

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

American Red Cross, Carolinas Blood Services Region  
Employer<sup>1</sup>

and

Case 11-RC-6732

Teamsters Local Union #71, affiliated  
with International Brotherhood of Teamsters  
Petitioner<sup>2</sup>

**CORRECTED REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, American Red Cross, Carolinas Blood Services Region, is a chartered unit of the American Red Cross, a federally-chartered organization that is headquartered in Washington, D.C. The Petitioner, Teamsters Local Union #71, affiliated with International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a bargaining unit consisting of all full time and regular part-time collection specialists I and II, collection technicians I and II, mobile unit assistants I, II and III, mobile unit supply clerk, and mobile unit technician, for the blood collections operations department of the Charlotte, North Carolina, service area, of the Employer, excluding nurses, medical technologists, administrative assistants II and III, autologous directed services coordinator, compliance specialist II, mobile unit assistant specialist, training specialist, assistant team supervisor, collection manager, collection operations supervisor, compliance manager, mobile unit supervisor, scheduling supervisor, scheduler, team

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The Petitioner's name appears as amended at hearing.

supervisors, office clerical employees, professional employees, and supervisors as defined by the Act. Following a hearing before a hearing officer, the parties filed briefs with me.

As evidenced at hearing and in the briefs, the parties disagree on three issues: (1) whether the Employer is a health care institution under Section 2(14) of the Act; (2) whether the scope of the unit should include only employees in the Charlotte blood service area or whether the appropriate unit should include the Charlotte, Winston-Salem and Asheville, North Carolina, blood services areas; (3) and whether the positions of administrative assistant II and scheduler should be included or excluded from the unit.

Contrary to the Petitioner, the Employer contends that it is a health care institution within the meaning of Section 2(14) of the Act. Regarding the scope of the unit, the Petitioner seeks a unit consisting of only blood service employees employed at the Charlotte blood services locations. However, the Employer argues that an appropriate unit should include similar employees employed at the three locations of the Employer located in Charlotte, Winston-Salem and Asheville. Finally, the Petitioner would exclude from the bargaining unit the positions of administrative assistant II and scheduler, while the Employer maintains these two positions should be included in the bargaining unit found appropriate.

The unit sought by the Petitioner would include approximately 158 to 164 employees, and the expanded unit proposed by the Employer would consist of about an additional 160 employees. The parties stipulated that four registered nurses: Leslie Manzini, Lynne Livingston, Brian Cobb and Allison Stones and the medical technologists working in both the reference lab and human leukocyte antigen (HLA) lab should be excluded from

the unit. The parties further agreed that administrative assistants III Yvonne Bacallao and Elizabeth Taylor-Lemus should be excluded from the unit as confidential employees. Finally, the parties stipulated that the following individuals possess and exercise one or more of the enumerated Section 2(11) authorities and are supervisors within the meaning of the Act: Christi Mathewson, Judy Martin, Kerry Brogdon, Sharifa Hodge, Wendy Smith, Patricia Martin-Vegue, Christopher Holloman, Mary Morgan, Delores Smalls and Willie Jones. The Petitioner, during the hearing and in its brief, did not take a position as to whether it would be willing to proceed in an election in any unit found appropriate. There is no history of collective bargaining for the Employer.

I have considered the evidence adduced during the hearing and the arguments advanced by the parties on the issues. As discussed below, I have concluded that neither the evidence, nor the arguments advanced by the Employer, support a finding that the Employer is a health care institution within the meaning of Section 2(14) of the Act. Accordingly, I have determined that the Employer is not a health care institution under the Act. Further, I find that the record establishes that a single location unit of the Charlotte blood services area, as sought by the petition, comprises an appropriate bargaining unit. Neither the evidence, nor the Employer's arguments supporting a broader unit, convince me that there is sufficient basis to warrant an expanded unit determination. Finally, for the reasons stated below, I have found that the positions of administrative assistant II and scheduler should not be included in the bargaining unit. Therefore, I have determined that the petitioned-for unit is an appropriate unit. Accordingly, I am directing an election in a unit of approximately 160 employees employed as collection specialists I and II, collection technicians I and II, mobile unit

assistants I, II, and III, mobile unit supply clerk, and mobile unit technician, for the blood collections operations department of the Employer at its Charlotte, North Carolina, service area.

To provide a context for my discussion of the issues and my conclusions, I will first provide an overview of the Employer's operations. Next, I will discuss the health care institution issue, first setting forth the applicable legal standard, followed by my analysis of the facts and reasoning supporting my determination of the issue. That section is followed by the relevant factors relating to the unit issue and the reasoning supporting my conclusion that the single location, petitioned-for unit is appropriate. Finally, I set forth my discussion of the appropriate composition of the unit issue concerning the positions of administrative assistant II and scheduler followed by the applicable legal standards for determining these unit placement issues.

## **I. OVERVIEW**

The Employer, American Red Cross, Carolinas Blood Services Region, is a member of the Southeast Division of the American Red Cross, which division includes the states of North Carolina, South Carolina, Georgia and Alabama.<sup>3</sup> The Employee is also a part of the Biomedical Services Division of the American Red Cross with the Charlotte location being the regional headquarters for the Carolinas Blood Services Region. It is the function of the Employer to collect and distribute blood products and provide blood treatment services throughout North Carolina and a few counties in Georgia, South Carolina, and Tennessee. The Employer maintains five service areas in its region which

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<sup>3</sup> As described in the record and noted by the Employer in its brief, The Greater Carolinas Chapter of the American Red Cross (the "Chapter") is an entirely separate division of the American Red Cross that focuses on service to the community including emergency and/or disaster relief, service to military families and local community support. The employees in the petitioned-for bargaining unit are employees of the American Red Cross, Carolinas Blood Services Region, not the Chapter.

include: Charlotte, Asheville, Winston-Salem, Durham, and Wilmington, North Carolina. There is a collection staff at each of these locations who collect blood through bloodmobile drives and at fixed sites and return it to the locations for distribution. The collection staff reports to their assigned team supervisor, who in turn, reports to the collection operations supervisors. The collection operations supervisors report to the collections managers who supervise the entire blood collection operations in a particular service area. The collections managers report to the collection director who reports directly to the CEO of the Carolinas Blood Services Region.

The Charlotte service area of the Employer, covering the employees identified in the petition, includes employees working from two Charlotte facilities: (1) St. Vardell Street, referred to in the record as the Clanton Road facility, which also is where the administrative offices for the Charlotte service area are located; and (2) a fixed-site donation facility at 2425 Park Road. A second fixed-site donation facility, which appears not to be regularly staffed with employees, is also located in the neighboring community of Huntersville, North Carolina. The Park Road facility also houses the regional administrative offices of the Employer, the HLA lab and one of two regional reference laboratories.

Besides the two fixed-site donation locations for the Charlotte service area, the Employer also conducts blood collection operations from mobile units originating from both its Park Road and Clanton Road facilities. The mobile blood collection process typically begins with employees in the donor resource department contacting churches, schools, and other organizations to schedule blood drives. After the donor resources department schedules a blood drive, the scheduler assigns blood collection staff to

specific drives to collect blood. The blood collection staff then goes to the location to conduct the blood drive. The Charlotte service area employees typically operate 6 to 8 blood drives per day; the majority of blood collected by the Employer is through these efforts of its mobile units. Donors may donate whole blood by phlebotomy or may donate blood components by apheresis. Collection employees at the Park Road location are generally responsible for the apheresis operation since it requires the use of special equipment, which involves collecting blood from the donor, harvesting particular blood components and returning the blood to the donor. As reflected in exhibits introduced by the Petitioner, during the period May 2009 through April 2010 for the Charlotte service area, the Employer collected approximately 101,340 units of whole blood and 20,755 units of apheresis products. During this same period, according to the Employer's exhibit, the Employer at its Charlotte service area collected 685 units of autologous red cell products.

## **II. HEALTH CARE INSTITUTION ISSUE**

### *A. Applicable Legal Standard*

Pursuant to Section 2(14) of the Act, the Board will assert jurisdiction over "health care institutions." These institutions are defined as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility or other institution devoted to the care of sick, infirm or aged persons." Regarding blood collection employers, the Board stated in *Syracuse Region Blood Center*, 302 NLRB 72 (1991), "In cases in which there was no indication that a blood bank performed any activities other than the collection, processing, and distribution of blood and blood products, the Board has found that the blood bank was not a health care institution within

the meaning of the Act.” *Dane County American Red Cross*, 224 NLRB 323 (1976); *Greene County American Red Cross*, 221 NLRB 776 (1975); *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975); *San Diego Blood Bank*, 219 NLRB 116 (1975). The Board in *Syracuse Region Blood Center* continued its analysis of facilities involved in blood collection by ruling that when the employer’s activities extend beyond the collection, processing, and distribution of blood and also include patient pheresis and therapeutic phlebotomies, both of which, the Board held, indisputably involve patient care, an employer will be determined to be a health care institution.<sup>4</sup> However, the Board then further explained that if an employer that routinely does blood collection also performs patient pheresis and therapeutic phlebotomies, it must conduct these patient-related functions “with sufficient regularity and in a sufficiently large number” before the employer is properly found to be a health care institution. 302 NLRB at 73. In *Syracuse Region Blood Center*, the Board determined that by performing between 400 and 600 therapeutic apheresis and therapeutic phlebotomies, as compared to 94,000 whole blood donations and 1500 non-therapeutic apheresis procedures, the employer performed these patient-related procedures with sufficient regularity and in sufficiently large number to establish that it was a health care institution.

#### *B. Analysis of Facts and Reasoning*

The Employer argues that it is a health care institution devoted to the care of sick or infirm patients under Section 2(14) of the Act. In support thereof, the Employer relies heavily upon the testimonies of Dr. Corinne Goldberg, Medical Director of the Carolinas

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<sup>4</sup> The Employer’s exhibit informs that, “Apheresis is the process in which whole blood is withdrawn from a person’s circulation, a component such as plasma is separated out and retained, and the remainder is returned to the patient, usually with some replacement fluid. In therapeutic apheresis, as distinct from blood component donation by apheresis, the goal is to remove a pathologic element from the blood.”

Region, and Elaine Baker, Administrative Director of Clinical Services for the Employer. The Employer asserts that it falls within the rationale of *Syracuse Region Blood Center* because the activities that it performs go beyond the mere collection, processing, and distribution of blood. That is, in addition to the whole blood and apheresis collections, the Employer also performs therapeutic apheresis collections. Dr. Goldberg described this procedure as the withdrawal of blood from a person; the separation by machines of the various components contained in the blood such as plasma, red blood cells, white blood cells, stem cells and platelets; the isolation and removal of one of these components and then the return of the remaining blood components, as well as replacement fluid, to the person. The Employer, for the period May 2009 through April 2010, conducted 255 such therapeutic apheresis procedures.

The Employer also contends that in the near future it will increase the number of therapeutic apheresis procedures that it performs. Specifically, Dr. Goldberg testified that in May 2010, the Employer performed 2 Dendron procedures and that the Employer expects to perform 10 such blood collections per month in the upcoming year. As explained by Dr. Goldberg, the Dendron procedure is one in which a person's blood is withdrawn, particular white blood cells are removed, and the remainder of the person's blood and replacement fluids are returned to the patient. The white blood cells that are removed are then shipped to Dendreon, a pharmaceutical company, which processes the white blood cells and converts them into a cancer vaccine. The cancer vaccine is then shipped back and injected into the patient. The collections will occur every two weeks and there are a total of three Dendreon procedures that are scheduled for each person. Finally, Dr. Goldberg described how the Employer has recently purchased a machine so

that it will be able to perform photopheresis procedures. This procedure involves the drawing of whole blood from a person, the isolation of the white blood cells which are then irradiated with an ultraviolet light and then the return of all elements of the blood, including the white blood cells, to the individuals. Though the Employer has yet to perform any photopheresis procedures, Dr. Goldberg testified that the Employer hopes to average 36 such procedures per month once it is able to conduct them.

Regarding all the various forms of therapeutic apheresis identified in the record and relied upon by the Employer as evidence that it is a health care institution, Dr. Goldberg admitted that these procedures were performed by the Employer only at hospitals and not at any of the facilities of the Employer. Moreover, all therapeutic apheresis procedures according to Dr. Goldberg were performed only by members of the nursing staff of the Employer with no assistance from any other employee of the Employer. Again, the parties have agreed that the four nurses employed by the Employer are not to be included in the appropriate bargaining unit. Thus, as the Petitioner argues, no bargaining unit employees are involved in the therapeutic apheresis procedures performed by the Employer at various hospitals in the Charlotte area.

In its brief the Employer separates the 255 therapeutic apheresis procedures it performed in the year period as follows: therapeutic plasma exchange/plasmapheresis – 137; thrombocytapheresis-2; erthrocytapheresis-79; leukocytapheresis-26; and stem cell-11. During this same year period, as noted above, the Employer in its Charlotte services area collected approximately 101,340 units of whole blood and 20,755 units of apheresis products. While the Employer clearly does perform some therapeutic apheresis procedures, the very small number of these procedures in relation to the overall volume

of the blood collection activities of the Employer does not support the conclusion that they were “performed with sufficient regularity and in a sufficiently large number...” to justify the Employer’s being qualified as a health care institution within the definition of Section 2(14). *Syracuse Region Blood Center*, 302 NLRB at 73. In this regard, the proportionate number of such procedures performed by the Employer here is smaller than that performed by the employer in *Syracuse Region Blood Center*. For this reason, I find *Syracuse Region Blood Center* to be distinguishable from the present case.

Regarding the Dendron procedures and the photopheresis procedures described in the record, I find that both these procedures are not yet firmly established enough as a component of the Employer’s operation to be given consideration. For example, in finding an employee’s notice to resign in the future to be “purely speculative,” the Board reasoned that, “the Employer’s apparent argument that the Board should assess [the employee’s] community of interest with the unit found appropriate on conditions that may or may not exist 6 or more months from now would throw the entire election process established under Section 9 into turmoil and completely destabilize the system for the selection of employee representatives.” *Grange Debris Box & Wrecking Co.*, 344 NLRB 1004, 1005 (2005). See also *Amoco Production Company*, 199 NLRB 484 (1972) (Board rejected employer’s contention that anticipated depletion of oil field would alter its operation).

While the Employer also relies on the decision in *North Suburban Blood Center v. NLRB*, 661 F.2d 632 (7<sup>th</sup> Cir. 1981), wherein the Seventh Circuit found that the performance of donor pheresis and autologous collections is an indicator of health care institution status, the Board in *Syracuse Region Blood Center* specifically rejected the

court's reasoning. On this point, the Board unequivocally stated, "we do not agree...that the Employer's performance of donor pheresis and autologous collections<sup>5</sup> is an indicator that it is a health care institution." *Syracuse Region Blood Center*, 302 NLRB at 73.

Additionally, in support of its position that it is a health care institution under Section 2(14) of the Act, the Employer cites the fact that it operates two laboratories, a reference lab and a human leukocyte antigen (HLA) lab, at its Park Road facility. The main function of the reference lab is, upon notification from a hospital, to analyze a person's blood in an attempt to determine why that person is reacting in a negative manner to the blood provided to the person by the hospital. From May 2009 through April 2010, the reference lab examined the blood of 588 persons.

The second laboratory operated by the Employer, the HLA lab, also examines the blood of a person who will be receiving product platelets to insure that the person will receive a product that is compatible for him. During the same one year period stated above, the HLA lab conducted 8,749 tests and procedures.

The testing performed by the two laboratories, the reference lab and the HLA lab, of the Employer appears to be routine in nature. However, none of the lab testing was performed on individuals. Rather, the tests were performed on blood samples that were referred to the laboratories of the Employer.

The Employer's argument that it should be found to be a health care institution because of the work performed at its two Park Road laboratories has been rejected by the Board. Citing *Greene County American Red Cross*, the Board in *Syracuse Region Blood Center* was very clear that in determining the employer to be a health care institution it

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<sup>5</sup> Autologous donations are those made by individuals who, as patients at some time in the future, will receive the same blood. *Id.* at 73.

did “not rely on the Employer’s performance of laboratory services or on its consultations with hospitals and physicians. Neither of these functions is an indicator of health care institution status.” 302 NLRB at 73, n.8. Consequently, I find that the Employer’s operation at its two Charlotte laboratories cannot be relied upon as an indicator that it is a health care institution.

In sum, the evidence here is lacking to establish that the Employer sufficiently performs activities other than the collection, processing, and distribution of blood and blood products to warrant a finding that it is a health care institution. The slight therapeutic apheresis procedures it performs in relation to the substantially large volume of non-therapeutic procedures it conducts each year demonstrates that it does not perform therapeutic apheresis with sufficient regularity and in sufficiently large numbers. Accordingly, I find that the Employer is not a health care institution within the meaning of Section 2(14); and I shall apply the traditional community of interest test to determine the appropriate unit herein. *Syracuse Region Blood Center*, supra.

### **III. APPROPRIATE UNIT ISSUE**

Though the American Red Cross, Carolinas Blood Services Region encompasses the five service areas of Charlotte, Winston-Salem, Asheville, Durham and Wilmington, the Petitioner seeks to represent only employees employed at the Charlotte facilities of the Employer. Contrary to this position, the Employer maintains that the appropriate unit is the broader unit of employees at three of its five regional centers, specifically, the Charlotte, Winston-Salem and Asheville operations of the Employer.

At both fixed and remote donation sites which are handled by mobile units, the blood collection process appears to be essentially the same. At a fixed site, donor rooms may require less preparation and there is an adjacent canteen for the rest and recovery of

donors, but the interaction between donors and employees is common for both fixed and remote donation sites. There was no testimony from any person located at any service area other than the Charlotte service area, but Dr. Goldberg described all five of the service areas in North Carolina as operating in a similar manner.

*A. Applicable Legal Standard*

The Board's procedure for determining an appropriate unit under Section 9(b) is to begin by examining the petitioned-for unit. If that unit is found to be appropriate, then the inquiry ends. However, if the petitioned-for unit is not appropriate, the Board may then examine the alternative units suggested by the parties. Additionally, the Board also has the discretion to select an appropriate unit that is different from what the parties contend is appropriate. *See e.g. Overnite Transportation Co.*, 331 NLRB 662, 663 (2000).

The general rule is that a single-location unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees in another location as to cause their single-location unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *Budget Rent A Car Systems*, 337 NLRB 884 (2002); *Dattco, Inc.*, 338 NLRB 49 (2002); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Centurion Auto Transport*, 329 NLRB 34 (1999); *Kendall Co.*, 184 NLRB 847 (1970); *Kent Plastics Corp.*, 183 NLRB 612 (1970); *National Cash Register Co.*, 166 NLRB 173 (1967); *O'Brien Memorial*, 308 NLRB 553 (1992); and *Passavant Health Center*, 313 NLRB 1216 (1994).

When determining an appropriate unit, the Board finds that the unit need only be *an* appropriate unit, not the *most* appropriate unit, so that employees are given “the fullest freedom in exercising the rights guaranteed by the Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation*, 322 NLRB 723 (1996). With that in mind, the petitioner’s desire concerning the unit is a relevant consideration, but is not dispositive. *Mark’s Oxygen Co.* 147 NLRB 228, 230 (1964). The Board “generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees.” *Bartlett Collings Co.*, *supra*. As explained above, in those instances in which the petitioner has petitioned for a single-facility unit, such a unit is presumptively appropriate. *Hegins Corp.*, 255 NLRB 1236 (1981); *Mark’s Oxygen*, *supra*. When, however, as I have determined, the Employer is not a health care institution within the meaning of the Act, the appropriate test for determining unit placement issues is the traditional community of interest test. Under this analysis, the Board considers such factors as past bargaining history; mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Bartlett Collins*, *supra*, citing *Ore-Ida Foods*, 313 NLRB 1016 (1994). Importantly, when a union seeks a presumptively appropriate unit, e.g., a single-facility or an employer-wide unit, it is the burden of the party seeking a multi-facility unit to rebut the presumption. See, e.g., *Hilander Foods*, 348 NLRB 1200 (2006); and *Greenhorne & O’Mara, Inc.*, 326 NLRB 514 (1998).

*B. Analysis*

In arguing for an expanded unit that includes employees in the three service areas of Charlotte, Winston-Salem and Asheville, the Employer cites the common wage scales, working conditions, benefits and other terms and conditions of work shared by employees in each of these cities. The Employer also notes that the employees in the three named service areas share centralized new hire training in Charlotte and are governed by a personnel policy manual established for the entire Carolinas Blood Service Region.

Despite the position of the Employer, the record shows that each of the three service areas also maintains their own personnel files at their separate locations. Further, after initial new hire training, certain continued employee training, including training associated with any changes in procedure, is conducted independently at each individual service area. Other regional training, such as blood collections training, is centralized in Charlotte, but includes employees from all five of the service areas in the Carolinas Region. There is no training by the Employer that is exclusive for just the three service areas the Employer desires to have in the bargaining unit. Consequently, all employee training is either unique to a specific city or shared between all five such service areas of the Employer in North Carolina. The Employer's witness Judy Martin, who serves as the Interim Collection Director and the Automated Collection Manager for the Employer, testified that, "very infrequently, if any" do employees from Winston-Salem or Asheville travel to Charlotte for training.

According to the record, there are about 160 proposed bargaining unit employees working in the Charlotte service area, about 100 non-supervisory employees employed in

Winston-Salem and approximately 60 similar employees working in Asheville.<sup>6</sup> However, the Employer could identify only one employee during the year prior to the hearing who transferred from either Winston-Salem or Asheville to Charlotte or the reverse. During that same period, one employee appears to have also transferred from Winston-Salem to the Durham service area.

When one service area conducts a large blood drive, the Employer may schedule employees from another service area to travel to the service area where the blood drive is located to lend assistance. This practice was affirmed by an exhibit of the Employer. The interchange of employees between Charlotte and Winston-Salem and Asheville, however, does not appear to be frequent or involve significant numbers of employees. For example, all three of the Charlotte non-supervisory employees who testified during the hearing stated that they had not had any contact with any Winston-Salem or Asheville employees for over a year. Moreover, the record indicates that employees at the Charlotte, Winston-Salem and Durham service areas interchange for large blood drives just as frequently as Charlotte, Winston-Salem and Asheville service area employees engage in such interchange.<sup>7</sup> Contrary to the position of the Employer, the evidence reflects that the limited instances of interchange between employees in the Charlotte, Winston-Salem and Asheville service areas are insufficient to mandate a bargaining unit greater in geographical scope than described in the petition. I find the contact between Charlotte service area employees and those in the Winston-Salem and Asheville service areas is minimal and not significant. Accordingly, the Employer has not met its burden

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<sup>6</sup>The number of non-supervisory employees the Employer employs in Durham is about 140 to 150, and in Wilmington, it is estimated there are between 30 and 40.

<sup>7</sup>I take administrative notice that the North Carolina State Transportation Map shows that Winston-Salem is 63 miles closer to Durham than Asheville, and it is equidistant between Durham and Charlotte.

of establishing that the presumptively appropriate single-location unit of the Employer is not an appropriate unit; and I, therefore, further find that the unit consisting of only Charlotte service area employees, as sought by the petition, is an appropriate unit. *Hegins Corp., supra; Hilander Foods, supra; J & L Plate*, 310 NLRB 429 (1993).

#### **IV. THE DISPUTED CLASSIFICATIONS**

Based upon a claimed community of interest with those employees included in the bargaining unit, the Employer asserts that both the positions of administrative assistant II and scheduler should be included in the unit. In contrast, the Petitioner maintains that these two disputed classifications do not have sufficient community of interest with other bargaining unit employees to warrant their inclusion in the bargaining unit.

The traditional factors in determining whether employees share a community of interest warranting their inclusion within a particular bargaining unit are: 1) the degree of functional integration between employees; 2) common supervision; 3) nature of employees' skills and job functions; 4) interchange and contact among employees; 5) work situs; 6) general working conditions; and 7) fringe benefits. See *Washington Palm, Inc.*, 314 NLRB 1122, 1126-1127 (1994).

##### *A. The Degree of Functional Integration*

The one scheduler coordinates the scheduling activities for the Charlotte blood collections staff. Initially, she is provided with a skeleton schedule for the week or the month indicating where and when the Employer will be conducting mobile blood drives in the Charlotte service area. Then based upon the number of units of blood that the Employer projects will be collected at each remote site, the scheduler assigns employees to work at the appropriate locations and times. This would include scheduling the blood

collection staff to work out-of-town, on weekends and during holidays. In addition, the scheduler has the authority to approve vacation time, sick leave and other time off requested by the employees she routinely schedules for work.

As the Employer notes, the employees in the position of administrative assistant II primarily perform clerical duties such as answering phones, preparing letters or reports and filing. Besides these duties, the persons working as administrative assistants II are responsible for being the time keepers for the blood collection employees. Though the blood collection employees, when able, use a time clock, they also may use a voice system to record work time. The administrative assistants II review both of these employee time systems to insure the work time for employees is correct. They also review time off work taken by employees, such as vacation time or sick leave, to verify that the records for employees are accurate.

#### *B. Common Supervision*

The scheduler and the administrative assistants II do not share common supervision with employees involved in blood collection. The scheduler and the administrative assistants II all report to the collections manager. The employees assigned to perform blood collection duties are directly supervised by team supervisors who have no authority over the scheduler or administrative assistants II. Employees are given performance reviews only by their immediate supervisors.

#### *C. Nature of Employee Skills and Job Function*

As described above, the duties of the scheduler and administrative assistants II would take place in an office environment and require certain clerical skills. From both of their job descriptions, it appears that persons in either of these two disputed positions would

have minimal, if any, contact with the public. By contrast, employees who are engaged in blood collection utilize little clerical skills and are required to have a strong knowledge about proper blood collection. These bargaining unit employees, of course, have constant contact with the public during their work time.

*D. Interchange and Contact Among Employees*

The record does not show that the scheduler or administrative assistants II have any regular contact with the blood collection employees included in the unit. An employee would contact the scheduler to advise her that due to an emergency, special need, or illness he would not be able to work as scheduled. The scheduler might contact an employee to ascertain his availability to work or his willingness to have his scheduled work rescheduled. One employee stated that on a weekly basis he would talk to the scheduler at least once. It appears from the record that nearly all of these contacts between the scheduler and other employees are by phone.

Similarly there appears to be minimal contact between administrative assistants II and the employees performing blood collection. Except for the need to resolve issues related to timekeeping, the record does not show any need for the administrative assistants II to have contact with any of the bargaining unit employees. Bargaining unit witnesses stated that other than greeting administrative assistants II when they were visiting the Clanton Road offices, they had no other interaction with administrative assistants II.

*E. Work Situs*

The scheduler and the administrative assistants II all work at the administrative office area at the Charlotte Clanton Road facility. As previously noted, employees involved in blood collection, work out of either of two locations: Clanton Road or Park Road. The

Clanton Road administrative offices are separate from the Clanton Road blood collection area.

*F. General Working Conditions*

While it is expected that the scheduler and administrative assistants II have a work schedule which follows the others working in the administrative office at Clanton Road, this is not true for blood collection employees. These employees are expected to work until all donors have been taken care of. Thus during a blood drive, the hours of these employees may be uncertain. As well as starting early in the morning and continuing at night, a blood drive might be scheduled during weekends and on holidays. Besides having different work schedules, as described above, the scheduler and administrative assistants II have different work environments and totally different degrees of contact with the public. The record is silent regarding the amount of earnings for any employee, but the scheduler and administrative assistants II, like all employees in the bargaining unit, are paid on an hourly basis.

*G. Fringe Benefits*

The record reflects that all employees of the Employer employed at its Charlotte service area receive the same fringe benefits.

In evaluating all of the relevant factors cited above, I note that the scheduler and administrative assistants II perform very different work, have different work schedules and are separately supervised in comparison to employees included in the bargaining unit. They do not travel in their work or have a high degree of public contact as do unit employees. Moreover, nearly all their time is spent in the administrative offices of the Employer conducting work of a clerical nature; and thus their work is not primarily

involved in the actual blood collection operations. Despite the contentions of the Employer, the evidence demonstrates that the interchange between both the scheduler and the administrative assistants II and unit employees is, at best, infrequent. The Employer attempts to argue that the scheduler and administrative assistant II classifications are similar to plant clerical positions which should be included in the bargaining unit. However, I find that this analysis is misplaced as both the scheduler and administrative assistants II clearly function as office clericals, which warrants their exclusion. *Kroger Co.*, 204 NLRB 1055 (1973); *L. M. Berry & Co.*, 198 NLRB 217 (1972). Based on the above and record as a whole, I find that both the positions of scheduler and administrative assistant II do not share a sufficient community of interest with other employees included in the bargaining unit to warrant a finding that they too should be included in the bargaining unit herein found appropriate. Accordingly, I find that the position of scheduler and the position of administrative assistant II should be excluded from the bargaining unit.

## **V. CONCLUSIONS AND FINDINGS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.

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

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

All full time and regular part-time collection specialists I and II, collection technicians I and II, mobile unit assistants I, II, and III, mobile unit supply clerk, and mobile unit technician, for the blood collections operations department of the Charlotte, North Carolina, service area, of the Employer, excluding nurses, medical technologists, administrative assistants II and III, autologous directed services coordinator, compliance specialist II, mobile unit assistant specialist, training specialist, assistant team supervisor, collection manager, collection operations supervisor, compliance manager, mobile unit supervisor, scheduling supervisor, scheduler, team supervisors, office clerical employees, and professional employees and supervisors as defined by the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Teamsters Local Union #71, affiliated with International Brotherhood of Teamsters. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

### **1. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In

addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **2. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible, and the list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the

election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, NC 27116-1467 on or before **July 2, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, [www.nlr.gov](http://www.nlr.gov),<sup>8</sup> by mail, or by facsimile transmission at 336/631-5210. Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least

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<sup>8</sup>To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 9, 2010**. The request may be filed electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>9</sup> but may not be filed by facsimile.

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 on 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.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the

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<sup>9</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

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:** June 25, 2010

/s/ Willie L. Clark, Jr.  
Willie L. Clark, Jr., Regional Director  
National Labor Relations Board  
Region 11  
4035 University Pkwy, Suite 200  
P.O. Box 11467  
Winston-Salem, North Carolina 27116-1467