

Meriter Hospital, Inc. and 1199W/United Professionals for Quality Health Care, affiliated with the National Union of Hospital and Health Care Employees/Service Employees International Union, AFL-CIO, CLC, Petitioner.
Case 30-RC-5279

February 28, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On October 16, 1991, the Regional Director for Region 30 issued a Decision and Direction of Election in the above-entitled proceeding, pertinent portions of which are appended hereto, in which he found, that operating room technicians are technical employees who should be included in the petitioned-for technical unit.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision disputing four of the Regional Director's unit placement findings,¹ including his finding with respect to operating room technicians.

The Board has carefully considered the matter at issue and has decided to grant the Employer's request for review as raising substantial issues warranting review solely with respect to the issue of whether operating room technicians should be included in the technical unit.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the record with respect to the issues under review,² we affirm the finding of the Regional Director that operating room technicians, under the facts as set forth in the Regional Director's decision, are technical employees. *William W. Backus Hospital*, 220 NLRB 414 (1976); *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *Medical Arts Hospital of Houston*, 221 NLRB 1017 (1975). In all other respects the request for review is denied.³

¹ Review was requested by the Employer only with respect to the Regional Director's exclusion of the utilization review specialists, the medical imaging quality control technician, and the pharmacy technicians II; and the inclusion of the operating room technicians.

² Pursuant to Sec. 102.67(d) of its Rules and Regulations, the Board may examine the record in evaluating a request for review.

³ Member Oviatt would vote the medical imaging quality control technician subject to challenge.

APPENDIX

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Technical Employees of the Employer at its Madison, Wisconsin facilities including Radiologic Technologists I, II, III and IV, certified Occupational Therapist Assistants, Licensed Practical Nurses, Cardiovascular Technologist II, Dental Hygienist, Special Project Coordinator, Medical Records Dietitian Technician, Coder Analysts, Cancer Registrars, Quality Support Specialists, Operating Room Technicians, Dental Assistants, EEG Technician II and Lead EEG Technician, Respiratory Therapists; but excluding Medical Imaging Quality Control Technicians, Monitor Technicians, Anesthesia Technicians, Pharmacy Technicians I and II, ECG Technicians I and II, Professional employees including Utilization Review Specialists, Perfusionists guards and supervisors as defined in the Act.

Background and Issue:

The Employer is an acute care non-profit hospital of more than one hundred beds, located in Madison, Wisconsin. Currently, the Employer is under contract with Local 150 of the Service Employees International Union, AFL-CIO for a service and maintenance unit of employees (Employer Exh. 13). This contract is effective from March 19, 1990 to March 15, 1992. Also, the Petitioner in the instant case represents a unit of registered nurses in certain departments of the Employer. That unit's collective bargaining agreement expires March 14, 1993.

On April 21, 1989, the Board issued the rule in which it determined that with respect to acute care hospitals, eight units, including a unit of all technical employees, shall be appropriate units for collective bargaining purposes. 284 NLRB 1561-1562, 53 Federal Register No. 170 pp. 33923-33924. On April 23, 1991, the United States Supreme Court in *American Hospital Association v. NLRB*, 111 U.S. 1539, 137 LRRM 2001 (1991) upheld the validity of the rule.

The Petitioner herein seeks to represent a unit of all technical employees of the Employer. Apparently, none of these employees have previously been represented by any labor organization.

The Parties stipulated that the technical unit should consist of the following classification "Radiologic Technologists I, II, II and IV (Medical Imaging Technicians), certified occupational Therapist Assistants, Licensed Practical Nurses, Cardiovascular Technologists II, Dental Hygienist, Special Project Coordinator, Medical Records and Dietician Technician."

The Parties are in disagreement as to the Unit Placement of certain other classification in the technical unit. The Employer would include in the technical unit and Petitioner would exclude the following classifications:

1. EKG (ECG) Technicians I & II
2. EEG Technicians
3. Dental Assistants
4. Utilization Review Specialist
5. Quality Support Specialist
6. Coder Analysts
7. Cancer Registrar
8. Perfusionists
9. Pharmacy Technicians I & II
10. Monitor Technicians
11. Medical Imaging Quality Assurance Technicians

Finally, the Petitioner would include in the technical unit and the Employer would exclude:

12. Operating Room Technicians (Surgical Technicians)
13. Respiratory Therapist
14. Anesthesia Technicians

The Board's Definition of Technical Employees:

The Board in *Barnett Memorial Hospital Center*, 217 NLRB 775 (1975) stated the following test for determining the definition of a technical employee:

. . . we apply the Board's standard 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.

The Board in determining under its rule making procedures that a technical unit is a separate unit appropriate for collective bargaining purposes in the acute hospital industry stated at 284 NLRB 1516 at 1553 (1987):

The evidence presented at the hearings demonstrate that technical employees 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 . . . technical employees occupy a high prestige status distinct from other categories of non-professional employees because of the training requirements for their jobs.

Technical employees further are distinguished by the support role they play within the hospital and by the fact that they worked in patient care. Examples of their 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.

. . . At the hearings the evidence shows that all health care technical employees have significant additional education and/or training beyond high school including: community college associate degree programs which provide math and science background beyond that which high schools offer; vocational training programs run by hospitals; programs at accredited schools of technology and in some fields, a full 4-year college degree.

Further, the evidence indicates that most hospital technical employees are either certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority, although laws regarding such licensure, registration, training and qualifications vary throughout the country.

Although, in general hospitals apply similar benefit and labor relations policies to technical and other non-professional employees, the evidence shows that the wages and hours of technical employees differ significantly from those of the other non-professionals. On the aver-

age, technicians earn \$2,000 per year more than service workers in this industry. Technicians' wages are tied to the earnings of the more highly skilled technologists with whom they work, and they generally earn approximately 75% of what technologists earn.

. . . There is no temporary interchange, and little permanent interchange between technical employees and other non-professionals because of the difference in skills, the specialized functions of the technicals, and the differences in their education.

. . . Contrary to statements of industry witnesses, who maintain that a service worker could take a six week training program and be able to read EKG equipment we are persuaded that technical training requires full or nearly full-time education and high school education does not provide the mathematics and science background necessary.

The Board's guidelines as set forth under its Rule making decision 284 NLRB 1516 (1987); 284 NLRB 1580 (1989), along with the prior Board decisions in this area will be utilized as precedent in my arriving at the unit placement conclusions of the various categories in dispute in this case.

Also, to the extent that the pay received by the employees in the disputed classification is a relevant factor in considering the unit placement I note that the current collective bargaining agreement between the Employer and Local 150 of the Service & Hospital Employees Union provides a current wage scale of \$7.29 an hour for the lowest paid newest hired Service & Maintenance employee to \$16.08 an hour for the highest paid most senior employee. The \$16.08 an hour appears to be the pay received for highly skilled maintenance employees with 20 years seniority or more (Employer Exh. 13 at Pages 50-51). These classifications include Biomedical Tech II, Chief Mechanic, Head Electrician, Maintenance Electrician, Mechanic II & Maintenance Specialist. Set forth below are the facts, and my legal conclusions for the disputed job classifications.

. . . .

Utilization Review Specialist

There are two Utilization Review Specialists (URS) employed by the Employer. Their pay range is \$10.37 an hour to \$14.42 an hour. The requirement to become an URS is to be an RN, or Registered Records Administrator, or Accredited Records Technician, and have at least two years experience in a health care or reviewing organization setting. An RN must complete a three or four year degree program, an RRA must complete a four year degree program and an ART must complete a two year degree program. Both of the Employers URS are RNs. The URS reviews the medical records and charts of the hospital's patients to determine that the patients are "sick enough to be in the hospital." The URS conducts concurrent admission and continued stay review. Fifty percent of the URS time is spent on private insurance patients and the other 50% on Medicare and Medicaid patients. In performing these duties the URS will go to the nursing units where the patient charts are left and review the charts. They then will summarize the type of treatment the patient is receiving and the diagnoses, and report their findings to the insurance company. Based upon this information the insurance company will certify the number of days the patient

may be hospitalized. After the certified days are passed and if the patient has not been released, the URS must determine from the charts and records why further hospitalization is necessary, and provide this information to the insurance carrier. The URS must therefore make an independent judgment as to whether or not further hospitalization is required, and articulate the reasons to the insurance company. Concurrent review also involves work with Medicare and the Wisconsin Peer Review Organization (WIPRO) which is composed mainly of physicians which evaluates physicians care to determine that certain severity and intensity requirements are met justifying an inpatient hospital stay under Medicare.

The Employer and Petitioner both recognized that the position of URS involves the use of independent judgment in the review and interpretation of patients medical records. However, the Petitioner contrary to the Employer contends that the position is professional and should be excluded from the technical unit. Under current Board law I shall exclude this classification from the unit as being professional. Both incumbents are RNs although the hospital guidelines do not require RNs for this position. See *St. James Hospital's of Newark*, 248 NLRB 1045 (1980) where the Board found RN-Utilization Review Specialists as being in a professional unit even though the hospitals guidelines did not require RNs for the position.

Medical Imaging Quality Control Technician:

The Employer employs one Medical Imaging Quality Control Technician (herein referred to as MIQCT). The pay range is \$7.08 an hour to \$9.81 an hour, with the incumbent earning \$9.80 an hour. No certification or license is necessary for this position. The only requirement is an associate degree in science. On the job training, includes a one semester physics course at the University level and two weeks of training regarding film processors. Also, the person must have two years prior experience in a medical imaging or radiology department. The MIQCT works from 7:30 a.m. to 4:00 p.m., Monday through Friday.

He performs quality control procedures on all radiographic equipment in the medical imaging department. He monitors the X-ray processors to check the chemistry replenishment rates, temperature and humidity. In measuring the equipment he utilizes monitoring tools, including filters, sensitometers and decimeters. Also, the MIQCT assists a physicist in testing new equipment received by the hospital. The MIQCT keeps the darkroom clean and checks for light leaks. Contrary to the Employer's assertion, I do not believe the MIQCT classification is technical in nature. No license or certification is required and very little on the job training is necessary. Finally, I do not deem the job requires the requisite judgment necessary to be a technical employee. The Board in assessing this job classification in previous cases have found it not technical, but rather belonging in a service and maintenance unit. *Southern Maryland Hospital Center, Inc.*, 274 NLRB 1470 at 1475 (1985); *Nathan and Miriam Barnert Memorial Association d/b/a Barnert Memorial Hospital Center*, 217 NLRB 775, at 778 (1975).

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Operating Room Technicians

The Employer contrary to Petitioner, would exclude this classification. There are approximately 27 operating room technicians (ORTs) employed by the Employer. ORTs are

paid \$9.11 to \$12.55 an hour. They work a normal 8 hour shift Monday through Friday and are supervised by the head nurse of the operating room. In order to be hired as an ORT, the person must have completed an OR Technical course lasting 9 to 12 months at a local technical college. During the past 9 years no ORT has been hired without completing the technical college requirement. Likewise, the ORTs are subjected to a 6 month on the job training at the hospital. The ORTs are not required to be certified, registered or have prior work experience. Of the present twenty-seven ORTs, only six lack the formal training as provided by the Technical college course and five of the ORTs are certified. Also, the ORTs are required to attend monthly-in-service training attended by RNs and at times physicians. These sessions are to keep current in surgical procedures.

The ORTs assist in assembling the required sterile devices, and the placing of gowns onto a cart. They will add items to the surgical cart based on a preference list which a particular surgeon utilizes. These lists are apparently compiled by the ORT and not the physician. Once the cart is assembled, the ORTs will wheel the cart to the surgery room. There they will sterilize the room by wiping the furniture with a disinfectant. Likewise, the ORT makes sure that the surgical supplies are disinfected. The ORTs role during surgery is to assist the surgeon by handing to the surgeon the instruments needed at the time needed. A trained ORT will be able to anticipate when a certain instrument is needed. Any tissue removed may be given to the ORT by the physician for future tests. The ORT makes sure the tissue is properly contained and the container is marked for the additional tests. The circulating nurse (an RN) is responsible for taking the container to the appropriate lab for testing. After the surgery is completed, the ORT will transport the contaminated supplies to a re-processing area, and will re-clean the surgery room. Finally, on occasion the ORTs will perform minor suturing when asked by the physician.

Although conceding that the training necessary to become an ORT is sufficient to normally consider the job technical, the Employer argues that the ORTs are not sufficiently skilled to be classified as technical employees. The Employer cites *St. Elizabeth's Hospital of Boston*, 220 NLRB 325 at 329 (1975) for support of its position. However, while this position presents a close issue, I am satisfied that the current record adequately demonstrates that the ORTs herein are technical employees. All of the ORTs hired for the past nine years have completed a 9 to 12 month course in this field at the area technical college. Likewise, while many of the duties performed by the ORTs are routine such as disinfecting the supplies and room, others are considerably more skilled and technical in nature. Thus, the ORTs are responsible for anticipating the surgeons needs and handing the surgeon at the appropriate time the appropriate instruments. Likewise, the ORTs do in fact perform minor suturing when requested by the physician. In *St. Elizabeth's Hospital of Boston*, supra, relied upon by the Employer, the Board did in fact find the ORTs as being non-technical employees. However, the Board did not explicate in any detail the nature of the skills and duties performed by the ORTs. I am persuaded that the Board's decision in *William W. Backus Hospital*, 220 NLRB 414 at page 418 (1976) is a more detailed and reasoned decision by the Board. In that decision none of the ORTs were certified. However, the Board found the em-

ployees to be technical based on the duties they performed. Further, unlike Backus, in the instant case, for the past nine years, the hospital has required the ORTs to have completed a 9 to 12 month technical college program for ORTs in order to be qualified for hire. This program consists of courses in medical surgical procedures, operating room techniques, anatomy aseptic techniques, surgical instrumentation and microbiology. Likewise, 20 of the current 27 ORTs have taken this program and five are certified. See also *Children's Hospital of Pittsburgh*, 222 NLRB 588 at 594 (1976) for a further decision including ORTs in a technical unit. The ORTs herein shall be included in the Technical Unit.

Pharmacy Technicians I & II

There are twelve employees in Pharmacy Technician Level I (PT I) and fourteen in PT II. PT I pay ranges from \$7.08 an hour to \$9.81 an hour. PT IIs are paid \$8.25 to \$11.43 an hour. PT Is are hired without any experience. They receive 8 weeks on on-the-job training. They are trained by an experienced PT I or PT II. In order to progress to a PT II, a PT I must have finished 18 months service in a tech I position and must be trained and competent in 2 of the 5 Tech II duties. No degree or certification is necessary to be a Pharmacy Technician, nor is any prior work experience necessary. The duties of a PT II include sterile product preparation, outpatient prescription processing, controlled substance distribution, record keeping inventory maintenance, distribution of drug product and coding or charging of pharmaceuticals.

In the sterile products preparation the Tech II is responsible for the compounding of IV solutions. They do this by taking a base solution such as dextrose and adding a drug to it. The pharmacist will place in the computer the amount of solutions to be mixed and the Tech II will utilize this in mixing the solutions. The Tech II must have the Pharmacist verify his/her work. The Tech II will display the product, the base solution, the syringe and the label so that the pharmacist can view what product has been mixed. However, the pharmacist cannot determine whether the proper mixture has been performed. The failure of the Tech II to properly compound the IV solution could lead to adverse reaction by the patient. In the past all IV solutions had been performed by pharmacists.

In performing outpatient prescription processing, the Tech II will receive the prescription from the patient. The Tech II will ask the patient what other drugs he/she is taking, and will enter the information into a computer which will generate the product label. The Tech II will take the prescription gather the product and fill the prescription. After completion, the product is set aside for a final check by the Pharmacist.

Again, as stated above while the Pharmacist does do a final product check, the Pharmacist cannot verify with certainty that any solution mixture has been properly compounded.

In performing his/her duties regarding controlled substances, the PT II is responsible for receiving on a daily basis the controlled substance sheets which originate from the nursing units. The Tech II will fill out the proper paper work as required by law, and resupply the nursing units. Likewise, the Tech II will distribute other non-narcotic drugs to the nursing units, and will see that the drug supply is restocked by ordering drugs from the various whole-sale suppliers. Finally, the Tech II performs coding and billing functions for drugs dispensed to patients.

The PT I and IIs do not receive any in-service training programs, or attend outside programs. They are not required to have any knowledge of the effects of drugs on patients. The Tech I is responsible to fulfill any of the jobs of the Tech II but, the majority of the Tech Is job consists delivering medications to nursing units, picking up physician order forms, filling medication cassettes with supply medications for a 24 hour period, as well as prepackaging and packaging drugs in a unit dose fashion.

The Employer contrary to Petitioner, contends that the PT I and IIs are technical employees and should be included in the unit. I have no question but that Tech Is are not technical employees. They work generally as an inventory clerk, and exercise no independent judgment. I shall therefore, exclude the Tech Is from the bargaining unit.

The determination of Tech IIs presents a much closer issue. They have 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 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 1017, 1018 (1975). In *Southern Maryland*, supra, as in the instant case the PTs did fill prescriptions. However, said prescriptions, as in the instant case, were filled under the close scrutiny of licensed pharmacists. Under Wisconsin law only a license pharmacist can in fact dispense drugs. Accordingly, I shall exclude the PTs I and II from the technical unit.