

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

TOUCHETTE REGIONAL HOSPITAL

Employer
and

DAPHNE A. CHANDLER, an Individual

Case 14-RD-101796

Petitioner
and

SEIU HEALTHCARE ILLINOIS & INDIANA

Union

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

The Employer, Touchette Regional Hospital (Touchette), is an Illinois corporation engaged in the operation of an acute care hospital located in Centreville, Illinois. The Union, SEIU Healthcare Illinois & Indiana,¹ represents a residual unit of historically recognized full-time, regular part-time, and per diem skilled maintenance and business office clerical employees. On April 2, 2013, the Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union. A hearing officer of the Board held a hearing and the Petitioner filed a brief with me.

¹ Though the Union has experienced changes in form/name, no party contends that the Union is not the representative of the represented employees at issue here and recognized as such by the Employer. Accordingly, these changes are irrelevant to this proceeding and therefore the term "Union" will also refer to any previous form/name of the Union.

The Employer, Petitioner, and the Union agree that certain skilled maintenance and business office clerical job classifications set forth in the unit described below are appropriately included in the unit. As evidenced at the hearing, there are two issues. First, the Union contends the scope of the petitioned-for unit is inappropriate based on the Regional Director's Decision and Direction of Elections (Decision) in Cases 14-RC-096744 and 14-RC-096816. In this Decision, the Regional Director rejected the Employer's contention that the then represented technical and service and maintenance employees should be excluded from the petitioned-for units because these employees, who were previously employed by Kenneth Hall Regional Hospital (Kenneth Hall), already voted to be represented by the Union and historical units must be respected. In the Decision, the Regional Director directed elections among all technical employees and all service and maintenance employees, irrespective of whether they were former Kenneth Hall employees or had always been employed by Touchette. The Union contends, therefore, that the Regional Director should apply the same rationale in this case and dismiss the decertification petition on the ground that the petitioned-for unit is inappropriate as it excludes the historically unrepresented Touchette skilled maintenance and business office clerical employees in the same job classifications as those historically represented Kenneth Hall employees. Second, the Union contends that if the Regional Director should find the petitioned-for unit appropriate, then five named business office clerical employees holding job titles included in the agreed-upon

classifications should be excluded from the unit and ineligible to vote because they have been historically unrepresented by the Union.

The Employer contends that all skilled maintenance and business office clerical employees in the agreed-to classifications in the petitioned-for unit should be eligible to vote, including the five disputed business office clericals, regardless of whether they were historically represented by the Union. The Petitioner contends that the petitioned-for unit is appropriate since the Union continues to represent the Employer's skilled maintenance and business office clerical employees as the Union purposely chose to exclude these employees from the petitioned-for units in Cases 14-RC-096744 and 14-RC-096816. The Petitioner contends that two of the five disputed employees must be eligible to vote as they voted in a 2009 decertification election involving the Union.

Based on my review of the record, and for the reasons set forth below, I conclude that a unit of all employees in the currently recognized unit of skilled maintenance and business office clerical employees in the agreed-upon classifications is appropriate because it is coextensive with the recognized unit, and that the five disputed business office clerical employees should be allowed to vote subject to the challenge procedure.

I. HISTORY AND OVERVIEW OF OPERATIONS

The Employer previously operated two separate facilities. One facility is Touchette, located in Centreville, Illinois. The other facility was Kenneth Hall, located 5 miles away in East St. Louis, Illinois. Kenneth Hall was originally called St. Mary's Hospital of East St. Louis. In 2004, St. Mary's was purchased by

Southern Illinois Healthcare Foundation (the Foundation), which changed the name of the hospital to Kenneth Hall. The Union has been the exclusive collective-bargaining representative of the former Kenneth Hall professional² and non-professional employees since October 19, 2000, when it was separately certified as the representative of each unit of employees. The Kenneth Hall non-professional unit included technical employees, service and maintenance employees, as well as the skilled maintenance employees and business office clerical employees at issue here. The employees of Touchette were historically unrepresented. In around 2008, Touchette integrated with Kenneth Hall, and their parent organization, the Foundation, began the process of winding down operations at Kenneth Hall and transferring operations and employees to Touchette. In around 2011, the Foundation completed the integration, and Kenneth Hall closed.

During the integration process, the Union continued to represent the Kenneth Hall professional and non-professional employees. These employees were covered by a collective-bargaining agreement which was effective by its terms from April 1, 2006 to March 31, 2009. In 2008, the Union filed unit clarification petitions in Cases 14-UC-204 and 14-UC-205, seeking to accrete the professional and non-professional employees at Touchette into the professional and non-professional bargaining units at Kenneth Hall. A Regional Director's Decision and Order issued on December 10, 2008, dismissing these petitions as premature because the merging of the two hospitals had not yet been completed at the time of the hearing. On April 23, 2009, an election was conducted in the

² The professional employees are not at issue in this proceeding.

Kenneth Hall non-professional unit pursuant to a decertification petition filed in Case 14-RD-1918. The decertification was unsuccessful and a Certification of Representative issued on May 1, 2009, limiting the unit to employees employed at the East St. Louis facilities of Kenneth Hall.

Subsequently, the Employer, as the successor to Kenneth Hall, recognized the Union as the exclusive collective-bargaining representative of employees in the two units of former Kenneth Hall professional and non-professional employees. After the Employer recognized the Union, the parties engaged in bargaining, but have not reached or signed a successor collective-bargaining agreement. The Employer implemented terms and conditions of employment for the employees represented by the Union, effective September 1, 2012 through March 31, 2013. Since recognizing the Union as the bargaining representative of the unit of former Kenneth Hall non-professional employees, the Employer has continued to employ Touchette employees in the same job titles encompassed in this unit, but who are not represented by any union. Some non-professional employees employed by Kenneth Hall, who were represented by the Union at Kenneth Hall, were hired by Touchette in the same job titles they held at Kenneth Hall and continued to be represented by the Union after their hire. Some non-professional employees employed by Kenneth Hall, who were represented by the Union at Kenneth Hall, were hired by Touchette in the same job titles they held at Kenneth Hall, but removed by Touchette from the non-

professional unit and are no longer represented by the Union.³ Thus, non-professional employees in the job classifications included in the unit and already represented by the Union, currently work at Touchette alongside employees in the same classifications, who are not included in the unit and not represented by the Union, with the same supervision and under the same general working conditions.

The Decision in Cases 14-RC-096744 and 14-RC-096816 issued on February 15, 2013, directing elections in both petitioned-for units and including the former Kenneth Hall technical and service and maintenance employees historically represented by the Union, as well as Touchette's employees in the agreed-upon classifications in these units who were historically unrepresented. In Case 14-RC-096744, the Union won the election involving the service and maintenance employees. In Case 14-RC-096816, the Union lost the election involving the technical employees, and the Union's election objections are pending. The Employer continues to recognize the Union as the collective-bargaining representative of the agreed-upon classifications, which is a residual unit of historically represented skilled maintenance and business office clerical employees.

II. ANALYSIS

"Section 9(c)(1)(A)(ii) of the Act provides for an election where an employee or a group of employees 'assert that the individual or labor organization, which has been certified or is being recognized by their employer

³ The record is unclear how many of these non-professional employees were removed from the unit by Touchette or why, or whether they include the five business office clerical employees the Union contends should be ineligible to vote because they have been historically unrepresented.

as the bargaining representative, is no longer a representative as defined in section 9(a).” *W. A. Foote Memorial Hospital*, 230 NLRB 540, 541 fn. 6 (1977). “Section 9(c)(1)(A)(ii) restricts the filing of a petition and the subsequent issuance of any direction of a decertification election in the same unit as that in which the union is recognized or certified.” *Id.* at 540-41. Section 9(c)(1)(A)(ii) of the Act “. . . was designed to provide a method for determining whether an existing unit of employees desire[s] to continue their *current* representation, and the Board is required to conduct an election thereunder only when a question is raised concerning such current representation in the existing unit.” *Brom Machine & Foundry Co.*, 227 NLRB 690 (1977) (quoting *Westinghouse Electric Corp.*, 115 NLRB 530 (1956)). It is well established that a decertification petition is inappropriate where the unit sought to be decertified is not coextensive with the certified or recognized unit. *Group Health Assn.*, 317 NLRB 238 fn. 3 (1995). The Union, Employer, and Petitioner agree that the residual recognized unit consists of certain skilled maintenance and business office clerical job classifications set forth in the unit described below and are appropriately included in the unit. I so find.

The Union first contends that the Regional Director should apply the same rationale as in the Decision in Cases 14-RC-096744 and 14-RC-096816. The Union argues that the decertification petition must be dismissed on the ground that the petitioned-for unit is inappropriate because it excludes the historically unrepresented Touchette skilled maintenance and business office clerical

employees employed in the same job classifications as those historically represented Kenneth Hall employees in the agreed-upon classifications.

The Union's first contention is without merit. Cases 14-RC-096744 and 14-RC-096816 involved representation petitions rather than a decertification petition at issue here. In those cases, the Regional Director, in rejecting the Employer's contention, concluded that to include only the currently unrepresented technical and service and maintenance employees in the petitioned-for units would permit these employees to perpetuate a "fringe defect" in the historical unit by allowing them to vote to maintain their unrepresented status.

The Regional Director's rationale in the above-referenced Decision is inapplicable to this case which involves a decertification petition rather than a representation petition. The Board's procedure for determining an appropriate unit under Section 9(b) for a representation petition is different than its procedure for determining an appropriate unit under Section 9(c)(1)(A)(ii) for a decertification petition. In a representation petition, if the petitioned-for unit is appropriate, then the inquiry into the appropriate unit ends. *Wheeling Island Gaming*, 355 NLRB 637 fn. 2 (2010). On the other hand, in a decertification petition, as in this case, the election must be held in the existing or recognized bargaining unit, and the Board will not give effect to any agreement for an election in a different unit. *Riveredge Hospital*, 251 NLRB 196, 197 (1980).

Here, the petitioned-for unit is appropriate because it is the currently recognized bargaining unit, i.e., the Employer's historically represented skilled

maintenance and business office clerical employees. These employees became a residual unit of non-professional employees because the Union declined to include them in the petitioned-for units in Cases 14-RC-096744 and 14-RC-096816, or seek to represent them in a separate unit. The “fringe defect” analysis relied upon by the Regional Director in the above-referenced Decision is inapplicable here because this case involves a decertification petition which requires that the unit sought to be decertified is coextensive with the certified or recognized unit. Were the Regional Director to dismiss the instant decertification under the “fringe defect” analysis, as the Union urges, it would deprive indefinitely the recognized unit an opportunity to vote on continued representation by the Union merely because the Union declined to include them in the petitioned-for units in 14-RC-096744 and 14-RC-096816. Such an outcome would be inconsistent with the purposes of the Act with regard to decertification petitions, as described above.

The Union further contends that should the Regional Director find the petitioned-for unit appropriate and direct an election, five named business office clerical employees who hold job titles included in the petitioned-for unit should be excluded because they have been historically unrepresented by the Union. However, there is conflicting evidence on the record as to these employees, and I conclude that the eligibility of these five business office clerical employees should be resolved through the challenge procedure.⁴ *Houston Distributing Company, Inc.*, 261 NLRB 145 fn. 4 (1982).

⁴ These five employees are Kristi Gonzalez, Helen Lee, Darnella Mayberry, Patricia Reibel, and Anita Watts.

Therefore, it is appropriate to conduct an election among employees in the currently recognized unit of skilled maintenance and business office clerical employees in the agreed-upon classifications, as set forth below.

III. CONCLUSIONS AND FINDINGS

Based on 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 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 here.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union involved claims to represent certain employees of the Employer.

5. 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.

6. 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, regular part-time and per diem (those regularly averaging four (4) or more hours per week in a quarter) employees in the currently recognized unit of skilled maintenance and business office clerical employees, including accounts receivable coordinators, biomedical technicians, boiler operators,

carpenters, clinical services reps, clinical services reps II, clinical services reps III, electricians, maintenance mechanics, maintenance workers, medical billing specialists, medical billing specialist leads, medical records clerks, medical records coders-noncertified, medical records technicians, office coordinators, patient accounts representatives, and plumbers, EXCLUDING technical employees, service and maintenance employees, professional employees, confidential employees, managerial employees, guards and supervisors as defined in the Act, and historically excluded skilled maintenance and business office clerical employees.

IV. 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 in this unit will vote on whether or not they wish to be represented for the purposes of collective bargaining by SEIU Healthcare Illinois & Indiana. The date, time, and place of the election will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to 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 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. Those 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.

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 for the unit, containing the full names and addresses of all the eligible voters in the unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This 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, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **May 6, 2013**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the 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's website, www.nlr.gov,⁵ by mail, or by facsimile transmission at (314) 539-7794. 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 **three** copies of the list, unless the list is submitted by facsimile or electronic 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 Notice of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election is 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*

⁵ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. 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 **May 13, 2013**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁶ but may not be filed by facsimile.

Dated April 29, 2013, at St. Louis, Missouri.



Daniel L. Hubbel, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63013-2829

⁶ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions. 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 Agency's website, www.nlr.gov.