UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION SIX

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.[1]

Employer

and Case 6-UC-468

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 814, AFL-CIO

Union-Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, West Virginia University Hospitals, Inc. operates short-term acute care hospitals in Morgantown, West Virginia, where it employs about 835 service employees, represented by the Union-Petitioner, Laborers' International Union of North America, Local 814, AFL-CIO[2]. In this proceeding, the Union filed a petition with the National Labor Relations Board under Section 9(b) of the National Labor Relations Act seeking to clarify the existing bargaining unit to include six medical assistants, three medical records assistants and two phlebotomists at the Cheat Lake Physicians Clinic located at 608 Cheat Road, Morgantown, West Virginia (hereinafter referred to as the Clinic). [3] A hearing officer of the Board held a hearing and the parties filed briefs with me.[4]

[1] The name of the Employer appears as amended at the hearing.

[2] The parties stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act.

[3] The proposed unit set forth in the petition also lists housekeeping assistants and housekeeping team leaders in the inclusions. Although the Union did not amend the proposed unit description, the record indicates that the one individual performing housekeeping functions at the facility is employed by a subcontractor, and the Union did not submit or elicit any evidence to the contrary. Consequently, I have limited my discussion to the job classifications of medical assistant, medical records assistant and phlebotomist.

[4] I note that both the Employer's and the Union-Petitioner's briefs were untimely as both were postmarked on the due date for receipt of briefs, and were received two days and one day, respectively, after the due date for the filing of briefs in this matter. However, inasmuch as the issuance of the decision was not

As evidenced at the hearing and in the briefs, the parties' primary disagreement relates to the following issue: Whether the existing bargaining unit should be clarified to include the medical assistants, medical records assistants and phlebotomists employed at the Clinic.

The Employer contends that every recognition clause in all collective-bargaining agreements negotiated in the past 13 years,[5] including the current collective-bargaining agreements, expressly limits the existing bargaining units to the nonprofessional employees,[6] including medical technicians, working at the Employer's Medical Center Drive location. The Employer further argues that the Petitioner failed to properly complete the petition form. Finally, the Employer argues that the petition is untimely. The Petitioner, contrary to the Employer, contends that the nonprofessional employees at the Clinic should be accreted into the existing nonprofessional unit. The Petitioner likens the acquisition of the Clinic to the Employer's1998 acquisition of Chestnut Ridge Hospital. At that time the Employer agreed to recognize the Union as the representative of the nonprofessional employees working there. The Petitioner claims that the instant situation should have a similar result because the Clinic, like Chestnut Ridge Hospital, is organizationally designated as a department of the Employer.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that while the petition is timely and otherwise valid, the employees sought to be accreted separately constitute an appropriate bargaining unit. Moreover, the record establishes that the employees at issue lack the requisite community of interest with the bargaining unit nonprofessional employees working at the Employer's Medical Center Drive locations so as to require their inclusion in a single unit and, therefore, I have dismissed the unit clarification petition.

delayed and neither party was prejudiced in any way as the result on the late filing of the briefs, I have considered the briefs of both parties.

[5] Excerpts setting forth the recognition clauses for the collective-bargaining agreements which became effective in 1992, 1994, 1997 and 2000, as well as complete copies of the current collective-bargaining agreements, were admitted into the record.

[6] These employees are referred to by the parties as "service" employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

A. Background

The Employer, a West Virginia not-for-profit corporation, operates a private hospital system, including acute care hospitals on Medical Center Drive in Morgantown, West Virginia.[7] The Employer is a subsidiary of West Virginia United Health System, Inc. United Physicians Care, Inc. ("UPC"), the entity which owned the Clinic until 2005, is also a subsidiary of West Virginia United Health System, Inc. UPC provides physicians and operates primary care physicians' offices within the health system.

The Employer employs 835 "service" employees who have been represented by the Union for at least 15 years. At issue herein are six medical assistants, three medical records assistants and two phlebotomists working at the Clinic on Cheat Road in Morgantown, West Virginia. The Clinic is an outpatient primary care physicians' office.

For many years the Union and the Employer have been parties to collective-bargaining agreements covering the nonprofessional employees. The most recent collective-bargaining agreement is effective by its terms from February 12, 2003 through December 31, 2005. The current agreement identifies 24 job classifications of service employees represented by the Union. Since 2004, the Union has also represented approximately eight medical assistants at the Employer's Medical Center Drive location who were determined to be nonprofessional employees in Case 6-RC-12308.[8] After the medical assistants voted in favor of being represented by the Petitioner in the nonprofessional unit, the parties entered into a collective

[7] The Employer is one of three entities located on Medical Center Drive which form the Robert C. Byrd Health Science Center. The other two entities are the West Virginia University Administrative Unit of Health Sciences and University Health Associates ("UHA").

[8] I have taken official notice of the Decision and Direction of Election in Case 6-RC-12308.

bargaining agreement covering these employees which is effective from September 20, 2004 through December 31, 2005.

The recognition clause at Article I, Section 1 of the current collective-bargaining agreement covering the service employees provides as follows:

> The HOSPITAL recognizes the UNION as the exclusive bargaining representative of all service employees including unit clerks working in nursing service as defined in job titles attached as Appendix I employed at its Medical Center Drive, Morgantown, West Virginia location. Not included are employees in the following classifications: teaching, administrative and supervisory, registered nurses, professional, technical, security guards, maintenance, doctors, business office clerical, and all other employees not included, as defined in the National Labor Relations Act, as amended.

The recognition clause at Article I, Section 1 of the collective-bargaining agreement covering the medical assistants provides as follows:

> The HOSPITAL recognizes the UNION as the exclusive bargaining representative for those Medical Assistant positions addressed by NLRB Case 6-RC-12308 employed at its Medical Center Drive, Morgantown, West Virginia, location. Not included are employees in the following classifications: teaching, administrative and supervisory, registered nurses, professional, technical, security guards, maintenance, doctors, business office clerical, and all other employees not included, as defined in the National Labor Relations Act, as amended.

The majority of the Employer's facilities are located on Medical Center Drive. Ruby Memorial Hospital, West Virginia University Children's Hospital,[9] WVU Eye Institute, Family House, Mary Babb Randolph Cancer Center, Jon Michael Moore Trauma Center and Physicians Office Center are all located on Medical Center Drive.

On October 1, 1998, the Employer purchased Chestnut Ridge Hospital, a psychiatric hospital. While the front entrance of Chestnut Ridge Hospital does not face Medical Center Drive, the back of the building faces that road, and the record indicates that there is a stairwell leading from Chestnut Ridge Hospital to Medical Center Drive. Upon the Union's request, the

9 The Children’s Hospital is located on the sixth floor of the Ruby Memorial Hospital building.

Employer agreed to accrete the nonprofessional employees working there into the existing bargaining unit.

When the current contract covering the nonprofessional employees was negotiated in 2003, the Employer employed no nonprofessional employees working in any facilities other than those located on or adjacent to the Medical Center Drive location. It is likewise undisputed that during the summer of 2004, when the contract covering the medical assistants was being negotiated, the situation had not changed. There were still no nonprofessional employees working in any of the facilities other than those located on or adjacent to Medical Center Drive.[10]

From 1998 until 2005, United Physicians Care, Inc. (UPC), one of the Employer's sister corporations, employed all of the physicians and other employees working at the Clinic, with the exception of the Practice Administrator.[11] From 1998 until April 2004 the Clinic was located in the area of Cheat Lake known as Cranberry Square, approximately six miles from Ruby Memorial Hospital. In April 2004 the Clinic relocated to its current address, which is also approximately six miles from Ruby Memorial Hospital.[12]

As of January 1, 2005, in anticipation of UPC's sale of the practice to the Employer, all of the employees at the Clinic, except the physicians, became employed by the Employer.[13] At

[10] The record reflects that the parties are currently negotiating a successor contract and that the Union has proposed to delete the phrase "employed at its Medical Center Drive, Morgantown, West Virginia location" from Article I, Section 1 of the contract.

[11] The Practice Administrator was employed by the Employer herein and was contracted to manage the UPC Cheat Lake Physicians' Clinic.

[12] The Employer also has off campus facilities located between one-half to six miles from Ruby Memorial Hospital. These include the Employer's data center, accounting department, patient finance and access department and two warehouses. The record establishes that the Employer employs no nonprofessional employees at these facilities. Housekeeping services performed at these locations are provided by a contractor. The Employer also has some ownership in off-site concerns such as Health Work Rehabilitation Center and Care Partners, a home health provider. Again, no nonprofessional employees are employed at these locations.

[13] The record establishes that the Employer assumed the employment of the Clinic's employees, other than the physicians, as of January 1, 2005, so that these employees could start their employment at the beginning of a benefit year. The record indicates that in April 2005, when the sale of the Clinic's assets to the Employer became final, the physicians also became employed by the Employer.

that time, six medical assistants, three medical records assistants and one phlebotomist were working at the Clinic. All accepted employment with the Employer. Since then, the phlebotomist and one medical records assistant left the Employer's employ. Both of these individuals were replaced. Moreover, the Employer added a second phlebotomist at this facility.

The phlebotomist positions were posted within the Employer's job posting system as non-bargaining unit phlebotomist positions. One of the bargaining unit phlebotomists from Ruby Memorial Hospital applied for and was hired for one of the positions. The other phlebotomist currently employed at the Clinic was hired from the outside. The replacement for the medical records assistant who left the Clinic was also hired from the outside.

The Clinic is under the overall supervision of Practice Administrator Rebecca Rodd. Rodd spends all of her time at the Clinic. Rodd reports to the Employer's Vice-President Steven Tancin, whose office is located at Ruby Memorial Hospital. Reporting to Rodd at the Clinic are supervisors Cindy Morris and Jody Kooser.[14] Nursing supervisor Cindy Morris works only at the Clinic, where she supervises the nurses, medical assistants and the phlebotomists who work there. With respect to the medical assistants and the phlebotomists, Morris prepares their schedules, assigns work, monitors performance, provides training and administers any discipline. Morris has no responsibilities relating to and does not supervise any employees at any of the Employer's other locations.

The medical records assistants report to Jody Kooser. Kooser has offices at both Ruby Memorial Hospital and the Clinic. The record indicates that Kooser is present at the Clinic one to two days per week, and that the balance of her time is spent at Ruby Memorial Hospital. Kooser reports directly to Practice Administrator Rodd regarding the medical records assistants working at the Clinic. Kooser reports to Manager of Medical Records Chris Methany regarding her oversight of medical records assistants at Ruby Memorial Hospital.

[14] Also reporting to Rodd is Supervisor Amy Klink. Klink oversees the managed care staff, billing personal and front desk staff at the Clinic, none of whom are at issue in this proceeding.

With respect to scheduling the medical records assistants at the Clinic, the record reflects that Rodd determines the number of hours for which medical records assistants are needed and Kooser prepares the schedule for the individual employees in that job classification. Kooser conducts informal meetings for medical records assistants at the Clinic. The record establishes that there are no meetings which are attended by both the medical records assistants from the Clinic and medical record assistants from Ruby Memorial Hospital. Likewise, medical records assistants at the Clinic and Ruby Memorial Hospital never fill in for each other. In the case of vacations or other shortages, the Clinic staff will cover for work only at the Clinic. In this regard, although one phlebotomist was hired from Ruby Memorial Hospital, Rodd testified that the Employer's expectation that the Clinic will staff itself and will not obtain its employees from the Hospital has been communicated to her.

B. Duties of Medical Assistants

As noted, there are approximately eight bargaining unit medical assistants working at Ruby Memorial Hospital. These medical assistants rotate assignments in the pre-admission unit, and at the Ruby Day Surgery Center.[15] The medical assistants are part of the Employer's nursing department which is under the overall direction of the Vice-President of Nursing. The medical assistants directly report to Manager Judy Schmidt, who in turn reports to the Director of Perioperative Services.

At the pre-admissions unit, the medical assistants obtain heights and weights from patients, take vital signs, perform phlebotomy, collect specimens and perform 12-lead EKGs, if necessary. They also work on charts of patients who are not having anesthesia. Medical assistants contact patients to notify them of the scheduled time of arrival at the hospital for

[15] The pre-admission unit is located on the fourth floor of the Physicians Office Center, which is adjacent to and connected with Ruby Memorial Hospital. Ruby Day Surgery Center is located on the second floor of Ruby Memorial Hospital.

surgery and they communicate preoperative instructions. The medical assistants work from 8:30 a.m. to 5:00 p.m., 9:30 a.m. to 6:00 p.m. or 10:00 a.m. to 6:30 p.m. on weekdays.

At Ruby Day Surgery Center the medical assistants direct the flow of patients arriving for surgery to the operating room. They decide the order in which patients are to be taken, and assign patients to cubicles using a "bed board." The medical assistants deal with patient cancellations and adjustments in the surgery schedule and handle incoming telephone calls. The medical assistants are responsible for communicating with other medical personnel who work in the area. The hours of medical assistants at the Ruby Day Surgery Center are from 5:30 a.m. to 2:00 p.m. or 7:30 a.m. to 4:00 p.m.

The duties of the medical assistants at the Clinic include processing patients, taking vital signs, and preparing patients to see the doctor, and drawing blood in the absence of a phlebotomist. The medical assistants at the Clinic appear to have greater responsibility than the medical assisitants at the Hospital in that they also administer immunizations, change dressings and perform straight catherizations.[16] They handle patient instructions, schedule tests and start IVs.[17] The medical assistants working at the Clinic work on weekdays.[18]

C. Duties of Phlebotomists

It appears from the record that the bargaining unit phlebotomists work in the lab at Ruby Memorial Hospital. Although the duties of the phlebotomists, whether at the hospital or at the Clinic, are substantially the same, the Employer maintains two separate job descriptions for phlebotomist positions at the Clinic and at Ruby Memorial Hospital. All of the phlebotomists order tests on the computer, identify the patient, complete paperwork for payors and draw blood. Because the Clinic operates as a physician's office rather than a hospital, phlebotomists

[16] A straight catherization involves putting a flexible tube into the bladder to collect a sterile specimen of urine.

[17] A nurse will then monitor the IV flow.

[18] The record does not reflect the actual work hours of these employees.

at the Clinic are responsible for the additional duty of preparing specimens for delivery to Ruby Memorial Hospital. This involves packing the specimens on ice and spinning the blood in a centrifuge, if necessary. They also notify the physicians at the Clinic of test results for patients who take cumiden. The phlebotomists at the Clinic also ensure that all patients are scheduled and that the patients have the appropriate lab slip.

D. Duties of Medical Records Assistants

The record indicates that the medical records assistants working at the Clinic have similar qualifications, education and training as those working at Ruby Memorial Hospital. When the Employer purchased the assets of the Clinic, the practice went from being a physicians' practice to a hospital-based practice. Consequently, the Clinic is now subject to different regulatory requirements, including the requirement that there be one integrated medical record for patients, and that the maintenance, coding and documentation of the medical record be uniform.

The record indicates that the Employer has implemented one electronic medical record for its patients, regardless of the site on Medical Center Drive where services and/or care are rendered. Although the conversion to an electronic medical record has begun at the Clinic, at present there continues to be a paper medical record of services rendered there.

E. Terms and Conditions of Employment

The record establishes that the Employer provides certain uniform administrative services to its facilities, including the Clinic. The record establishes that the Clinic receives laboratory, information technology, purchasing, legal and other support services from the Employer. In addition, the Employer's Human Resources office provides assistance to the Clinic. The Employer's Human Resources office[19] is involved in the hiring process to the same extent whether the job opening is on Medical Center Drive or off site. In this regard, the record

[19] The Human Resources office is located on the second floor of Ruby Memorial Hospital.

shows that the Human Resources office performs recruitment and screening of all applicants. The Human Resources office also conducts the initial interview for all applicants. The second interview is conducted by the supervisor at the hiring location. The supervisor at the hiring location also decides whether or not to hire the applicant. The Human Resources office will communicate the offer of employment and explain the benefit package to all new employees. The payroll for the Clinic is generated from the Employer's payroll department at Ruby Memorial Hospital. The record indicates that employees receive the same form of paycheck regardless of where they work.

The Employer also provides certain employer-wide benefits and programs for employees. For instance, all employees have access to the Employer's job posting software where jobs are posted internally and externally. All employees have access to the Employer's day care center and the Employee Health Department. The Employer also has social functions open to all employees.[20] All of the Employer's non-bargaining unit employees can avail themselves of the same internal grievance procedure which culminates in a final decision by the Employer's Vice-President of Ancillary and Support Services..[21] All employees also wear a name tag.

The Clinic employees are also subject to employment policies and benefits generated by the Employer's Human Resources office. The record establishes that the nonprofessional employees at the Clinic receive the same benefits as non-union employees working at a Medical Center Drive location. They are also subject to the same employment policies, such as

[20] According to Clinic Practice Administrator Rodd, the geographic constraints are such that employees from the Clinic do not always participate in hospital events, and the Clinic has many separate social events.

[21] The contracts covering the bargaining unit contain a grievance procedure which culminates in final and binding arbitration.

the absentee, sick leave, paid time off and disciplinary policies, as non-bargaining unit employees working at a Medical Center Drive location.

The Clinic employees are subject to certain operational policies and procedures which do not apply at the Medical Center Drive locations. Initially, the record establishes that the entry level wage rates for phlebotomists and medical records assistants are higher at the Clinic than at Ruby Memorial Hospital.[22] In addition, employees at the Clinic clock in and out at lunchtime, whereas employees working on Medical Center Drive are not required to clock in and out at lunchtime. The Clinic employees have a different uniform than employees working on Medical Center Drive.[23] They are also subject to a separate parking policy.[24] The Clinic also has its own procedures for identifying patients, answering telephones and taking messages.

The record reveals that Practice Administrator Rodd conducts staff meetings for all employees at the Clinic as well as certain departmental meetings. No bargaining unit employee from the Hospital has ever attended one of these meetings. Likewise, the record shows that employees at the Clinic do not attend meetings at the Hospital. In addition, Rodd has established different "turn around times" to be met for various tasks at the Clinic that employees working at the Hospital are not expected to meet.[25] Finally, the Clinic continues to maintain its own paper personnel file for each of the employees employed there. With respect to budgeting, the Clinic is a separate cost center. The budget for the Clinic is prepared solely by Rodd.[26]

[22] The entry level wage rate for the medical assistant is the same at the Clinic and the Hospital.

[23] Employees at the Hospital wear scrubs, the color of which is determined by their job classification. Employees at the Clinic wear the same color scrubs, regardless of their job classification.

[24] There is no information in the record as to the specific parking policies applicable to the employees at the Clinic.

[25] For instance, the turn around time for providing a medical record chart to a physician is 20 minutes at the Clinic, whereas it takes longer to obtain a chart in the hospital setting. Also, at the Clinic, information is to be entered in the medical record within 24 hours. When the Hospital utilized paper records, information was not entered until after the discharge of the patient. The record is unclear as to how quickly information is to be entered now that all medical records at the Hospital are electronic.

[26] Rodd calculates operational and labor costs at the Clinic in preparing the budget.

The employees at the Clinic do not eat in the cafeteria used by employees at Ruby Memorial Hospital. The employees at the Clinic do not interchange with the employees in the corresponding job classifications at the Hospital. The two groups of employees do not cover for each other's vacations and do not answer telephone calls for each other.

II. ANALYSIS

A. Validity of Petition

In support of its position that the petition should be dismissed, the Employer preliminarily argues that the Union-Petitioner failed to properly complete Form NLRB-502, the petition form. In this regard, the Employer points out that in answering "Section 1. Purpose of this Petition," the Petitioner checked the block indicating that it is seeking a Unit Clarification. The Employer notes that the Petitioner also checked block 7b on the petition form, which is to be checked if the type of petition being filed is an RC-Certification of Representative. The Employer thus argues in its brief that the Petitioner's error makes it unclear whether "the action the Petitioner seeks is clarification of an existing unit or recognition of a new unit."

The Employer also contends that notwithstanding the instruction in Section 5 of the petition form, the Petitioner failed to accurately describe the present bargaining units which are set forth in Article I, Section 1 of the parties' current collective-bargaining agreements. Specifically, the Employer contends that by describing the current units as "All Service Employees including unit clerks at the Morgantown location(s)," the Petitioner mischaracterized the actual bargaining unit by failing to include the language, "employed at its Medical Center Drive, Morgantown, West Virginia location." Finally, the Employer argues that the Petitioner failed to include a statement setting forth the reasons why the clarification of the unit is desired.

I cannot conclude that the Union-Petitioner's error in checking of box 7b on the petition form, created any confusion as to whether the Petitioner was seeking clarification of the existing unit or recognition of a new unit. The "UC Petition Attachment" accompanying the petition makes it clear which employees the Petitioner is seeking to include and exclude in the current

bargaining unit. Moreover, the Notice of Hearing issued by the Regional Office on August 19, 2005, clearly states that the petition was filed pursuant to Section 9(b) of the Act. Finally, the parties stipulated at the hearing in this matter that the Petitioner had previously filed a unit clarification petition in Case 6-UC-465,[27] and had demanded recognition for the employees in the proposed unit, which demand was refused. At the hearing, the Employer also confirmed that it is unwilling to recognize the Petitioner as bargaining representative for the employees of the requested unit until a determination is made as to whether the employees must be accreted into the unit. Thus, it cannot be established that the apparently inadvertent error on the face of the petition actually confused the Employer as to the Union-Petitioner's purpose in filing the instant unit clarification petition.

Similarly, the Union-Petitioner's alleged "mischaracterization" of the actually bargaining unit does not warrant dismissal of the petition. The petition requires the Petitioner to describe the present unit, not to quote the contractual recognition clauses. The current agreements, as well as all of the recognition clauses negotiated by the parties since 1992, were received into the record without objection. In fact, the parties stipulated that the language of the recognition clause has not changed in the previous five collective-bargaining agreements. Thus, it does not appear that the Union-Petitioner was attempting to mischaracterize the unit descriptions set forth in the parties' collective-bargaining agreements.

Finally, the Employer's statement that the Union-Petitioner failed, contrary to 29 CFR Section 102.61(d),[28] to include a statement setting forth the reasons why the clarification is desired, is unwarranted. The "UC Petition Attachment" sets forth the job classifications at the Clinic which the Petitioner seeks to have included in the unit. Clearly, the Petitioner desires to have the nonprofessional employees working at the Clinic accreted into the existing

[27] Case 6-UC-465 was filed on April 1, 2005. and was subsequently withdrawn. The proposed unit in Case 6-UC-465 was identical to the proposed unit in this case.

[28] These requirements are set forth in Section 102.61 (d) of the Board's Rules and Regulations.

nonprofessional unit. Thus, the reason why the Union-Petitioner desires clarification of the unit is self evident.

B. Timeliness of the Petition

The Employer asserts that the petition is untimely because it was filed well past the midpoint of the current collective-bargaining agreements. The Employer also argues that the collective-bargaining agreements clearly define and limit the bargaining unit to employees in the 26 job titles described in the agreements who are employed at the Employer's Medical Center Drive location. The bargaining agreements also expressly exclude "all other employees not included."

The Employer notes that "[a]lthough previous collective-bargaining agreements have contained similar [recognition] language, the Union has never sought accretion through unit clarification when WVUH owned or operated the services at those facilities not listed in the collective bargaining agreement." The Employer cites Robert Wood Johnson University Hospital, 328 NLRB 912 (1999), as authority that the availability of accretion is limited where the parties have historically excluded a group of employees from an existing unit. The Employer, citing Edison Sault Electric Co., 313 NLRB 753 (1994), further states in its brief that "the Board consistently declines to clarify a bargaining unit during the term of a collective bargaining agreement when the objective is to change the composition of a contractually agreed upon unit."

The Employer's arguments in this regard might have some validity if the Union was seeking to represent an additional group of employees which had been in existence before the parties entered into the current contracts. Here, however, it is undisputed both that until the Employer purchased the assets of the Clinic from United Physicians Care, Inc., the Employer did not employ the employees at the Clinic and the Employer did not employ any nonprofessional employees at any of its non-Medical Center Drive locations. Thus, unlike the per-diem nurses at issue in Robert Wood Johnson University Hospital, supra, there is no fact of historical exclusion that limits the Petitioner's right to seek an accretion in this matter.

In addition, Edison Sault Electric Co., supra, is inapposite as that case involved a dispute which arose after the new contract was ratified by the union members over a job classification which had existed for many years and had previously been included in the bargaining unit. The instant dispute involves employees who may be performing unit work at a facility acquired after the parties negotiated a new collective-bargaining agreement.

The recognition clauses of the current collective-bargaining agreements do limit the unit to employees in specified job classifications working at the Employer's Medical Center Drive location. However, as noted, the record establishes that although the Employer has operated facilities which are not located on Medical Center Drive in the past, no employees in any of the job classifications included in the bargaining unit were employed at any of those locations. There is likewise no evidence in the record that the Union knew or that the parties discussed the Employer's acquisition of the Clinic during the collective-bargaining negotiations.[29]

Accordingly, inasmuch as I conclude that the instant petition is timely filed and is otherwise valid, a determination on the merits of the dispute is appropriate.

C. Accretion Standards

The Board has followed a restrictive policy in finding accretions to existing units, because employees accreted to such units are not accorded a self-determination election, and the Board seeks to ensure the employees' rights to determine their own bargaining representative. Archer Daniels Midland Co., 333 NLRB 673, 675 (2001); Passavant Retirement & Health Center, 313 NLRB 1216, 1217-1218 (1994), citing Compact Video Services, 284 NLRB 117, 119 (1987). Further, it is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so

[29] In Stanford Hospital and Clinics v. NLRB, 370 F.3d 1210 (DC Cir. 2004), cited by the Employer, the Circuit Court of Appeals for the District of Columbia disagreed with the Board's finding of an accretion under the circumstance of that case. The parties have not cited and research has not disclosed any authority indicating that the Board has accepted the court's reasoning in that case as warranting a change in Board precedent. I am, of course, bound by Board precedent. See e.g., Toledo Hospital, 315 NLRB 594 (1994).

composed that it may separately constitute an appropriate bargaining unit. Hershey Foods Corp., 208 NLRB 452, 458 (1974). In other words, accretion is found only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted. E.I. Du Pont de Nemours, Inc, 341 NLRB No. 82 (2004), citing Ready Mix USA, Inc., 340 NLRB 946, 954 (2003) citing Safeway Stores, 256 NLRB 918 (1981).

The Board has also consistently held that there is a rebuttable presumption that employees at a new facility constitute a separate appropriate unit. Archer Daniels Midland Co., supra at 675, citing Gitano Distribution Center, 308 NLRB 1172 (1992) and Passavant Retirement & Health Center, supra. This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and that the additional employees share an overwhelming community of interest with the pre-existing unit to which they are accreted. See Safeway Stores, Inc., supra.

In determining whether the presumption has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history, if any. U.S. Tsubaki, Inc., 331 NLRB 327, 328 (2000); Passavant Retirement & Health Center, supra at 1218. The Board has identified the degree of employee interchange and common day-to-day supervision as particularly important factors in determining whether an accretion is warranted. Passavant Retirement & Health Center, supra at 1218; Mercy Health Services, 311 NLRB 367 (1993); Towne Ford Sales, 270 NLRB 311, 312 (1984). As to employee interchange, it is well established that the Board considers permanent transfers to be a less significant indication of actual interchange than temporary transfers. Mercy Medical Center San Juan, 344 NLRB No.

93, slip op. at 2 (2005); Deaconess Medical Center, 314 NLRB 677 (1994); Red Lobster, 300 NLRB 908, 911 (1990).

Applying the established Board law to the instant factual situation, it is clear that the medical assistants, phlebotomists and medical records assistants working at the Clinic have a separate group identity and that they lack such an overwhelming community of interest with the bargaining unit employees at the Medical Center Drive location as to compel their inclusion in the existing bargaining unit. In this regard, there is no regular interchange of nonprofessional employees in these job classifications between the two locations, and employees at the two locations have little or no contact with each other in the performance of their job duties. The record contains only one instance of a permanent transfer of a phlebotomist from a bargaining unit position to a position at the Clinic, which appears to have been an isolated occurrence in that the Clinic is expected to staff itself. Moreover, as noted above, evidence of a permanent transfer is of less significance than evidence of temporary interchange, which does not exist in this case. The employees at the Clinic are geographically separated from the bargaining unit employees by a distance of six miles, and there is no bargaining history for these employees. The medical assistants, phlebotomists and medical records assistants at the Cllinic and the Hospital possess a similarity of skills and functions. However, as noted previously, the working conditions of the employees at the Clinic are different from those enjoyed by employees in the existing unit, including a separate dress code, parking policy, policy regarding clocking in and out at lunch time and other operational policies set by Rodd, and the Clinic employees work in a primary care doctor's office setting, which is different from the medical setting of an acute care hospital.

The employees at the Clinic are separately supervised. The medical assistants and the phlebotomists do not share even immediate supervision with the bargaining unit employees at the Hospital. Although the medical records assistants at the Clinic and those at Ruby Memorial Hospital are both supervised by Kooser, Kooser does not conduct joint meetings or provide any

joint training to the groups. Kooser spends only one to two days a week at the Clinic and the balance of her time is spent at the Hospital.[30] Moreover, all of the employees at the Clinic ultimately report to Practice Administrator Rodd, who has no supervisory responsibilities for any employee in the bargaining unit. In addition, the record establishes that Rodd exercises substantial local autonomy at the Clinic with respect to the hiring, scheduling of employees, assignment of work, performance evaluations and procedures to be followed at the Clinic.

Based on the above and the record as whole, noting particularly the absence of any temporary interchange or any bargaining history, the geographic separation between the Clinic and Ruby Memorial Hospital, the largely separate supervision and the differences in the work settings and the conditions of employment and the considerable local autonomy exercised by Rodd, I find that an accretion is not appropriate. In this regard, I note that the record does not establish that the medical assistants, phlebotomists and medical records assistants at the Clinic share such an overwhelming community of interest with the bargaining unit employees as to overcome the presumption that a unit consisting of employees working at the Clinic is separately appropriate for bargaining.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and is a health care institution within the meaning of Section 2(14) of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

[30] The record does not indicate who the medical records assistants consult with when Kooser is not present at the Clinic.

3. Laborers' International Union of North America, Local 814, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

In sum, for the reasons set forth above, I shall dismiss the petition in the instant case. **IV.**

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.[31] This request must be received by the Board in Washington by 5 p.m., EST (EDT), on November 14, 2005. The request may **not** be filed by facsimile.

Dated: October 28, 2005

/s/Gerald Kobell
Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Two Chatham Center, Suite 510
112 Washington Place Pittsburgh,
PA 15219

Classification Index
385-7533-4020

[31] A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov."