

**Dane County Chapter, American National Red Cross
Badger Regional Blood Center and Union of Madison
Red Cross Employees,¹ Petitioner. Case 30-
RC-2683**

June 2, 1976

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Dana L. Hesse. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, this case was transferred to the Board for decision. Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Dane County Chapter, American National Red Cross Badger Regional Blood Center, an affiliate of the American National Red Cross headquartered in Washington, D.C., is an unincorporated association with tax-exempt status. The Employer provides blood services to meet the requirements of approximately 81 hospitals located in an area stretching from northwestern Illinois to the Upper Peninsula of Michigan. The Employer has uniform contracts for the supplying of blood with these hospitals which are usually reexecuted annually. The Employer also has separate contracts with three VA hospitals which are entered into nationally. Of the approximately 81 hospitals serviced, approximately 25 are county or municipal hospitals. The standard contract requires the participating hospital to reimburse the Employer in part for the cost of collecting, processing, and distributing the blood at set rates per unit for the various kinds of blood products.

During the past fiscal year the Employer realized gross revenues in excess of \$1.8 million, and pur-

chased and received goods in excess of \$300,000 from points outside the State.

The Employer contends that it should be exempt from the Act as an instrumentality of the Federal Government. The Employer further contends that, should the Board assert jurisdiction, it should be found to be a health care institution. We reject both of the Employer's contentions and we find that the Employer's operations warrant the Board's assertion of jurisdiction.²

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

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

4. The Employer, contrary to the Intervenor,³ contends that Pamela Reynolds is a confidential employee who should be excluded from the unit. Reynolds is secretary to Dr. Becker, medical director⁴ of the Employer. The Employer primarily contends that, inasmuch as the parties have agreed that the secretaries to its division manager and administrator should be excluded as confidentials and the administrator reports to the medical director, the latter's secretary should therefore automatically be considered to be a confidential employee. However, the record shows that, although the administrator reports to the medical director, he has primary responsibility for labor relations problems, while the medical director oversees the technical aspects of the Employer's operation. Dr. Becker's attendance at meetings of the personnel committee and employee Reynolds' duties with respect to his attendance do not establish that he formulates, determines, and effectuates management policies in the field of labor relations.⁵ Cf. *Litton Financial Planning*, 216 NLRB 380 (1975). Accordingly, we shall include her within the unit herein found appropriate.

The parties stipulated and we find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

² *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975).

³ *Badger Regional Blood Center Employees Wisconsin Council 40 of County and Municipal Employees, American Federation of State, County and Municipal Employees, AFL-CIO*, is the Intervenor herein. Intervenor's motion to intervene was granted by the Hearing Officer and it shall appear on the ballot herein on the basis of its more than 30-percent showing of interest which has been administratively verified.

⁴ Dr. Becker's job description, which was submitted by the Employer, is entitled "Director or Medical Director" and he is referred to by either title in the record.

⁵ Dr. Becker is a member of the Employer's medical advisory committee and is not a member of its personnel committee. Although the record does indicate that the medical advisory committee is apprised of problems in the area of labor relations, there is no evidence in the record that it is Dr. Becker's function to report on labor problems.

¹ Petitioner's unopposed motion to withdraw from the proceedings having been timely made is hereby granted.

All full-time and regular part-time employees of the American National Red Cross, Dane County Chapter, Badger Regional Red Cross Blood Center, but excluding professional employees, confidential employees, managerial employees, guards and supervisors as defined in the Act

[Direction of Election omitted from publication]⁶

CHAIRMAN MURPHY, concurring in part and dissenting in part

I agree with my colleagues that Employer's operations and impact on commerce are sufficient to warrant the Board's assertion of jurisdiction and that the Employer is not a health care institution within the meaning of Section 2(14) of the Act. Unlike my colleagues, I would find that the secretary to the Employer's director⁷ is a confidential employee and should be excluded from the unit on that basis.

The Board defines as confidential employees those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.⁸

The Employer's director, Dr Gary Becker, is responsible for its direction in all matters and, in carrying out such responsibilities, participates in formulating and carrying out its labor policies. Despite this overall responsibility and participating, my colleagues find that Dr Becker is in reality not involved in labor relations problems. Instead, they imply that he concerns himself solely with the technical aspects of the operations while leaving administrative matters, including labor relations, entirely to his immediate subordinate, the Employer's administrator, L. J. Petersen. This is not borne out by the record. While Petersen, as stipulated by the parties, is a person who formulates and effectuates labor relations policy,⁹ he does not do so to the exclusion of Dr Becker. Petersen testified, without contradiction, that Dr Becker both formulates and carries out labor relations poli-

cies to the same extent that he, Petersen, does. Further, Dr Becker attends medical advisory committee meetings and keeps notes of those meetings. This committee is kept apprised of various matters including any problems in labor relations which the Employer may be experiencing.¹⁰ Dr Becker also attends all meetings of the personnel committee, which recommends pay rates and fringe benefits to the Chapter's board of directors. Thus, contrary to the picture my colleagues attempt to portray, Dr Becker is a direct participant in the formulation and implementation of the Employer's labor relations policy.

Dr Becker's secretary, Pamela Reynolds, acts for him in a confidential capacity. She opens all of his mail, prepares all of his correspondence, including that of a confidential nature, and has access to all of his files. Indeed, my colleagues do not contend otherwise. However, they do urge that Reynolds has very few duties with respect to labor matters. This assertion, of course, is in large measure based on their misconception as to the extent of Dr Becker's involvement in such matters. Since Reynolds opens all of Dr Becker's mail and types all of his correspondence she, of necessity, acts with respect to all items related to labor matters in which the doctor becomes involved. These, as noted, touch all aspects of the Employer's labor relations by virtue of Dr Becker's responsibility and participation therein. Further, Reynolds types the minutes of the medical advisory committee meetings which include Dr Becker's notes concerning labor matters, and personnel committee reports routinely pass across her desk. Thus, in the performance of her duties for Dr Becker, Reynolds spends a substantial amount of her time working on labor matters for him.

Since Dr Becker is involved in the formulation and/or carrying out of Employer's labor relations policies, and Reynolds acts for him in a confidential capacity, I would find that she is a confidential employee and, therefore, may not be included in the requested unit.¹¹

⁶ [Excelsior footnote omitted from publication.]

⁷ My colleagues refer to the director by his former title, medical director.

⁸ *The B. F. Goodrich Company*, 115 NLRB 722, 724 (1956).

⁹ Petersen's secretary was excluded from the unit on the basis that she acts in a confidential capacity to Petersen.

¹⁰ The medical advisory committee acts as the advisor to the Employer for the technical medical aspects of its program.

¹¹ *Victor Industries Corporation of California*, 215 NLRB 48 (1974).