronic Engineer Specialist report to a different direct supervisor, the other employees in the unit report to two distinct direct supervisors as well, the Maintenance Manager and the Construction Inspector Coordinator. As described above, the Board has found that the fact that employees have different supervision is not determinative of their exclusion from a skilled maintenance unit, Toledo Hospital, Supra. Although the record does not reflect evidence concerning employee interaction between the contested employees and members of the skilled maintenance unit or information concerning their wages or career paths, the absence of this

information does not alter the conclusion that all of these employees belong in a skilled maintenance unit. In this respect, the Board's decision in Toledo Hospital and San Juan Medical Center is determinative. In San Juan Medical Center, the Board found that Biomedical Technicians were properly included in a skilled maintenance unit even though they had more education; received higher wages; and worked different hours than maintenance employees, and had little interaction and no interchange with other employees in the skilled maintenance unit. Finally, the fact that Biomedical Specialists maintain and repair patient-related equipment, rather than physical plant systems, does not warrant their exclusion from the unit, Toledo Hospital, Supra; Accord Ingalls Memorial Hospital, 309 NLRB 393 (1992). Accordingly, it is found that the positions of Biomedical Electronics Specialists I, II, and III, and the Electronic Engineer Specialist III shall be included in the skilled maintenance unit.

b. Network Engineer and Network Technician

i. Statement of Facts

Employees in the Network Technician and Network Engineer classifications do not fall under the supervision of the Director of Facilities, but are supervised by a Director of Information Systems. The Director of Information Systems in turn reports to the Employer's Chief Information Officer. The Network Engineer and Network Technicians are directly supervised by a supervisor below the Director of Information level. The record does not reflect whether other persons are employed within the Information Systems Department, and if so, the nature of the functions they perform.

The Network Engineer position requires a baccalaureate degree in information systems or experience in lieu of a degree, with seven to ten years of experience required. This position is responsible for maintaining the Employer's computer network which includes accessing multiple applications and hardware via both a local and a wide area network that encompasses all of the Employer's facilities. The current Network Engineer does not have a baccalaureate degree but possesses seven Microsoft software and three Cisco Systems network certifications. He also is salaried and earns the hourly equivalent of \$20 to \$22 per hour. According to the Director of Information Systems, the Network Engineer is responsible for the maintenance and repair of both the Employer's Local Area Network, which includes the hospital, as well as its Wide Area Network (WAN), which includes all outlying facilities. He diagnoses and solves problems within the systems, including repairs to both hardware and software programs. The Network Engineer is also involved in the planning and implementation of new programs and information systems. According to the Director, the Network Engineer uses extensive independent judgment in executing the functions of his position. He monitors ongoing computer operations on the WAN, supporting users and analyzing performance to identify problems and recommend efforts to maximize system performance. He provides research and development for existing and future network communications to stay current with technology. He recommends solutions for use and interfacing of equipment to accommodate the electronic transfer of data. He also assists with the installation, upgrade or revision of hardware, software applications, operating systems and equipment.

The Network Technicians assist the Network Engineer, and are responsible for maintaining and supporting the local area network (LAN), monitoring computer operations on the LAN, supporting users, installing networks, PC and peripheral equipment. There are two employees in this position. They provide support services to users, analyze performance problems, and suggest solutions to maximize system performance. This job requires an associate degree in computers or related experience in lieu of degree, with five to seven years of experience in a related position. This position is paid on an hourly basis. If employees have a computer or network problem they are supposed to call the Employer's help desk where customer support staff will initially troubleshoot the problem. If the initial troubleshooting fails to correct the problem the Supervisor of Systems Support will assign the work to the Network Engineer or Network Technicians.

There also exists an IDX Department in which computer analysts and some registered nurses work. IDX is the vendor of the main software program used in the hospital. Although the record contains little information about the work performed by persons in the IDX Department, it appears that this system houses patient information, and that nursing staff enter information regarding patients' conditions, diagnoses and/or therapies into this system. The relationship of the IDX Department to the Information Systems Department, if any, is not known.

ii. Analysis and Conclusion

Employees in the Network Engineer and Network Technician positions shall be permitted to vote subject to challenge in the skilled maintenance unit. The Employer asserts that the single employee who occupies the Network Engineer position, and the two employees who occupy the Network Technician position should be included in the skilled maintenance unit. The Petitioner contends that the Network Technician is a technical position, and the Network Engineer is a professional position. The positions exist within the Information Systems Department and are indirectly supervised by the Director of Information Systems, as opposed to other members of the skilled maintenance unit who are all indirectly supervised by the Director of Facilities.

Unlike other positions found appropriate in the skilled maintenance unit, the record indicates that the Network Engineer position requires a baccalaureate degree or related experience, with seven to ten years of experience, and that the employee in this position uses extensive independent judgment in the execution of his functions. The position of Network Technician requires an associate degree; one of the incumbents possesses such a degree, while the other is currently enrolled in a local college working toward an associate degree in a computer related field. While the Network Engineer is a salaried position, the Technicians earn an hourly wage.

The record does not disclose whether other positions exist within the Information Systems Department, and if so, their relationship to the Network Engineer and Network Technician positions. The relationship, if any, between the Information Systems Department and the IDX Department is also unknown. Whether employees in the disputed positions have any regular or substantial contact with members of the skilled maintenance unit is not known. Similarly, the record does not disclose the level of their salary/wage in comparison to members of the skilled maintenance unit.

It is concluded that record evidence is insufficient to make reasoned findings of fact and conclusions concerning the proper unit placement of the Network Engineer and Network Technician positions. In order to effectuate the purposes of the Act through expeditiously providing for a representation election, employees in the Network Engineer and Network Technician positions shall be permitted to vote subject to challenge in the skilled maintenance unit, and their voter eligibility shall ultimately be determined, if necessary, in post-election proceedings, Rhode Island Hospital, 313 NLRB 343 (1993); Toledo Hospital, *Supra* .

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding 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 any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Steelworkers of America, AFL-CIO-CLC.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **June 1, 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. 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 June 7, 2004.

SIGNED AT Indianapolis, Indiana, this 25th day of May, 2004.

/s/ Rik Lineback

Rik Lineback
Regional Director
National Labor Relations Board
Region 25
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