

**Duke University and American Federation of State, County and Municipal Employees, AFL-CIO, Local 77, Petitioner.** Case 11-RC-4041

October 18, 1976

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS JENKINS  
AND WALTHER

On November 14, 1975, the Regional Director for Region 11 issued a Decision and Direction of Election in the above-entitled proceeding in which he expanded the service unit sought by the Petitioner. He provided further that, since the unit found appropriate was substantially larger than that sought, the Petitioner would have the opportunity to submit an additional showing to support the larger unit, or if it did not wish to proceed to an election in the unit found appropriate, it should notify the Regional Director within 7 days of his decision. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a request for review of the Regional Director's decision and the Employer filed a brief in opposition. On March 25, 1976, by telegraphic order the request for review was denied insofar as it related to the unit placement of laboratory technicians, patient care technicians, and psychiatric attendants and was granted with respect to all other issues. Employer filed a brief on review.

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 considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer, Duke University, is a private, unincorporated nonprofit university in the State of North Carolina. It has an enrollment of approximately 7,200 students within 44 academic departments and 7 graduate schools. The Medical Center involved herein is headed by the vice president for health affairs. There are four major components of the Medical Center: the School of Medicine; the School of Nursing; Duke Hospital; and the private diagnostic clinics (PDC's), one medical and one surgical. All four medically oriented components are interlocking in both physical plant and staffing. The two PDC's are private partnerships whose members are faculty members in the School of Medicine. Students in the School of Nursing get their practical and clinical training by making use of and working in the hospi-

tal's facilities on a rotating basis. The hospital's budget is self-sustaining with revenues from patient income, Federal grants, and other resources. The private diagnostic clinics bill their patients for services rendered by the partnerships. The profits accrue to the physicians working therein. The employees in the diagnostic clinics are paid by the University. They enjoy the same fringe benefits as all other employees at the Medical Center and are not employees of the partnerships but of the Medical Center. The School of Medicine, the School of Nursing, the PDC's, and Duke Hospital are thus one integrated operation encompassing the Medical Center which is an operational division of the University. Each furnishes support for the other. Teaching activities are conducted throughout the Medical Center formed by these components.

There are approximately 7,000 employees in the Medical Center. Approximately 6,000 of these are paid biweekly. These biweekly employees are non-faculty, nonadministrative employees. They include service employees, nursing employees, technical employees, clerical employees, and maintenance employees. Their fringe benefits are similar in all instances and are distinguishable from those received by nonbiweekly employees.

Petitioner seeks a unit which, it contends, includes all service employees; the Employer argues that the unit sought is inappropriate as it excludes many service-type classifications. The Regional Director in his unit finding included a number of job classifications not sought by the Petitioner; however, as the Petitioner has not indicated it would not represent the employees which the Regional Director included in the unit, he directed an election in the larger unit, increasing the size of the unit sought from approximately 1,000 employees to approximately 1,900.

With respect to the issues under review, the Petitioner would exclude, while the Employer would include, employees in the following classifications:<sup>1</sup>

The *medical transcriptionists (11)*<sup>2</sup> work with the department of surgery and type medical records, reports, and surgical procedure documents. The *medical secretaries (89)* work primarily in the departments of medicine, surgery, and psychiatry and typically work in a physician's office performing secretarial and administrative tasks for the physicians. *Office clerks (53)* work throughout the Medical Center and perform routine clerical tasks. Some of these work in the business office, but a far greater number appear to work elsewhere in the Center. *Secretaries (351)*

<sup>1</sup> The record evidence supports and the parties agree to the exclusion of technical employees and all clerical employees in the business office

<sup>2</sup> The numbers next to the classifications indicate the approximate number of employees in each classification

also work throughout the Center and their secretarial and clerical functions include typing, scheduling, arranging appointments, composing routine correspondence, and taking and transcribing dictation. Although the Regional Director did not refer to clerk typists, the record indicates that there are 36 regular and 13 senior clerk-typists throughout the Medical Center, 6 of whom are typists in the business office.

It appears from the above that these employees spend a majority of their working time devoted to activities that are imminently connected with and functionally related to the Employer's health care objectives. While some of them may perform certain billing and other functions which are similar to the duties performed in the business office, these duties are related to patient care. Most of the employees in the above categories work elsewhere than in the business office, in locations scattered throughout the Employer's health care facilities; as such, they undoubtedly have more contacts with employees in the service unit than with business office clericals. Accordingly, we affirm the Regional Director's finding that the above classifications should be included in the service unit<sup>3</sup> except for those who physically work in the business office. The latter are excluded as business office clericals.

*Medical records clerks (66) and classification and coding clerks (22)* work in the basement of building S-1 and are responsible for the filing and retrieval of medical records, including X-ray files used in the diagnostic radiology division. They are also concerned with admissions and patients' medical histories; this involves researching patient history numbers as well as issuing new numbers through a computer system for new patients. The records with which these employees are involved have nothing to do with the financial records or billing. These records are kept as clinical documentation of what patient care was provided both with respect to inpatient and outpatient care. They perform no functions which are performed by business office employees and are not under the supervision or direction of the business office. Their supervision is by the assistant director of the Hospital. We agree with the Regional Director's inclusion of these classifications in the service unit.<sup>4</sup>

*Information clerks (5)* are stationed at the main lobby information desk and at the PDC information desk. They provide general informational services to patients and visitors and are supervised by the assis-

tant administrative director who also supervises various other divisions within the hospital. The Regional Director included the information clerks in the service unit because of their contact with patients. However, it appears that they perform functions which are similar to those performed by the receptionists found to be business office clerks and excluded from the service and maintenance unit in *St. Catherine's Hospital of Dominican Sisters of Kenosha, Wisconsin, Inc.*, 217 NLRB 787 (1975). Moreover, their duties are similar to those performed by clinic receptionists, who are agreed-upon exclusions. Accordingly, we shall exclude the information clerks from the service unit found appropriate herein.

*Library assistants and clerks* work in the School of Nursing and the Medical Center Library, the department of surgery, and the undergraduate medical education library performing such tasks as ordering, cataloging, filing, circulation, and maintenance of library materials. While the Regional Director voted these employees under challenge, it is clear that these employees do not perform clerical work in or in close proximity to the business office. As the work performed by these library assistants and clerks is related to and an integral part of the operation of the Medical Center, we will include them in the service unit. See *St. Catherine's Hospital, supra*.

*Telephone operators (22)* operate from facilities located in the telcom building. The *switchboard operators (3)* are located at PBX stations in the PDC reception area and in the anesthesia department. The telephone operators are responsible for operating the telephone switchboards and handling voice and radio paging in the Hospital and Medical Center. The switchboard operators handle incoming calls of persons seeking appointments or wishing to talk to a particular physician and also handle outgoing calls for physicians. The Regional Director included these employees in the unit based on a relationship to the service employees and because they would otherwise have no opportunity for representation, relying on *Duke University*, 217 NLRB 799 (1975), in which the Board found that a separate unit of switchboard operators at a health care institution if found appropriate would result in an unwarranted fragmentation of bargaining units. These employees are housed in a separate building, in a sense an extension of the business office itself. We note these employees have little contact with other service employees. As we have previously found such classifications to be office clerical, we shall exclude them from the service unit found herein.<sup>5</sup>

*EEG technicians (4)* operate a machine which re-

<sup>3</sup> See *Trumbull Memorial Hospital*, 218 NLRB 796 (1975), *Saint Anthony Center*, 220 NLRB 1009 (1975)

<sup>4</sup> See *Jewish Hospital Association of Cincinnati d/b/a Jewish Hospital of Cincinnati*, 223 NLRB 614 (1976), *William W. Backus Hospital*, 220 NLRB 414 (1975).

<sup>5</sup> *St. Catherine's Hospital, supra*, *St. Luke's Episcopal Hospital, Texas Children's Hospital, Texas Heart Institute*, 222 NLRB 674 (1976)

cords brain activities and functions, schedule patients' visits and prepare them for examination; they also give some medication and record the patients' medical histories. The technicians also clean, adjust, and perform maintenance on the machines. They are required to have 1 year of formal training at the University and upon completion of this program may take an examination and be certified. While the four technicians involved are not certified, two are eligible to take the examination. The other two are not eligible as they have not met the requirements for certification although they are performing the tasks required.

The Regional Director found the EEG technicians not to be technical and included them in the service unit. Petitioner contends that they should be excluded as technicals as the record shows they give medication, record medical histories, maintain complicated machinery, and a formal training program of 1 year is required.<sup>6</sup> We find that the EEG's are technical employees even though they are not certified, since the Employer has a 1-year formal training program upon completion of which an exam may be taken for certification and two of the four are eligible for certification. In those cases where they were found to be nontechnicals,<sup>7</sup> there was a much shorter training required for the technicians. Accordingly, we shall reverse the Regional Director and exclude the EEG technicians, finding them to be technical employees.<sup>8</sup>

*Pharmacy technicians (44)* prepare drugs in unit doses under the supervision of staff pharmacists. They are trained for 6 months at a technical institute before beginning their duties at the Medical Center. They are not hired unless they possess a certificate attesting to the successful completion of the technical training course and thereafter are required to have on-the-job familiarization before they are ready to fully assume their duties at the various satellite pharmacies in the Medical Center. They receive medication orders from nursing stations, pull the drug, and fill the order. They are not certified or registered by any formal organization. The Petitioner urges their exclusion, noting that their training competency and independent judgment plus their association with professional medical personnel give these employees a community of interest with the other technical employees. In *Medical Arts Hospital of Houston, Inc.*,

221 NLRB 1017 (1975), in which pharmacy technicians were included in the service unit, they were trained only for a 3-week period, whereas the technicians in the present case must complete a 6-month course of study and receive a certificate of completion before being hired. These pharmacy technicians, even though they are not certified by a formal organization, have close association with professional medical personnel and share a community of interest with other technical employees. Therefore we shall, contrary to the Regional Director, exclude them from the service unit.

*Surgical care assistants (15)* were included in the unit by the Regional Director without discussion in his decision. Petitioner contends that these surgical care assistants qualify as technical employees since they are comparable to licensed practical nurses. A majority are college graduates and must have some biological science training. Some are licensed practical nurses, some are former military medical corpsmen, and most all are seeking admission to the Physicians' Assistants Program. All appear to have had professional training. In accordance with our precedent as to this classification, and for the reasons stated in those cases, we find the surgical care assistants to be technical employees and exclude them from the service unit.<sup>9</sup>

*Facilities analysts* are located in the Bell building, maintain an inventory of space and fixed and nonfixed equipment in the Medical Center. The Regional Director allowed this classification to vote under challenge. Contrary to the Regional Director, we find that, as there is no showing that these are technical employees, we shall include them in the service unit.

*X-ray processor repairman (1)* works in the division of diagnostic radiology performing maintenance and repair on radiographic film processing equipment. There are no educational requirements but prior experience in the field is necessary. The X-ray processor repairman is not certified, licensed, or registered. It appears that this individual is engaged in the repair and maintenance of highly technical equipment used at the Medical Center and is given extensive training by the manufacturer of the equipment. His level of training does not however, in our view, qualify him as a technical employee, and we shall include him in the service unit.

*Instrument makers (7)* are highly skilled mechanics with a background in metal fabrication. They fabricate and repair operating room and lab equipment such as tables and suspension apparatuses. The Regional Director found that they should be excluded

<sup>6</sup> Only recently the training requirement for the position was upgraded from 6 months to a 1-year formal training program which is given at Duke University

<sup>7</sup> *Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Memorial Hospital Center*, 217 NLRB 775 (1975), *Trumbull Memorial*, 218 NLRB 796 (1975), and *Trinity Memorial Hospital of Cudahy, Inc.*, 219 NLRB 215 (1975)

<sup>8</sup> *St Luke's Hospital, supra*

<sup>9</sup> See *Kanawha Valley Memorial Hospital, Inc.*, 218 NLRB 846 (1975); *Trinity Memorial Hospital of Cudahy*, 219 NLRB 215; *Medical Arts Hospital of Houston*, 221 NLRB 1017, *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976) Cf *Barnert Memorial Hospital Center, supra*

from the service unit as technical employees. While these employees have a skill, they perform a maintenance and repair function which would properly place them in a service and maintenance unit;<sup>10</sup> they have, however, heretofore been excluded by the parties from the existing maintenance unit. We shall, therefore, contrary to the Regional Director, include them in the service unit found herein.

*X-ray equipment repairmen (3)* are skilled tradesmen who maintain and calibrate X-ray machinery and inspect for high voltage regulation. They are high school graduates but must demonstrate a mathematical aptitude and prior experience in the field of X-ray equipment maintenance and a knowledge of mechanics. They attend schools and take courses given by the manufacturers of the equipment they maintain. They are not certified, licensed, or registered. Contrary to the Regional Director who excluded them as technical employees, we find that, while these employees are engaged in the repair and maintenance of technical equipment, and are given training by the manufacturer of the equipment, their function is essentially one of maintenance and repair. Like the instrument makers, they would normally be included in a service and maintenance unit. Inasmuch as the union representing the maintenance employees does not seek to include them, we shall include them in the service unit found herein.

*Radiological safety technicians (2)* survey radiological equipment throughout the Medical Center, checking for radiation leaks and system integrity and use meters to detect and register emissions. They are familiar with various radiological health and safety codes and equipment standards. They have no particular educational background or prior working experience but are trained on the job. We agree with the Regional Director and shall include them in the service unit herein.

*Research technicians (161)* are engaged in research projects and are trained according to the requirements of the project involved. They are located throughout the Medical Center. Their background requirements vary depending upon the research project, but a college degree is preferred, and many have an advanced degree. The Regional Director's decision is silent with respect to these research technicians. We find, however, that, as these employees are all college graduates and are performing research for which a college degree is preferred, they may well be professional employees, but in any event should be excluded from the service unit found.

*Research aides (6)* assist researchers at the Medical Center. Five of these work at the community health

sciences department, one in the division of neurology. While most have some college training or a degree, there is no particular educational requirement for the position, and it appears from the record their work does not require any particular training. The Regional Director's decision makes no reference to these employees. We find these employees are not technicals. Since they are engaged in patient care or related functions and have contact with unit employees such as lab technicians, we shall include them in the service unit.

*Social service representatives (3)* are all college graduates with some training and experience in the general field of social services. They are responsible for finding financial sponsors and support for patients in need, assist in discharging, plan posthospital patient activities, provide counseling and psychological support for patients and their families, and perform other general social services. We find that, as they have college degrees and are performing work in their field of study, they are either technical or professional employees and are properly excluded from the service unit.

*Gift shop coordinator (1)* operates the gift shop and supervises voluntary help who assist in the gift shop. We shall include this individual in the service unit inasmuch as she does not exercise supervisory authority over employees—only volunteers, and her work is related to patient care.

*Medical laboratory clerks (21)* log specimens, answer the telephone, and perform general clerical duties including using computers in the laboratories. We find that, as these employees are engaged in patient care related functions and have contact with unit employees, they should be included in the service unit.

The Petitioner's request for review speaks of X-ray file clerks and administrative secretaries, classifications not dealt with in the Regional Director's decision nor referred to in the unit description. We have carefully reviewed the record, but are unable to confirm with certainty their existence as a separate classification; it may be that the functions are performed under classifications previously treated herein. Therefore, if any employees bearing these classifications do appear to vote, they shall be allowed to vote subject to challenge.

The Petitioner also requests that the inclusion of food service employees be described with some additional specification. In the unit description set out below, we have named the specific classifications encompassed by the category of food service employees.

On the basis of the foregoing, we find that the following employees employed by the Employer at the

<sup>10</sup> *Highview, Incorporated*, 223 NLRB 646 (1976).

Duke University Medical Center, Durham, North Carolina, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>11</sup>

All biweekly service employees, including food service employees (food service aides, dining hall cashiers, cooks, and bakers), patient care assistants, advanced patient care assistants, patient care technicians, surgical attendants, operating room technicians, plastic operating room aides, plastic operating room assistants, physical therapy room assistants, laboratory assistants, laboratory research assistants, clinical assistants, senior laboratory assistants, unit service aides, central supply room aides, data terminal operators, messengers, clinic assistants, medical technicians, ward clerks, deliveryman, medical supply assemblers, EKG technicians, vectorcardiogram technicians, patient escorts, chapel receptionists, equipment room clerks, inventory record clerks, mail clerks, medical transcriptionists, medical secretaries, office clerks, secretaries, medical records clerks, classification and coding clerks, library assistants and clerks, parking lot attendants, bus drivers, chauffeurs, valet parkers, autopsy technicians, pharmacy aides, electron-microscopy technicians, corse- teer, cytology preparatory technicians, laboratory technicians, laboratory preparators, offset pressmen, duplicating machine operator, artist illustrators, audio-visual technicians, lab assistants and clerks, facilities analysts, X-ray processor repairman, instrument makers, X-ray equipment repairmen, radiological safety technician, research aides, medical laboratory clerks, gift shop coordinator, but excluding laundry workers, housekeepers, psychiatric attendants, recreation assistants, arts and crafts instructors, telephone repairmen, audiovisual specialists, cytotechnologist, medical technologist, pharmacy technicians, dental assistants, pulmonary function technicians, medical photographers, key-punch operators, computer programmers, junior programmers, computer operators, senior computer operators, materials coordinator, research technicians, surgical care assistants, senior surgical care assistants, EEG technicians, technical employees, information clerks, telephone operators, switchboard operators, business office employees, guards, and supervisors as defined in the Act.

<sup>11</sup> Except for the unit placement of classifications under review and discussed herein, the Regional Director's unit placement of other classifications have not been considered or disturbed

Accordingly, we hereby remand the case to the Regional Director for the purpose of conducting an election pursuant to the Decision and Direction of Election as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the issuance of this Decision on Review.<sup>12</sup>

MEMBER WALTHER, dissenting in part:

Contrary to my colleagues, I would not find that EEG technicians are technical employees. In the instant case, there are four EEG technicians, none of whom are certified. There is currently a 1-year formal training program for EEG technicians at the hospital, upon completion of which they can take a written examination and be certified. Two of the EEG technicians are eligible to take the examination for certification but have not done so, and two do not even meet the requirements for certification. None of the four EEG technicians is certified. Thus, it is evident that the Employer does not require certification. In addition, there is no evidence in the record that these EEG technicians exercise any independent judgment in the performance of their duties, or that they perform any duties materially different from EEG technicians traditionally included by the Board in service and maintenance units.

The Board, in legions of cases, has found EEG technicians not to be technical employees and thus has included them in service and maintenance units. Indeed, in *Jewish Hospital Association of Cincinnati d/b/a Jewish Hospital of Cincinnati*, 223 NLRB 614 (1976), the Board included in a service unit, on facts similar to those herein, two EEG technicians who received from 3 to 6 months' training, and for whom certification was then available, but not a requisite for employment. Neither of the EEG technicians was certified. The Board found those EEG technicians not to be technical employees. See also *William W. Backus Hospital*, 220 NLRB 414 (1975); *St. Luke's General Hospital*, 220 NLRB 488 (1975); *St. Elizabeth's Hospital of Boston*, 220 NLRB 325 (1975); *Alexian Brothers of Elizabeth, Inc., d/b/a Alexian Brothers Hospital*, 219 NLRB 1122 (1975); *Trinity Memorial Hospital of Cudahy, Inc.*, 219 NLRB 215 (1975); *Trumbull Memorial Hospital*, 218 NLRB 796 (1975); *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975); *St Catherine's Hospital*, 217 NLRB 787 (1975); *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975).

The Board now proposes, on the basis of a longer training program, to ignore well-established, logical, and consistent precedent and find that EEG technicians are technical employees. Indeed, this training

<sup>12</sup> [*Excelstor* footnote omitted from publication]

program was only recently upgraded from 6 months to 1 year. Clearly, these employees are not certified, nor is there a requirement that they be certified. Moreover, the record is devoid of any evidence that their duties are different from EEG technicians traditionally included in service and maintenance units, or that they exercise any more independent judgment than EEG technicians who have been included in the unit by agreement of the parties. To make a training program with the possibility of certification the exclusive basis for finding EEG technicians to be technical employees, in my judgment, is unsound and ignores the Board criteria that 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."

In reaching its conclusion, the majority relies on *St. Luke's Episcopal Hospital, Texas Children's Hospital, Texas Heart Institute*, 222 NLRB 674 (1976). In my opinion, that decision is distinguishable and not controlling here. There, the parties specifically stipulated that EEG technicians I and senior EEG technicians possessed the requisite training to qualify as technical employees and should be treated as such.<sup>13</sup> Absent a similar stipulation by the parties, I would not apply *St. Luke's, supra*, hereto and, in line with all other prior Board decisions, would not find that EEG technicians are technical employees. I agree with my colleagues in all other respects.

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<sup>13</sup> Also at issue were EEG technicians II. EEG technicians II were employed before registry became available, were not certified, licensed, registered, or enrolled in any formal training program. However, the parties stipulated that they performed the same duties and had the same responsibilities as the other EEG technicians. Apparently because the duties of EEG technicians II were similar to the duties of EEG technicians, who were stipulated to be technicals, the Board excluded the EEG technicians as technicals.