UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

UNIVERSITY OF CHICAGO MEDICAL CENTER
Employer

and **Case 13-UC-421**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 743

Union

DECISION AND CLARIFICATION OF BARGAINING UNIT AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing on this petition was held before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to clarify the existing bargaining unit as petitioned for.[1]

I. Issues

The International Brotherhood of Teamsters, Local 743 (the "Petitioner" or "Union") represents a unit of hourly paid clerical, service, and maintenance employees of the University of Chicago Medical Center (the "Employer" or "Hospital"). By its petition the Union seeks to add to the unit the job classification of Advanced Pharmacy Technician ("APT") consisting of 27 employees. The Employer contends the Union's petition must be dismissed as untimely filed because it raised the unit placement issue of the APT's after the parties bargained a new collective bargaining agreement and is, therefore, disruptive of the parties collective bargaining relationship. Additionally, the Employer contends that the APT position is merely a re-titling and expansion of duties performed by the Lead Pharmacy Technician position ("LPT") which historically has been excluded from the unit represented by the Union, and therefore can not be accreted into that unit under Board precedent.

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[1]Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this matter to the undersigned Regional Director. Based on the record and the parties' stipulations, I find:

a. 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.
b. The labor organization involved is the exclusive bargaining representative of the existing unit at issue herein.

The Union contends that unit should be clarified to include the APTs, especially the APTs that were not formerly LPTs, as they perform many of the same job duties and functions of the Pharmacy Technicians ("PTs"), a job classification included in the existing unit. Regarding timeliness, the Union contends that its petition was timely filed shortly after the parties reached a new collective bargaining agreement, and that it did not abandon its position on the APTs doing unit work during negotiations. Additionally, the Union contends that the Employer did not make clear whether the APT position would be supervisory or what its job functions it would entail until negotiations for the new agreement were substantially completed.

Based on the position of the parties, the issues raised are:

(1) Is the petition to clarify the bargaining unit untimely due to the parties negotiating a new collective bargaining agreement without resolving or attempting to resolve the unit placement of the APTs in negotiations?

(2) If the petition is timely, are the APTs considered part of the unit because they are engaged in unit job functions, or alternatively, should they, as a newly created job classification, be accreted into the existing unit under the Board's accretion policies, including community of interest considerations?

II. Decision

Based on the entire record of this proceeding and for the reasons set forth in detail below I find:

(1) The petition in this matter is untimely. The APT classification was announced, implemented, and APTs were performing their job functions prior to the negotiations for a successor agreement by the parties, and it is undisputed that neither party discussed or reserved the placement of the APTs in the unit during the contact negotiations.

(2) Even if the petition was timely, I find that it is not appropriate to clarify the unit to include the APT position, notwithstanding that approximately half of the APTs are substantially engaged in functions that are an outgrowth or enhancement of functions performed by unit PTs. My finding that it is inappropriate to clarify the unit as sought by the Union is based on an amalgamation of factors, discussed more fully below.

Accordingly, IT IS HEREBY ORDERED that the petition is dismissed.

III. Statement of Facts

A. Background and History of Collective Bargaining between the Parties

The Employer operates an acute care hospital campus in Chicago, Illinois. One of the significant portions of its operations centers on providing pharmacy services to patients from nine separate pharmacy locations scattered throughout the Employer's medical campus. The pharmacy department orders, stores, secures, prepares and delivers all manner of medications to patients located throughout the medical campus. The department operates under the overall supervision of David Hicks, vice president and chief pharmacy officer.

The Petitioner has represented a mixed unit of clerical and service and maintenance employees (hereafter the "Unit") at the Employer's hospital campus since at least 1987 The recognition clause for the overall unit is set forth in Section 2.1(a) of the most current contract and provides, in relevant part, that the Employer recognizes the Union as the collective bargaining representative for all:

Hourly Paid Clerical

> Hourly paid clerical employees working at its facilities located in the Chicago metropolitan region inclusive of suburban Cook County and other surrounding counties, excluding all student employees, employees working less than twenty (20) hours per week, salaried clerical employees including administrative assistants who are on the exempt payroll, all employees represented by labor organizations and covered by other collective bargaining agreements, temporary employees, confidential employees, professional employees, guards and supervisors as defined by the National Labor Relations Act…

Hourly Paid Service and Maintenance

> Non-professional employees of the University of Chicago Hospitals who perform service and maintenance duties at its facility located in the Chicago-metropolitan region inclusive of suburban Cook Country and other surrounding counties, excluding all students, clerical, technical and professional employees, employees covered by other collective bargaining agreements, and guards and supervisors as defined in the Act.

This bargaining unit consists of approximately 1350 employees, 56 of whom are PTs working in the pharmacy department. Prior to the establishment of the APT classification there were 13 LPTs in the pharmacy department who were not part of the unit represented by the Union. When the Employer established the APT position, the 13 LPTs were reclassified as APTs and they continued performing the same job functions they had as LPTs, receiving the same pay and benefits they had as LPTs. The Employer hired 14 additional APTs, of which eight were unit PTs and six new hires. The Employer assigned these 14 additional APTs an amalgamation of job functions performed by the former LPTs and enhancements of job functions performed by the unit PTs.

A. **The Pharmacy Technicians**

Among other ancillary duties, the main function of the PT position is the gathering, compounding, and organizing of individual patient's medication at the various pharmacy locations and then distributing those medications to the patient. The individual PTs begin the process of filling patient medication orders by receiving the physician's order by computer or phone. The hospital currently utilizes a computer system called EPIC, a data base program, which provides a means of centralizing patient care functions, including pharmaceutical services. The EPIC computer system simplifies the process of communicating, organizing, and monitoring medication orders. The centralized nature of the EPIC system has decreased the recordkeeping functions of the department, as well as lessened the number of medicine orders transmitted through the telephone.

Filling a medication order can be done in a variety of ways. The PT may fill the order manually or use the robotic picking system to pick routine medications from pharmacy stock. The PT may be required to compound or fabricate the medication order. Compounding is the process by which certain drugs are mixed according to a physician's order to fit the special needs of the patient. Such compounding may change the form of a medication, from a solid pill to a liquid, or to achieve a unique dosage requirement for the patient. Compounding medication is performed under containment hoods which are designed to contain powders and fumes during the mixing process. Another process performed by the PTs involves the formulation of intravenous solutions (IVs), suspensions, manual medications, and piggyback medications. This function is performed in the department's IV rooms.

The distribution of medication is a part of the PT's job function. There are several ways of delivering medications to patients that differ only in the time and matter of the delivery. Every morning, PTs are assigned the task of delivering a day's worth of medication. The medication is organized in cassettes or trays which are delivered on carts to locked medication drawers located near each patient's room. Intravenous drugs are similarly delivered. Throughout the day, medication orders are filled and delivered individually by the PT or sent up to the patient's unit through the hospital's pneumatic tube system. The PTs are also responsible for refilling the AcuDose computerized medicine cabinets scattered throughout the various hospital units with medicines and materials commonly used by the nursing staff in patient care. With respect to discontinued or unused drugs, PTs gather these drugs while on their daily delivery rounds. In the pharmacy, the PTs return the products to storage or dispose of them and credit the patient's account for the unused items.

B. The Lead Pharmacy Technicians

The LPT position had existed in one form or fashion for over 20 years prior to the changeover to the APT classification. There is no dispute that this position has always been excluded from the Unit. Just prior to the changeover to the APT classification in April 2009, there were 13 LPTs performing specialized functions for the pharmacy department. Specifically, the LPTs were singularly responsible for providing storeroom services; narcotic and controlled substance distribution, control, and record keeping; and providing specialized pharmaceutical services to the Hospital's operating room and General Clinical Research Center. Only the LPTs, pharmacists, and pharmacy management had access to the storeroom via a card swipe system, and only the pharmacists and LPTs had separate access to the narcotics vault. Overall, five LPTs were responsible for the operation of the storeroom, which included the ordering, purchasing, and the receipt of drugs and related materials; maintaining storeroom inventory and expense reporting for the finance department; processing expired drugs; and filling narcotic orders. Another five LPTs were responsible for the preparation, delivery, and record keeping of narcotic and controlled substance medications to units throughout the hospital. They also performed narcotic inventories at nursing stations and worked with the nursing staff to secure the controlled substances. One LPT worked exclusively compounding or assembling narcotics and high cost drugs in the operation room under emergency conditions. Two LPTs worked exclusively for the General Clinical Research Center (hereafter "GCRC") in a separate investigational drug service pharmacy and reported to Pharmacy Director Heath

Jennings.[2] There is no dispute that the LPTs exclusively performed the stated job functions, and that there was no historical evidence that PTs provided coverage or worked as an LPT in any of the foregoing functions.

C. The Employer's 2009 Restructuring of the Pharmacy Department and the Resulting Implementation of the Advance Pharmacy Technician Position

In early 2009, due to reduced patient loads and revenues, the Employer began to review its operations with an eye on reducing labor costs hospital-wide through a 10 percent layoff of personnel. With respect to the pharmacy, David Hicks, vice president and chief pharmacy officer, along with his management team of Pharmacy Director Heath Jennings and Pharmacy Manager Vince Martinez believed that the necessary efficiencies could be achieved through a restructuring of the department to achieve the necessary cost savings in drug costs due to wastage without layoffs . The plan was to utilize the dispensing and delivery efficiencies achieved through the use of the EPIC computer system and robotic medication dispensing system to free up redundant personnel and refocus the system on the problem of drug wastage and departmental coordination.

Pharmacy management decided to expand the LPT's job functions into several new areas of concentration, as well as improve the overall system of narcotic delivery and control. The plan was to finance these improvements in department operations through a material reduction in drug wastage and overage (unusable) drugs. According to Hicks, the pharmacy budgeted drug cost of $60 million a year, and a 5% decrease in that budgeted amount through decreased wastage would account for the entire 10% workforce reduction scheduled for the department. The Hospital decided to redesign the LPT position, renamed the APT position, and began the implementation of reorganizing the pharmacy department on February 9, 2009. On that date, management notified the pharmacy staff of the new APT position, announced the conversion of the old LPT positions to the APT classification, and posted 14 additional APT positions on their internal web site for bid by current departmental personnel. To be qualified for this position, the Hospital listed the following qualifications:

> The employee or applicant must have completed High School or possessed an equivalent GED certificate (Bachelors or other advanced degree preferred.) Valid Illinois Pharmacy Technician license. Certified Pharmacy Technician License (national certification).[3] Successfully complete our HR (Human Resource) entrance examination. Experience and training as defined by one of the following qualifications: Minimum of at least 5 years

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[2] The duties of the two LPTs working in the GCRC involved the day-to-day management and containment of investigational drug products used in research projects being performed both in the medicinal center as well as the university. Since some of the projects involve the utilization of non-FDA approved medication, the LPTs in this position operate under the regulatory umbrella of Federal Drug Administration; compliance to which involved the coordination of paperwork, drug-investigation site visits, the as well as the management of the storage, handling, dispensing and preparation of the investigatory products.

[3] The required national certification license would presumably be obtained from one of the accrediting bodies such as the Pharmacy Technician Certification Board [PTCB] or The Institute for the Certification of Pharmacy Technicians [ICPT].

> experience as an inpatient hospital pharmacy technician or graduation from an ASHP [American Society of Health-System Pharmacists] accredited Pharmacy Technician Program, with at least 2 years of experience as an inpatient hospital pharmacy technician or minimum of at least one year experience as an inpatient hospital pharmacy technician at UCMC [University of Chicago Medical Center] with above average scores on all UCMC employee evaluations, and no disciplinary actions in the last 12 months (except time and attendance).

The Employer implemented the operational change to the pharmacy department around April 19, 2009 when it converted the 13 existing LPTs to the APT job title. Thereafter, the Employer hired 14 new APTs – eight from within the ranks of 56 PTs and the remaining six positions through new outside hires. The wages and benefits package of the transferred LPTs remained the same after conversion to the APT title. The promoted PTs, on the other hand, went from a C-10 job classification to that of a C-11; a promotion that, in part, allowed them to receive an 8% wage increase. The eight promoted PTs, as all of the APTs, were required to possess both an Illinois Pharmacy Technician licenses as well as a national pharmacy technician certification. Parenthetically, PTs are required by state law to possess an Illinois Pharmacy Technicians License. The Employer posted for one and a half PT positions after promoting the eight PTs into the APT position.

The 13 former LPTs whose job titles changed to APTs on April 19 continued to perform their previous job function without interruption. The remaining APTs were slotted into the dispensing, delivering, and return sections of the operation where management believed service, oversight, or coordination were lacking. Specifically, the remaining APTs split their time in a set of shift assignments (rotations) in narcotics' dispensing and delivery, as well as providing oversight and prioritization functions in IV preparation and delivery as well as in the unit dose area. One APT was assigned to each of these locations, on a rotating basis, to provide oversight and coordination over the PTs working in these areas. The record reflects that the APTs provide coordination and prioritization to medication orders for the purpose of improving response time and containing waste and spoilage. A newly hired APT testified that he becomes familiar with patient profiles to anticipate patient drug needs and reduce response time. Oversight of these three areas is performed by APTs on the first and second shift; there is also a single night shift APT responsible for coordination and oversight of the night shift. On the day shift only, the Hospital has a set of APTs assigned solely to the medical units to provide oversight of the daily delivery of medication as well as to perform intensive medication sweeps on the units, searching for unused drugs. Some of these drugs can cost as much as $5,000 and can expire rather quickly.

D. The Union's Reaction to the Creation of the APT position:

The Union reacted to the posting of the APT new position and loss of unit PT positions by filing a group grievance on April 17, 2009. The grievance stated, in part, the following:

<u>Statement of Grievance</u>

> Hospital's pharmacy department transferred work performed by bargaining unit members out of [unit], thus eroding the Bargaining Unit. Employer [also] failed to bargain over the creation of the APT.
>
> **Settlement Desired**
> Duties historically performed now removed from C-10's [PTs] to be returned to C-10. Return jobs to C-10 classification. To bargain in good faith. To make all employees whole in every way.

The parties have continued to process this grievance through the date of the hearing in this matter.

Beginning around May 21 and continuing through August 20, 2009, the parties negotiated a successor agreement to the contract that lapsed by its own terms on July 10, 2009. The terms of the new contract were agreed upon by the parties and ratified by the Union's membership by August 2. Thereafter, the Employer fully implemented the agreement. It should be noted, however, that as of the date of the hearing, the formal document memorializing the agreement had not been executed.

During the negotiations for the successor agreement, there is no record evidence showing that the representational status of the APT classification was raised, discussed, or reserved for future resolution by either party. The record shows, however, that the parties have a history through successive contracts of adjusting the Unit to include new positions as well as to remove discontinued jobs titles. There is no evidence that the Union proposed or demanded that the APT classification be included in Unit or listed in the appendix along with the other bargaining unit positions during the negotiations or through the grievance procedure. In short, the Union did not make a direct claim for the accretion of the APT position into the Unit until the filing of the instant petition on October 8, 2009.

IV. Analysis

A. Timeliness of the Petition

The Board has developed a number of guiding principles in unit clarification cases, based on its desire not to disrupt an existing bargaining relationship or impose one on employees without the opportunity to vote. See *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005); *Towne Forde Sales,* 270 NLRB 311 (1984). In *Union Electric Co.*, 217 NLRB 666, (1975), the Board outlined the overall purpose and parameters of the unit clarification proceeding:

> Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category - excluded or

> included - that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

Id. at 667. In established collective bargaining relationships, the Board will accommodate the collective bargaining process by permitting unit clarification in situations where new groups of employees have come into existence after a union's recognition or certification or during the term of a collective-bargaining agreement that share a significant community of interest with bargaining unit employees, *Gould Inc.,* 263 NLRB 442, 445 (1982), or are considered to be part of the unit because they perform the same job functions as unit employees. *Premcor, Inc.,* 338 NLRB 1365 (2001).

The Board will not, however, clarify a bargaining unit to include a group of employees who have historical been excluded from the bargaining unit in question regardless of whether the union acquiesced in the exclusion or that the excluded employees share a community of interest with the unit absence recent substantial changes in the excluded employees. *United Parcel Service,* 303 NLRB 326, 327 (1991). Furthermore, even when a new group of employees come into existence or an existing group undergoes substantial changes such that clarification of a bargaining unit may be appropriate, the unit placement issue must be timely raised so as not to disrupt the collective bargaining process:

> If a group of employees is in existence when a union is recognized or certified, then the statutory right of those employees to select a bargaining representative can be honored and they can be included in the unit at that time without any disruption of labor relations stability. If a group of employees comes into existence during the term of a contract for an existing unit, then the parties must timely address the unit status of those employees prior to executing a successor agreement. Should they fail to do so, the parties have only themselves to blame for any instability resulting from the existence of a group of employees having interests in common with unit employees but excluded from representation in the unit.

Id. at *327.* There is an exception to the foregoing if the unit clarification issue is raised before a new agreement is reached, which is not resolved or bargained away in negotiations, a unit clarification petition filed shortly after a new contract is reached will be considered. *St. Francis Hospital*, 280 NLRB 950 (1987).

Herein the Employer contends that UC petition should be dismiss as untimely because the APT position became operational during the term of the parties' July 10, 2006 – July 10, 2009 collective bargaining agreement and that the topic of including the APT position into the existing bargaining unit was neither raised, discussed or reserved for later resolution during the negotiations for a new contract. Specifically, the Employer notes that contract negotiations began around May 21, a month after the APT position became operational, and concluded with a tentative agreement on August 20, 2009; the contract was then ratified by the Union membership

on August 28 and implemented by the Employer shortly thereafter. In short, only after a new agreement was negotiated, agreed upon, ratified, and implemented did the Union file its UC petition on October 8, 2009. Thus, the Employer argues, the petition is untimely under established Board law. *Edison Sault Electric Co.*, 313 NLRB 753 (1994).

The Union, on the other hand, claims that it never gave up its claim for the unit work being performed by the APTs during the negotiations for a new collective bargaining agreement, relying on the continued processing of its grievance. Therefore, it contends that the filing of the petition is not untimely under the limited exception in cases where the parties cannot agree on whether to include or exclude a disputed classification "but do not wish to press the issue at the expense of reaching an agreement" and reserve the unit placement issue for future resolution. *St. Francis Hospital*, supra. The Union also contends that the Hospital's obfuscation of the exact parameters of the job duties and functions of the APT throughout the processing of the April 17 grievance was a cause in the delay in filing the instant petition.

I find that the Union did not make a claim that the APTs should be included in the unit it represents until it filed the instant unit clarification petition. The April 17 grievance makes no specific or implied demand for the inclusion of the APTs in the Unit. Rather, in the grievance the Union only claimed the work being done by the APTs rather than claiming that the APTs should be in the unit. The distinction between claiming the work versus claiming to represent the employees doing the work is a long standing distinction under the Act which can produce significantly different results under several sections of the Act. See *Harley-Davidson Motor Co.,* 234 NLRB 1121, 1123, fn. 2 (1978), in which a unit clarification petition was dismissed because the dispute involved work jurisdiction claims falling under Section 10(k) of the Act rather than a claim to represent the employees doing the work. Because I find that the Union did not raise a unit clarification issue by claiming that the APTs should be in the unit prior to completing negotiations for a new collective bargaining agreement, its reliance on *St. Francis* is misplaced. For example, in *Sunoco,Inc*., 347 NLRB 421(2006), the Board found a unit clarification petition filed eight months after the unit employees ratified a new collective bargaining agreement to be timely. In that case, the employer clearly raised the unit clarification issue during negotiations, withdrew the issue in order to reach an agreement, and clearly communicated to the union its intent to file a unit clarification petition in the future. The *St. Francis* line of cases are distinguishable from the situation herein because a unit clarification issue was raised prior to completion of a new collective bargaining agreement, which was not resolved or yielded in the negotiations. In the *St. Francis* line of cases, postponing the unit clarification issue facilitated the collective bargaining process by allowing the parties to reach a collective bargaining agreement in the context of being aware that the unit issue was being put aside for a separate resolution. In the instant case, no unit clarification dispute was raised until after the negotiations were completed and the agreement was ratified by unit employees. A unit clarification issue raised for the first time after the completion of negotiations is untimely as it is disruptive of the bargaining relationship in that it precludes any opportunity to resolve the issue in negotiations, and it can undermine the premises on which the parties bargained during negotiations for the new collectively bargaining agreement. Accordingly, I find that the instant unit clarification petition was untimely filed.

As I find that the Union's grievance does not raise a unit clarification issue but, rather, raises a work assignment issue, I do not find that it presents a conflict with the Board's unit policies such that the unit clarification petition must be resolved to prevent such a conflict. *Ziegler, Inc.,* 333 NLRB 949 (2001).

B. Even if the Petition was Timely Filed, the Unit Should Not be Clarified to Include the APTs.

Assuming, arguendo, that the unit clarification petition should be considered, I am of the opinion that the APT job classification employees are technical employees within the meaning of Board precedent and should therefore be excluded from the unit. Technical employees constitute one of the eight units that the Board in its rule making process found would be appropriate units in acute care hospitals. 54 Fed. Reg. 16336 (Apr. 21, 1989), reprinted at 284 NLRB 1528. During the rulemaking process, the Board described technical employees as those who "perform jobs involving the use of independent judgment and specialized training, as opposed to service and maintenance employees who generally perform unskilled tasks and need only a high school education." 284 NLRB at 1553. The Board further explained that technical employees "are distinguished by the support role they play within the hospital, and by the fact they work in patient care." *Id*. Examples of technical work include "routine clinical tests performed by medical laboratory technicians; general respiratory care administered by respiratory therapists; and x-rays, ultrasound procedures, and CAT scans performed by various technicians." *Id*. at 1554. The Board also explained that technical employees are "certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority." *Id*. Other factors distinguishing technical employees from other non-professionals include separate supervision, the performance of work in laboratories away from other service employees, and a higher wage scale than non-professional employees. *Id*. at 1554-55.

Certain employment positions in acute-care hospital industry are susceptible to placement in several of the presumptively appropriate bargaining unit depending on the unique set of skills and responsibilities as required of the position. Pharmacy Technicians is such a disputed classification. For example, in *Rhode Island Hospital*, 313 NLRB 343 (1993), the Board excluded pharmacy technicians from a technical unit and included then in an overall non-professional unit based on their lack of specialized training, independence, and certification or licensure. *Id*. at 356. In doing so, the Board relied on the reasoning expressed in *Meriter Hospital,* 306 NLRB 598, 601(1992), where the pharmacy technicians were also found not to be technical employees. Specifically, In *Meriter*, the disputed pharmacy technicians:

> [H]ave a minimum of 16 months on-the-job training before they can become a Tech II. However, while they do perform a more technical function than the Tech Is, I do not find under current Board law that they constitute a technical classification. The only Board case which found Pharmacy Techs to be a technical classification was *Duke University*, 226 NLRB 470, 472 (1976). In *Duke* the PTs were found technical [employees] based on their completion of a 6-month course of study and their certification. None of the PTs in the instant case are required to engage in any post high school studies, and none are certified. The Board has consistently refused to place such employees in a technical unit. *Southern*

Maryland Hospital Center, Inc., 274 NLRB 1470, 1474 (1985); *Medical Arts Hospital of Houston, Inc.*, 221 NLRB 1071, 1018 (1975).

Id. at 601. In the instant case, the APTs are required to have an Illinois Pharmacy Technician license, a Certified Pharmacy Technician License (National Certification), as well as possess five years sustained on-the-job experience in an inpatient hospital pharmacy setting or a degree from a certified pharmacy technical school with two years inpatient hospital pharmacy experience. It is also clear that the job functions of the APTs involves exercising independence and discretionary judgment on the technician-based management and control of the medication dispensing, retrieval, and the fabrication drug components of the Hospital's pharmacy operations. Clearly, the APTs possess the distinguishing characteristics of specialized training, independence, and certification or licensure required of a technical employee. As such, I find them to be technical employees. Technical employees are specifically excluded in Article 2.1 of the parties' most recent collective bargaining agreement from the service and maintenance unit description. While the unit's clerical description does not specifically exclude technical employees, the technical exclusion in the unit's service and maintenance description applies to the APTs as pharmacy technicians found not to be technical employees are usually classified as service and maintenance employees. See e.g. *Duke University*, 226 NLRB 470, 472 (1976); *Medical Arts Hospital of Houston, Inc.,* 221 NLRB 1017, 1018 (1975). Thus, as I would find the APTs to be technical employees, they are excluded from the unit by the specific terms of the unit description.

If the APTs as a whole group are not considered technical employees, the record and the positions of the parties suggests that there is a delineation within the APT job classification on which the classification could be split and part of the classification could be clarified into the unit. To a large extent, the Union relies on the job functions of the eight former PTs and six new hires to support its contention that APTs belong in the bargaining unit because they perform bargaining unit work, citing *Premcor, Inc.,* supra and *The Sun*, 329 NLRB 854 (1999)[4]. The Employer, on the other hand, contends that the APTs should not be included in the unit based upon the APTs performance of job functions that were historically performed by the non-unit LPTs. There is some merit to both parties' contentions, but only as to part of the APT classification. The 13 LPTs that were converted to APTs continue to perform the job functions they performed as LPTs, under the same terms and conditions of employment – only their job title has changed as the Employer asserts. Thus, that group of APTs as historically excluded employees should not be accreted into the bargaining unit under long standing Board precedent. *Bethlehem Steel Corp.,* 329 NLRB 243, 244 (1999). The portion of the APT classification that consists of the eight former PTs and six new hires, which the Union refers to as floor based APTs, do engage in a number job functions performed by the unit PTs, although expanded and imbued with additional responsibilities, discretion, and independence. Thus, that group under the rationale in *Premcor* or *The Sun* arguably should be included in the unit as the Union contends. Thus, it is possible to accommodate the positions of both parties under Board precedent by splitting the APT classification and placing only the eight former PTS and six new hires (whom the Union calls the floor based APTs) in the unit based on their performance of unit job functions. However, upon a close examination of the facts in this case and the Board's unit

[4] The rationale in *The Sun* is applicable to units defined by work performed. While the Union contends the unit is defined by work, I find that it is a classification described unit.

clarification and unit placement policies, there are a number of reasons that mitigate against splitting the APT job classification and placing some of the APTs in the unit.

First, both parties seek to either include or exclude the APT classification as a unified whole that should either be placed in the unit or out of the unit, notwithstanding that their respective positions are based on factors applicable to only part of the APTs. Thus, splitting the APT classification and placing half the APTs in the unit is contrary to what the parties seek and may present disruptive bargaining issues for both parties. Second, while the eight former PTs and six new hires in the APT position perform some of the same functions as the unit PTs, the record shows these functions have been considerably enhanced with additional responsibilities and discretion as set forth above. The APTs essentially act as lead persons with responsibilities for mentoring and training PTs, as well as redirecting PTs work to cover staffing shortages. The Employer has given these "floor based APTs" considerable responsibilities and discretion to monitor patient drug needs and to interact with nurses, doctors, and the pharmacists to met the patients' drug needs with efficiency and a minimum of waste. Third, the eight former PTs and six new hires in the APT job classification are still in the progress of being trained by the APTs that were formerly LPTs, and their job functions are still undergoing development. For example, the eight former PTs and six new hires are being trained on a rotating shift basis in some of the non-unit functions performed by the former LPTs, such as narcotic handling, distributing, and record keeping. In considering the unit placement of the eight former PTs and six new hires separately, their job duties that are an outgrowth of unit PTs job functions do not outweigh their connection and interests with the former LPTs in the APT classification to justify splitting the APT classification and placing the eight former PTs and six new hires in the unit. Furthermore, given the historical exclusion of half the APT classification and the interest of the eight former PTs and six new hires with the former LPTs in the new APT classification, I find it would be inappropriate to clarify the bargaining unit to include the APT classification in whole or in part.

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 NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **March 5, 2010.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website,

select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 19th day of February, 2010.

Joseph A. Barker
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Region 13
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CATS — UC Petition-Accretion Issues
Classification index – 385-7533-2020; 385-7501-2587; 470-9000; 470-9025-6700.