

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

CROZER CHESTER MEDICAL CENTER<sup>1</sup>

Employer

and

Case 04-RC-092750

PROFESSIONAL AND PUBLIC SERVICE  
EMPLOYEES LOCAL UNION 1310 a/w  
LABORERS INTERNATIONAL UNION  
OF NORTH AMERICA AFL-CIO<sup>2</sup>

Petitioner

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

The Employer, Crozer Chester Medical Center, operates an acute-care hospital (the Hospital) in Upland, Pennsylvania. The Petitioner, Professional and Public Service Employees Local 1310, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's Cardiovascular Technicians. The parties agree that the petitioned-for unit is appropriate.<sup>3</sup> However, the Employer contends that an election should not be directed at this time because it plans to eliminate the petitioned-for job classification and assign the Cardiovascular Technicians' functions to the Employer's Interventional Radiology (IR) Technologists. The Employer currently employs five or six employees in the petitioned-for unit.

A Hearing Officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties, and, as discussed below, I have decided to conduct an election because the Employer's plan to eliminate the unit classification is uncertain.

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

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

<sup>3</sup> Both parties agree that if an election is directed, it should be an *Armour-Globe* election, which will determine whether unit employees wish to join an existing bargaining unit represented by the Petitioner. *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

To provide a context for my discussion, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether it is appropriate to direct an election at this time. Then, I will present the facts and reasoning that support my conclusion.

## **I. OVERVIEW**

The Petitioner represents approximately 700 employees at the Hospital. Another union, the National Union of Hospital and Health Care Employees District 1199C (District 1199C), represents about 125 technical employees, including the IR Technologists.

The Cardiovascular Technicians work in the Catheterization Laboratory (Cath Lab), which is part of the Cardiology Department and is located on the second floor of the Hospital. Sharon Dargay is the Administrative Director for the Cardiology Department, as well as for the Radiology Department, which includes the IR Technologists. She reports to Chief Nursing Officer (CNO) Bob Haffey for her Cardiology Department functions and to the Employer's President, Patrick Gaven, concerning her responsibilities in the Radiology Department. The IR unit is on the Hospital's ground floor. Shift Manager Cathy Osifat, who reports to Dargay, has responsibility for both IR Technologists and Cardiovascular Technicians.

## **I. RELEVANT CASE LAW**

The Board will not direct an election, and will consequently dismiss a petition, when there is definite evidence of a contracting unit or imminent cessation of operations. See e.g., *MJM Studios*, 336 NLRB 1255 (2001); *Hughes Aircraft Co.*, 308 NLRB 82 (1992). Factors considered in determining whether there is sufficient evidence of contraction or cessation to warrant dismissal of the petition are: the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to effectuate the change, and whether the employees have been notified. See *Hughes Aircraft Co.*, supra, 308 NLRB at 82-83; *Davey McKee Corp.*, 308 NLRB 839, 840 (1992); *Larson Plywood Co.*, 223 NLRB 1161 (1976). Where the change is too speculative to warrant withholding from the employees their statutory right to choose or reject union representation, the Board will direct an election. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

## **III. FACTS**

### *Duties and qualifications of Cardiovascular Technicians and Interventional Radiology Technologists*

In general, both the Cardiovascular Technicians and IR Technologists assist surgeons by inserting wires or catheters into patients so physicians can properly diagnose and treat them. Cardiovascular Technicians assist in all procedures related to the heart, while IR Technologists participate in a broader array of procedures -- those involving kidneys, the bladder, and other areas of the body. A team of Registered Nurses (RNs) works across both surgical areas.

Both groups use radiology equipment to allow physicians to study patients. In the IR unit, the IR Technologists have primary responsibility for understanding and operating radiology equipment. The Cardiovascular Technicians also work with radiology equipment, but Cath Lab physicians have primary responsibility for operating it.

IR Technologists must be certified by the Commonwealth of Pennsylvania as Registered Technologists (RTs). To achieve this status, they typically take a two-year course in radiology followed by a state certification examination. Cardiovascular Technicians also take a course of study and must pass a state-certification exam. Their course of study takes from two to eight months. The present IR Technologists are all certified as RTs, while none of the Cardiovascular Technicians hold this certification.

The two groups of employees are paid comparably. The IR unit is open for about nine hours per day, while the Cath Lab is open for about 10 hours.

#### *The Plan to Eliminate the Cardiovascular Technician Position*

Dargay testified that when she assumed responsibility for the two departments, she envisioned eliminating the Cardiovascular Technician position and having IR Technologists perform both the cardiac and non-cardiac procedures. She stated that she was given a directive by former Hospital President Joseph Saunders in 2008 to find ways to reduce costs and streamline operations, and she determined that elimination of this classification would be one way to meet that directive. To this end, in the past four years, the Employer has cross-trained two employees, Lynn Hisey and Brian Buchy, allowing them to work in both functions. Hisey, the Lead IR Technician, also works in the Cath Lab, and Buchy is a Cardiac Plant Specialist who also works in the IR area. Since he is not a certified RT, Buchy must work under the supervision of an IR Technologist whenever he is in the IR unit. The Employer has not taken steps to cross-train any other employees and has no definite plans to do so.

Dargay reasoned that it would be easier to meet medical and insurance industry standards if IR Technologists performed the functions in both departments, since they are already trained and certified in radiology. To further her goal of consolidating the work, Dargay had three or four informal discussions with the Employer's Human Resources Department in the past two years.

During contract negotiations in September 2012, Dargay discussed this matter with representatives of District 1199C, and she testified that these discussions "crystallized" her plans. As a result of these talks, the Employer and District 1199C agreed to the following contract provision entitled, "Statement on the Cath Lab and IR":

The Radiology Department is regularly investigating new ways to provide high quality care at a lower cost which provides more positive outcomes for our patients. Toward that end, we attempt to the extent appropriate to institute best practice, redesigned models of care for our Cardiovascular and Interventional Radiology patients. A restructured practice which focuses increased care by IR Techs is one of the trends that exists today. We anticipate to

maintain our movement toward this type of model so long as it remains a best practice. While it is impossible to ensure implementation of such a model given the significant and ever-changing field of healthcare, we would estimate that this type of model may be practically designed in a period of twelve (12) to eighteen (18) months.

Dargay initially testified that she expects to complete the transition in 2013. She later suggested, however, that she envisions it taking effect sometime in the next 12 to 18 months, the timeframe described in the contract with District 1199C. She reasons that this span is needed to recruit and train new IR Technologists and to train the current IR Technologists to work in the Cath Lab.

Dargay has not yet discussed this issue with CNO Bob Haffey, who could reject any recommendation to eliminate the use of Cardiovascular Technicians, and she has not yet put her plan in writing. There have not been any discussions with the potentially impacted employees, and there are presently no meetings scheduled to discuss the proposed transition.

#### **IV. ANALYSIS**

The Employer's plan to eliminate the Cardiovascular Technician position is too speculative at this time to deny the employees an opportunity to participate in a representation election. Rather, the evidence shows that the idea of eliminating this classification and assigning the employees' duties to the IR Technologists is at most in the conceptual stage. In fact, Dargay has not consulted CNO Haffey about her plan, although he has the authority to reject it. Moreover, the Employer has not notified the Cardiovascular Technicians that their positions will be eliminated or offered them the opportunity to train for IR Technologist positions. The Employer has not scheduled any meetings to discuss the change, and the Employer's estimate that a transition might take place in 12 to 18 months is indefinite. Indeed, the District 1199C contract suggests that increased care by IR Technologists is a goal, not a certainty. While the Employer has cross-trained two employees to work in both the IR unit and Cath Lab, there are no definitive plans to train others. Given these circumstances, the Employer has not demonstrated that the elimination of the Cardiovascular Technician classification is definite or imminent. *Hazard Express, Inc.*, supra; *Canterbury of Puerto Rico, Inc.*, supra. Therefore, I will direct an election in the petitioned-for unit.

#### **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby 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 is a labor organization that 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Cardiovascular Technicians employed by the Employer at the Crozer Chester Medical Center in Upland, Pennsylvania, excluding all other employees, including other employees covered under collective-bargaining agreements, guards, and supervisors as defined in 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. If a majority of the valid ballots are cast for **Professional and Public Service Employees Local Union 1310 a/w Laborers International Union of North America AFL-CIO**, they will be taken to have indicated the employees' desire to be included in the existing unit at Crozer Chester Hospital currently represented by Professional and Public Service Employees Local Union 1310 a/w Laborers International Union of North America, AFL-CIO. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented. 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 this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees 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 were 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, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees who are 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 after the designated payroll period for eligibility; (2) employees engaged in a strike 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 engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. 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. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Friday, December 14, 2012**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile or electronic filing, 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 of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the date 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 5 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 non-posting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Friday, December 21, 2012, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>4</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

**Signed:** December 7, 2012

/s/ Dorothy L. Moore-Duncan  
**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Region Four  
National Labor Relations Board

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<sup>4</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

