

September 30, 2010

VIA E-FILING AND OVERNIGHT DELIVERY

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

**Re: American Red Cross, Carolinas Blood Services Region
Case 11-RC-6741**

Dear Mr. Heltzer:

We are counsel for the American Red Cross-Carolinas Blood Services Region (the "Employer") in the above Representation Case pending in Region 11. The Decision and Direction of Election was issued by Regional Director Willie L. Clark, Jr., on September 17, 2010. Enclosed for filing is the Employer's Request for Review which has been e-filed via the Board's web site. A copy has also been provided to Mr. Clark and to Mr. Cohen as indicated in the Certificate of Service.

Thank you very much.

Sincerely yours,

ROBINSON BRADSHAW & HINSON, P.A.



Benjamin A. Johnson

BAJ/wkh
Enclosures

cc: Willie L. Clark, Jr., Regional Director, Region 11 (w/encl. via e-filing and overnight del.)
Seth R. Cohen (w/encl. via e-mail and US mail)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC**

American Red Cross-Carolinas
Blood Services Region
Employer
and
Teamsters Local Union #391
Petitioner

Case 11-RC-6741

REQUEST FOR REVIEW

COMES NOW the Employer, American Red Cross, Carolinas Blood Services Region, by and through its undersigned counsel, Robinson, Bradshaw & Hinson, P.A., and files this Request for Review in the above-captioned matter as follows:

I. PRELIMINARY STATEMENT

Petitioner, Teamsters Local Union #391 (“Petitioner”), seeks to represent a unit of blood collections employees based at the Wilmington location of the American Red Cross, Carolinas Blood Services Region (“Employer”) (Board Exh. 1(a)).¹ Petitioner filed a Petition for Representation on August 11, 2010, and described the unit requested as follows:

Included: 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 other appropriate employees involved in blood collections operations department of the Wilmington, North Carolina service area of the employer.

Excluded: Nurses, administrative assistants II and III, training specialist, collection manager, collection operations supervisor, mobile unit supervisor, scheduler and scheduling supervisor, team supervisor, compliance manager, office clerical and professional employee and supervisors as defined by the act. (Board Exhibit 1) (Emphasis added).

¹ The American Red Cross is a non-profit organization chartered by Congress and headquartered in Washington, DC.

During the hearing, Petitioner amended the petition so as to delete the language “and all other appropriate employees” and to include assistant team supervisors, hospital services inventory assistants, and collection technicians III, IV and V in the proposed unit (Tr. 23-25). The Petitioner did not amend the petition – indeed it reiterated its position on the record - that the unit be comprised of employees in the “blood collections operations department” of the Employer’s Wilmington, NC service area (Tr. 23-25).

The parties stipulated, for purposes of any representation election directed herein, to the inclusion and exclusion of the majority of the job classifications, as requested by the Petitioner in the amended petition (Tr. 29-33).² However, the two employees classified and working as hospital services inventory assistants are not blood collections employees and do not share a community of interest with the remaining members of the proposed bargaining unit (Tr. 16).

A hearing was held before hearing officer Jenny Dunn of the National Labor Relations Board on August 25, 2010 in Wilmington, North Carolina. At the hearing, the Employer established that the two hospital services assistants in the blood collections department do not have a sufficient community of interest with the other Wilmington employees sought by the Petitioner. In the Decision and Direction of Election issued on September 17, 2010 (“Decision”), however, the Regional Director determined that the hospital services inventory assistants should be included and ordered an election among the following unit:

All full-time and regular part-time collection specialists I and II, collection technicians I, II, III, IV, and V, mobile unit assistants I, II, and II, mobile unit

² The Employer and the Petitioner stipulated at the Hearing that any unit found appropriate by the Regional Director should include employees in the following classifications: Collection Specialist I and II, Collection Technicians I, II, III, IV and V, Mobile Assistants I, II and III, Mobile Unit Supply clerk, Assistant Team Supervisors, and the On the Job Instructor (Tr. 29, 115). The parties also stipulated to the exclusion of the following job classifications – Nurses, Administrative Assistants I, II and III, Collection Manager, Collection Operations Supervisor, Mobile Unit Supervisor, Scheduler and Scheduling Supervisor, Team Supervisor, Compliance Manager, office clerical and professional employees (Tr. 112-114). There is no prior history of collective bargaining between the employer and the petitioner in this unit.

supply clerk, hospital services inventory assistants, on-the-job instructor, assistant team supervisors involved in blood collection and distribution operations at the Employer's Wilmington, North Carolina facility, but excluding nurses, administrative assistants I, II, and III, association problem investigator, collection manager, collection operations supervisors, mobile unit supervisor, scheduler and scheduling supervisor, team supervisors, compliance manager, office clerical employees, and professional employees, guards and supervisors as defined by the Act. (Decision at 19)

Employer requests review of the Regional Director's Decision because his determination that the hospital services inventory assistants in Wilmington are properly included in a unit of blood collections staff is erroneous as a matter of law, represents a departure from Board precedent, is unsupported by the record evidence, and is based upon clearly erroneous findings of fact which the record will not sustain.

Even though the Decision found that the hospital services inventory assistants were in the blood distribution department and outside the petitioned-for blood collections department, the Decision nonetheless included them in the unit. The Decision also found that the hospital services inventory assistants do not share supervision with blood collections staff; do not share job functions or skills with the blood collection staff and legally cannot participate in blood collections; have no job-related interchange with the blood collection staff; and have substantially different hours and working conditions. Despite these findings, the Regional Director found there was a sufficient community of interest based largely on unspecified functional integration between blood collections and blood distribution activities at Wilmington. The facts of this case do not meet the level of functional integration and community of interest required by the Board, including by the Board cases cited in the Decision. Underlying the Decision is the Regional Director's erroneous finding that no other union would represent the hospital services inventory assistants and that there is no other unit in which they appropriately could be included.

II. ISSUE PRESENTED

In view of the evidence presented, are the two hospital services inventory assistants in the Employer's blood distribution department appropriately included in the unit comprising blood collections operations department staff?

III. STATEMENT OF FACTS

The Employer is part of the Biomedical Division of the American Red Cross (Tr. 36). The Employer collects and distributes blood products throughout North Carolina and small areas of Georgia and South Carolina (Tr. 36). The Employer maintains 5 service areas in the Carolinas Blood Services Region – Charlotte, Asheville, Winston-Salem, Durham, and Wilmington (Tr. 36-37). There is a collection staff at each of these locations who collect blood at blood drives and fixed sites and return it to the locations for shipping to manufacturing sites for processing and later distribution (Tr. 36-37). The collection staff at each location report to their assigned team supervisors (Tr. 119; Emp. Exh. 2). The team supervisors in turn report to the collection operations supervisors (Tr. 38). The collection operations supervisors report to the collections managers who supervise the entire blood collection operations at each service area (Tr. 38). The collections managers report to the collection director who reports directly to the CEO of the Carolinas Blood Services Region (Tr. 38).

The mobile blood collection process typically begins with employees in the donor resource department contacting churches, schools, and other organizations to schedule blood drives (Tr. 39-40). After the donor resources department schedules a blood drive, the scheduler assigns blood collections staff to specific drives to collect blood (Tr. 40). The Employer also operates a “fixed” site in Wilmington where donors can come to donate blood (Tr. 37). After the Employer collects the blood – whether at a blood drive or at the fixed site – the blood collections

team packages the blood products and sends them to processing centers in Charlotte, North Carolina and Columbia, South Carolina (Tr. 125). These blood products are then shipped to different locations for distribution to hospitals, including to the Wilmington location (Tr. 125). Hospital services employees at the Wilmington location transport the blood to the various hospitals in the area or package it for couriers to retrieve it for use with patients (Tr. 124-25).

IV. LEGAL ARGUMENT

A. **The Decision found that the hospital services inventory assistants were not in the department covered by the Petition, yet the Regional Director included them anyway.**

The petition seeks to organize certain employees in the Employer’s “blood collections operations department” (Board Exh. 1(a); Tr. 23-25). The hospital services inventory assistants are responsible for preparing and packing blood products and related materials and supplies for distribution to hospitals (Emp. Exh. 7) and they work in the Employer’s hospital services department, which is exclusively involved in blood distribution. Decision at 12. Having found that the hospital services assistants work in the Employer’s blood distribution department - a department not sought by the petition covering the Employer’s blood collections operations department - it was error for the Regional Director to include them in the unit.

B. **As justification for finding a community of interest on inadequate facts, the Regional Director incorrectly found that the hospital services inventory assistants would go unrepresented if not included in this unit.**

The Regional Director found that that no other union would represent the hospital services assistants and that there is no other unit in which they appropriately could be included. Decision at 11. However, at the hearing, the Petitioner made it clear that the hospital services inventory assistants would be represented, promising “We have a definite position. They would be a two-man unit So, if they were not included here, the Teamsters do – will file a

petition” (Tr. 174). The Regional Director’s finding that the two hospital services assistants would go unrepresented if not included in the proposed unit is simply not true. This clear error by the Regional Director – and assumption that the two employees would be unrepresented – likely resulted in his drastic departure from Board precedent on the necessary elements for finding shared community of interest, as discussed below.

C. The Hospital Services Inventory Assistants do not share a community of interest with the other members of the proposed unit.

As the Regional Director stated, the Board examines such factors as, “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,” *citing* Bartlett Collins Co., 334 NLRB 484, 484 (2001). *See also* Ore-Ida Foods, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).³

In examining these factors, the hospital services inventory assistants do not share a community of interest with other members of the proposed bargaining unit and thus their inclusion in the proposed unit is inappropriate. Unlike every other member of the proposed bargaining unit, they do not – and legally cannot – work on blood drives or at the fixed blood collection site (Tr. 138). Unlike every other member of the unit, they are not trained or certified

³ The Fourth Circuit has stated the test thusly:

- 1) similarity in the scale and manner of determining the earnings;
- 2) similarity in employment benefits, hours of work, and other terms and conditions of employment;
- 3) similarity in the kind of work performed;
- 4) similarity in the qualifications, skills and training of the employees;
- 5) frequency of contact or interchange among the employees;
- 6) geographic proximity;
- 7) continuity or integration of production processes;
- 8) common supervision and determination of labor-relations policy;
- 9) relationship to the administrative organization of the employer;
- 10) history of collective bargaining;
- 11) desires of the affected employees;
- 12) extent of union organization.

Sandvik Rock Tools, Inc. v. NLRB, 194 F.3d 531, 535 (4th Cir. 1999); *see also* *NLRB v. Harry T. Campbell Sons’ Corp.*, 407 F.2d 969 (4th Cir. 1969).

to perform any blood collection duties. They work different hours, have a different schedule, have a distinct supervisor, and have no work-related interaction with other members of the proposed bargaining unit.

(1) No mutuality of interest in wages, hours, and working conditions.

The Decision properly found that hospital services inventory assistants' hours of work and other terms and conditions of employment are fundamentally distinct from the remainder of the members of the proposed unit. The similarities cited in the Decision of common use of a time clock and break room and common benefits are too general to be accorded significant weight. Decision at 16-17.⁴

As explained by the Petitioner's witness, Mr. Doyle Wilkes, he applied for the position of hospital services inventory assistant in order to get away from the harder work and irregular hours in the blood collections department:

to get into a department that the work wasn't quite so hard and the hours were better . . . there are hours that are scheduled are erratic, very flexible, and it has to be. The hours in Hospital Services, we have to be on call, but we're not called in as much as we do in BCO.

(Tr. 211).⁵

The schedules of the blood collections staff and the hospital services inventory assistants are strikingly different. The hospital services inventory assistants work Monday through Friday and begin work between 7 am and 9:30 am and finish work between 2:30 pm and 6 pm (Emp. Exh. 3). They are not typically scheduled for weekend work (Emp. Exh. 3). In stark contrast, blood collections employees may start and end their day at any time, depending on the hours and

⁴ Furthermore, as noted in footnote 12 of the Decision, there is significant disparity in the pay rates, and the collections and distributions departments have separate annual budgets. *Id.*

⁵ Regarding their time "on-call," the Petitioner's witness, Doyle Wilkes testified that he had been called in to work while "on-call" only two times during the past year (Tr. 218).

location of the blood drive. Their days frequently start as early as 6:30 am and can go as late as 9:30 pm (Emp. Exh. 4; Tr. 131-32). Blood collections employees also frequently work weekends and work fluctuating schedules (Emp. Exh. 4; Tr. 132).

As explained by Mr. Wilkes, he applied for the hospital services inventory assistant position “[m]ainly to get into a department that the work wasn’t quite so hard and the hours were better” (Tr. 211). It was the choice of Mr. Wilkes to leave the Employer’s blood collections operations department – the only department involved in the petition – because of the very different working conditions in blood distribution (Tr. 211-212).

(2) No common supervision.

The Decision properly found that the supervision of the blood collections staff is distinct from the supervision of the hospital services inventory assistants. Decision at 14. The blood collections staff report to team supervisors, who report to the collection operations supervisors in Wilmington (Tr. 119, 38; Emp. Exh. 2). The hospital services inventory assistants report directly to a hospital services supervisor who reports to a hospital services manager in Charlotte (Tr. 123-24). There is no common supervision.

(3) Different skills and no common functions.

The Decision properly found that work performed by the blood collections staff and the hospital services inventory assistants is dissimilar. Decision at 14-15. Blood collections staff are responsible for collecting blood from donors which includes setting up the blood mobile site, taking health histories, phlebotomy, and blood processing (See Tr. 40, 132). After a blood drive, the blood collections staff package and send the unprocessed blood to manufacturing sites in Charlotte, North Carolina and Columbia, South Carolina (Tr. 125). The hospital services inventory assistants never work on blood drives and instead only deal with processed blood

products sent from Charlotte or Columbia for distribution in Wilmington and the surrounding areas (Tr. 125-126, 137; See also hospital services inventory assistant job description, Emp. Exh. 7). As a result, and in contrast to the blood collections staff, the hospital services inventory assistants do not interact with donors or the public and instead ordinarily interact with hospital personnel (Tr. 145-46).

However, at page 15, the Decision incorrectly finds that the included mobile unit assistants (“MUA’s”) also do not participate in blood drives, stating “they do not draw blood,” and thus share this similarity with the hospital services inventory assistants. *Id.* The MUA’s do participate in blood collections and function on blood drives. They are trained to perform health histories and blood processing, something the hospital services inventory assistants do not – and legally cannot – perform (Tr. 40, 132). Likewise, the mobile unit supply clerk is trained to make collection sets on blood drives (Tr. 183-184). Furthermore, to state that both the MUA’s and the hospital services inventory assistants drive vehicles and handle blood is a vague and general characterization with no meaningful weight in applying the Board’s community of interest test.

The Decision also properly found that the skills and training needed for blood collections staff are distinct, detailed and regimented as a result of their involvement in the blood collection processes. As aforesaid, this conclusion on this factor also should include the MUA’s, who must be trained to perform health histories and blood processing (Tr. 40, 132). It is beyond question that, in order to be able to perform their jobs of going on blood drives and collecting blood at the fixed site, blood collections employees are required to have health history training, phlebotomy training, and blood processing training (Tr. 134). In addition, they are required to have quarterly and annual assessment to ensure they maintain the skills necessary to perform their jobs (Tr. 134-35). The hospital services inventory assistants are not required to have any of this same,

regimented training and are not qualified to perform any of these same tasks (Tr. 135-37; Emp. Exh. 5-6). As a result, it would be against FDA regulations for the hospital services inventory assistants to perform work on a blood drive or at the fixed blood collection site and there can be no interchange between them and the blood collections staff (Tr. 138). Similarly, during the past nine months, no blood collections employee has filled-in as a hospital services inventory assistant (Tr. 215).

(4) *No frequent contact or interchange.*

The Decision also properly found that the blood collections staff and hospital services assistants have no contact or interchange. Decision at 15-17. Typically, the blood collections staff are working on mobile locations in and around Wilmington and at the fixed blood collection site. The hospital services inventory assistants have a designated work area with refrigerators and freezers and work as drivers delivering processed blood to hospitals (Tr. 140-141). They do not have any work-related interaction the blood collections staff (Tr. 126).

(5) *No functional integration.*

As explained above, the hospital services inventory assistants perform a very different function for the Employer than all other members of the proposed bargaining unit. Put simply, they are not involved in blood collections. Instead, they are involved in distribution of processed blood to area hospitals. This falls under the umbrella of the hospital services department, not the blood collections department.

As held by the Regional Director in a similar representation case, the “Hospital Services employees are not involved in the collections work, they perform clearly different functions, and are in a separate department with separate supervision.” *American Red Cross Heart of America Blood Services Region v. UAW*, 33-RC-4947, 33-RC-4948, *19 (December 15, 2005); *see also*

American Red Cross Blood Services Southern California Region v. SEIU Local 535 and Teamsters Local 63, 21-RC-20885, 21-RC-20886, *19 (May 11, 2006).

In the instant case, the Regional Director acknowledged the many differences and separate functions of the blood collections staff and hospital services inventory assistants. Decision at 12-13. Yet, without any basis in fact, he concludes, “there is clearly functional integration between the disputed employees and unit classifications.” Decision at 13-14. This conclusion is not supported by the record – which otherwise shows the completely different functions and lack of operational integration between the blood collections and blood distribution departments in Wilmington. It is unclear whether the Regional Director incorrectly believes the *same* blood is both collected and distributed in Wilmington – but this is most certainly is not what happens. After a blood drive, the blood collections staff send the unprocessed blood to manufacturing sites in Charlotte, North Carolina and Columbia, South Carolina (Tr. 125) where distinct employees – not in the petitioned-for unit – manufacture blood products. The hospital services inventory assistants never work on blood drives and instead only deal with processed blood products sent from Charlotte or Columbia for distribution in the Wilmington service area (Tr. 125-126, 137). Finally, the Regional Director noted that blood bags and test tubes used in blood collections are stored in a shared refrigeration unit that is maintained by the blood distribution department. Decision at 14. This factor is certainly legally insufficient to establish functional integration of operations.

The Regional Director cited Publix Super Markets, Inc., 343 NLRB 1023, 1024-1028 (2004) as support for his community of interest finding. In Publix, while the Board found there was separate supervision, different job functions, and limited work related contact, the Board also found the presence of substantial functional integration, similar skills, similar working

conditions, and interchange among employees. Id. In the instant case, the Regional Director found that the skills and functions were not similar (and incorrectly found that the included MUA's are not required to have blood collection training); found that the hours of work and basic working conditions were dissimilar; and found no evidence of any interchange among employees. As to functional integration, the Regional Director herein found that collections staff used a refrigerator in the distribution department to store blood bags and test tubes. That is all. In Publix, the Board found that disputed employees carried out support functions for the entire milk plant including the distribution department and were highly integrated functionally – disputed jobs like spotters, dispatch, pallet repair, in-house maintenance, pest control, sanitation, and forklift operators supported the entire milk plant including the distribution unit and were held to be functionally integrated with that department. Id. at 1024-1025.

The Decision in the instant case conflicts with Board precedent and is not supported by the record evidence. The Regional Director's main justification - that the staff functions basically all involve blood – is not in accord with Board precedent which requires a deeper analysis. This would be akin to finding that every employee in a bank is functionally integrated because they all work with money. As previously held in Red Cross representation cases, Red Cross hospital services employees have “separate management and supervision, separate functions, skills, duties and work areas, and limited contact as well as the absence of interchange and transfer” with collection employees. *American Red Cross Missouri-Illinois Blood Services Region v. Teamsters Local No. 682*, Case 14-RC-12500, *27 (June 10, 2004); *American Red Cross Blood Services Southern California Region*, 21-RC-20885, 21-RC-20886, *19 (May 11, 2006) (holding that, even though hospital services employees are part of the overall operations of the Employer, it is not appropriate to include them in a unit of blood collections staff).

V. CONCLUSION

The Regional Director's Decision is erroneous as a matter of law, represents a departure from Board precedent, is unsupported by the record evidence, and is based upon clearly erroneous findings of fact which the record will not sustain. The Regional Director improperly ruled that the hospital services inventory assistants share a sufficient community of interest so as to warrant inclusion in the Wilmington blood collections unit. Petitioner requested a unit of employees involved in the Employer's "blood collections operations department" (Board Exh. 1(a); Tr. 24-25) – however, as the Regional Director found, the hospital services inventory assistants work in the Employer's very separate blood distribution department. Fundamentally, the hospital services inventory assistants are not involved in the Employer's blood collections operations and they do not share a community of interest with the other members of the proposed bargaining unit. Finally, the Petitioner stipulated at the Hearing that it would represent the hospital services inventory assistants if they are due to be excluded from the unit of blood collections workers.

Respectfully, for the foregoing reasons, the Regional Director's decision to include the hospital services inventory assistants in the unit is due to be reversed.

This 30th day of September, 2010.

/s/ Benjamin A. Johnson

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Attorney Representatives for American Red Cross

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the EMPLOYER'S REQUEST FOR REVIEW upon the following to Seth R. Cohen at email address sjrclaw@earthlink.net and by depositing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Seth R. Cohen
Smith, James, Rowlett & Cohen, L.L.P.
P.O. Box 990
Greensboro, NC 27402-0990

This 30th day of September, 2010.

/s/ Benjamin A. Johnson

Benjamin A. Johnson