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October 5, 2010

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

OVERNIGHT MAIL

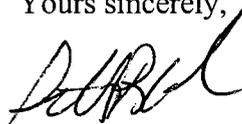
RE: *American Red Cross, Carolinas Blood Services Region and Teamsters Local 391
Case No.: 11-RC-6741*

Dear Mr. Helzer:

This law firm represents Teamsters Local Union 391. Enclosed is our response to the American Red Cross' request for review in the above-entitled case.

Please let me know if you have any questions

Yours sincerely,



Seth R. Cohen

SRC:kay

Enclosure

ORDER SECTION
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

AMERICAN RED CROSS, CAROLINAS)
BLOOD SERVICE REGION)
)
Employer,)
)
and)
)
TEAMSTERS LOCAL UNION # 391,)
affiliated with INTERNATIONAL)
BROTHERHOOD OF TEAMSTERS)
)
Petitioner.)

Case: 11-RC-6741

STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW

NOW COMES petitioner Teamsters Local Union 391 ("Local 391"), pursuant to Sec. 102.67(e) of National Labor Relations Board Rules and Regulations, and files this Statement in Opposition to the Employer's Request for Review. For the reasons which follow, Local 391 respectfully requests that the National Labor Relations Board ("Board") deny review.

The Employer's request for review is based upon one narrow issue: was the Regional Director correct in including two hospital services inventory assistants in the petitioned-for unit? With regard to this issue, the Employer's request for review fails to cite a compelling reason, pursuant to Sec. 102.67(c) why the Board should review the well-reasoned Decision of the Regional Director. The Employer argues that 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 on clearly erroneous findings of fact which the record will not sustain. On each and every point, however, the Employer is simply incorrect. The Regional Director's Decision is based upon long standing and clear precedent and is clearly supported by the record evidence.

Simply put, this is not one of the rare cases in which the Board should grant review, given the fact that the Employer's request does not fall within the parameters of Sec. 102.67(c).

INTRODUCTION

Local 391 filed a Petition with the Board on August 11, 2010, seeking to represent certain employees of the American Red Cross, Carolinas Blood Services Region ("Red Cross" or "Employer"). More specifically, the original petition listed the following proposed unit:

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 specialists, 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.

(See Board Exhibit 1(a)). A hearing was scheduled for August 11, 2010, in Winston-Salem, North Carolina, (Board Exhibit 1(b)), but was rescheduled until August 25, 2010, in Wilmington, North Carolina (Board Exhibit 1(d)).

Following negotiations between the parties, Local 391 and the Red Cross stipulated that the following individuals should be included and excluded from the proposed unit, leaving only two issues which will be discussed below. The unit stipulated to by the parties is as follows:

Included: 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 III, mobile unit supply clerk, assistant team supervisors, and on-the-job instructor, involved in blood collection operations department of the Wilmington, North Carolina service area of the employer.

Excluded: Nurses, administrative assistants I, II and III, collection manager,

collection operations supervisor, mobile unit supervisor, scheduler and scheduling supervisor, team supervisor, compliance manager, associate problem investigator, office clerical and professional employees, guards and supervisors as defined by the act.

(Transcript at 29-31; 111; 115-16) (hereinafter "Tr. at ___")

Simply stated, employees at the Red Cross in Wilmington are involved in collecting blood, mainly through blood drives, and then distributing processed blood to area hospitals. The parties could not reach agreement on two issues with regard to the unit:

1. Whether the appropriate unit should be a single-location unit or a multiple-location unit. Local 391 petitioned for and believes the appropriate unit is a single-location unit in Wilmington, North Carolina. The Employer argues that the appropriate unit is the Wilmington facility and the Red Cross facility in Durham, North Carolina. The Red Cross has five locations in North Carolina: Wilmington, Durham, Winston-Salem, Charlotte and Asheville. The issue before the Board is whether the appropriate unit is Wilmington, as proposed by Local 391, or Wilmington and Durham, as argued by the Red Cross.

2. Whether the job classification of hospital services inventory assistants should be included in the unit. There are two employees and one supervisor in this job category. These individuals distribute processed blood to area hospitals. Local 391 argues there is a community of interest with these employees and they should be included in the unit; the Red Cross argues there is no community of interest, and these employees should not be included in the unit.

The Employer's Request for Review only includes the second issue, i.e., whether the job classification of hospital services inventory assistants should be included in the unit.

LEGAL ANALYSIS

THE REGIONAL DIRECTOR WAS CORRECT TO INCLUDE TWO HOSPITAL SERVICES INVENTORY ASSISTANTS IN THE UNIT.

A. The Law.

While the National Labor Relations Act does not lay down any specific standards for making unit determinations, the Board has developed a number of criteria to be applied in such cases. "Foremost is the principle that mutuality of interest in wages, hours, and working conditions is the prime determinate of whether a given group of employees constitutes an appropriate unit." *Washington Palm*, 314 NLRB 1122, 1127 (1994). The key question is "whether the employees have a sufficient community of interest to be an appropriate unit." *Id.*

The traditional factors in determining whether employees share a community of interest are (1) degree of functional integration between employees; (2) common supervision, (3) employee skills and functions, (4) interchange and contact among employees, (5) work situs, (6) general working conditions and (7) fringe benefits. *Id.*

Given the facts as determined at the hearing, the two hospital services inventory assistants ("hospital services") should be part of the blood collections unit.

B. The Facts.

In determining whether the hospital services workers should be part of the blood collections unit, it is imperative to note that *not all blood collections employees are phlebotomists*. In other words, not all members of the blood collections unit actually draw blood from donors. Carolyn Williams, the operations manager for blood collections operations in Wilmington, testified, for example, that the mobile unit assistants are an appropriate part of the unit. Indeed, at the hearing,

the Employer stipulated that the mobile unit assistants are an appropriate part of the unit. (Tr. at 147)

Another position, which Ms. Williams also testified was an appropriate part of the unit, and which the Employer stipulated was an appropriate part of the unit, is the mobile unit supply clerk. Although this position is currently vacant, this individual provides supplies and equipment to the employees who go out on blood drives. The mobile unit supply clerk does not go out on blood drives, works a set 9:00-5:00 schedule, does not draw blood, and most importantly, does not transport blood. Nevertheless, the Employer has stipulated that this position is an appropriate part of the unit. (Tr. at 180-81)

The mobile unit assistants positions are particularly important to this issue, in that, as will be set forth below, the mobile unit assistants and the hospital services workers do similar jobs and have a community of interest. Indeed, Ms. Williams testified that until September 15, 2009, the two hospital services workers performed both functions, i.e., they performed the functions of what is now called mobile unit assistants and also performed the functions of what is now called hospital services inventory assistants. Beginning September 15, 2009, a new category, hospital services inventory assistants was created, and these two individuals no longer go out on blood drives doing the work of mobile unit assistants. (Tr. at 149-150)

The first witness for Local 391 on this issue was David Tibbetts, who is a mobile unit assistant III. He has worked in Wilmington in that position for five years. Mr. Tibbetts testified that Doyle Wilkes, one of the two hospital services workers at issue in this case, is the person who actually trained him (Tibbetts) for the job of mobile unit assistant. (Tr. at 190)

Mr. Tibbetts goes on blood drives with a team of other employees. Mr. Tibbetts testified that the three major parts of his job are driving the Red Cross truck to the blood donor site, taking health histories of donors, and monitoring and processing the raw blood which is drawn at the site. More importantly, Mr. Tibbetts testified that *80% of his job duties are driving the truck and monitoring and processing the raw blood.* (Tr. at 185-86)

Mr. Tibbetts has a high school education, which is what is required to be a mobile unit assistant, he punches a time clock, and when on a blood drive, he wears a uniform. Mr. Tibbetts, when not on a blood drive, works out of the Red Cross location in Wilmington. (Tr. at 189-193)

Doyle Wilkes, one of the two employees at issue in this case, has worked at the Wilmington Red Cross facility for 16 years, and has worked for the Red Cross for 20 years. He explained that part of his job as a hospital services worker is monitoring the computer system which monitors various refrigeration units at the Wilmington Red Cross site, where he works. Included in the equipment that Mr. Wilkes monitors are blood bags and test tubes, which are packed up by mobile unit assistants, such as Mr. Tibbetts, and taken to the blood donor sites. After the raw blood is transported back to the Wilmington site, it is sent to a lab for processing, then to Charlotte, and then processed blood is sent to Wilmington.¹ Once the processed blood arrives at the Wilmington site, Mr. Wilkes and the other hospital services employee are responsible for opening the boxes, inspecting the processed blood, adding it to the inventory shelf in the refrigeration unit, and monitoring that blood to make sure it stays stable and at the correct temperature. (Tr. at 194-201)

¹ It is unclear whether the same blood that is collected from Wilmington is sent back to Wilmington, or whether other blood is sent to Wilmington. In any event, at some point, processed blood is sent to Wilmington.

Finally, two or three days a week, each of the two hospital services employees delivers the processed blood in Red Cross vehicles to area hospitals. The blood is wrapped in a meticulous fashion, and placed in a special blood box for delivery. Mobile unit assistants also meticulously wrap the blood given by donors at the donor site, and place the blood in the same black boxes for transportation back to the Wilmington site. (Tr. at 216-221)

Accordingly, the two main functions of the hospital services employees are monitoring the processed blood which is shipped to the Wilmington site, and then delivering that processed blood to area hospitals. When Mr. Wilkes is delivering blood to area hospitals, he wears the same uniform as the mobile unit assistants and others who go on blood drives. He also has a Red Cross identity card, the same as the mobile unit assistants and other employees who go on blood drives. Mr. Wilkes has a high school education, which is required for being a hospital services employee, is paid by the hour, punches a time clock, and has the same benefits as mobile unit assistants and others in blood collections operations. (Tr. at 199-218)

Mr. Wilkes testified that the hospital services employees use the same break rooms as blood collections workers, and it is certainly not unusual to have close contact with mobile unit assistants and others who go out on blood drives, since they all work in the same building. (Tr. at 198) Like other counterparts in blood collections, hospital service workers need only a high school education, punch a time clock, and are paid by the hour, and share the same benefits. (Tr. at 207)

Although Mr. Wilkes generally works a set schedule, unlike those who go on blood drives, he is on-call 24 hours a day for periods of two weeks, when it is his turn to respond if there is a problem with the stored blood, such as fluctuation in temperature. (Tr. at 200-01) Based upon the facts at the hearing, following is a brief comparison of the traditional community of interest factors.

1. Degree of Functional Integration Between Employees.

There is a great deal of functional integration between blood collections employees, such as mobile unit assistants, and hospital services employees. The ultimate goal, of course, of the Red Cross in Wilmington is to get blood from the arm of a donor, so the blood can be processed and eventually put into the arm of a patient. It is, in other words, a cycle, beginning with blood being drawn from the donor, and ending with blood being given to a patient. The mobile unit assistants and those who collect the blood at blood drives are at the beginning of that cycle. They gather the blood, drive it to the Wilmington facility, and send it off for processing. The hospital services workers are at the end of the cycle, where they take the processed blood, monitor it until needed by a hospital, and then distribute that blood to area hospitals.

2. Common Supervision.

There is no common supervision since September 15 of last year. This is the only factor in favor of the Employer.

3. Nature of Employees' Skills and Job Functions.

The nature of job skills and functions between mobile unit assistants, an undisputed part of the unit, and hospital services workers is remarkably close. Mr. Tibbetts testified that 80% of his time is spent monitoring and processing the raw blood and transporting the raw blood back to Wilmington. By comparison, the hospital services workers monitor the processed blood once it is received in the Wilmington facility and then distribute that blood to area hospitals.

4. Interchange and Contact Among Employees.

Although there is not great interchange and contact among employees, there certainly is some. Both the blood collections workers and the hospital services workers both work at the same

site in Wilmington, share break rooms, and see each other when blood collection workers are not at a blood drive. Furthermore, as explained above, part of the duties of the hospital service workers is to monitor the computer system which is monitoring test tubes and blood bags which are used by blood collection employees when they go to blood drives.

5. Work Situs.

Both blood collections workers and hospital service workers work at the Wilmington Red Cross facility.

6. General Working Conditions.

Both blood collections employees and hospital service workers need high school educations, are paid on an hourly basis, punch a time clock, and work out of the same building. Although hospital service employees do not go on blood drives, they do have contact with the public when they make deliveries of blood to area hospitals. When making deliveries to hospitals, hospital services employees wear the same uniforms that are worn by blood collections employees when they go out on a blood drive. Finally, although blood collections employees work various hours, depending on when blood drives are scheduled, hospital service employees also are on-call 24 hours a day for two week periods when it is each person's turn to monitor the processed blood.

7. Fringe Benefits.

Fringe benefits are the same for blood collections employees and hospital services employees.

Additionally, it is important to note that if the hospital services employees are not included in this unit, they will be alone, with the only possibility to form their own two-person unit. It is undisputed that there is no other category of workers at the Wilmington site which collect, transport

or handle blood, other than blood collections operations and hospital services. Other employees, such as clericals and those who set up the blood drives, clearly do not have a community of interest with the hospital services workers. *The only two groups of employees at the Wilmington site which monitor, handle and deliver blood are the blood collections operations group and the hospital services group. Excluding hospital services from blood collections operations would result in a stand alone two-person unit.*

CONCLUSION

For the reasons cited in the Regional Director's Decision and those set out herein, Local 391 respectfully requests that the Board deny the Employer's Request for Review.

This the 5 day of October, 2010.



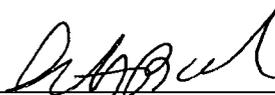
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CERTIFICATE OF SERVICE

I, Seth R. Cohen, attorney for petitioner in the above-entitled action, do hereby certify that I have served a copy of the foregoing, Statement in Opposition for Request for Review, on opposing counsel of record at the last known address known to me, by placing said document in an envelope in the U.S. Post Office in Greensboro, North Carolina, this the 5 day of October, 2010, said envelope being addressed as follows:

Mr. Benjamin A. Johnson
Robinson Bradshaw & Henson
P.O. Drawer 12070
Rock Hill, SC 29731

Honorable Willie L. Clark, Jr.
Regional Director, Region 11
National Labor Relations Board
P.O. Box 11467
Winston-Salem, NC 27116-1467



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