

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 20

ST. JOSEPH HOSPITAL

Employer

and

Case: 20-RC-120380

NATIONAL UNION OF HEALTHCARE
WORKERS

Petitioner

DECISION AND DIRECTION OF ELECTION

St. Joseph Hospital (Employer) operates an acute care hospital in Eureka, California. By its amended petition, the National Union of Healthcare Workers (Petitioner) seeks to represent a unit of nonprofessional service employees employed by the Employer. There are about 270 employees in the petitioned-for unit.

The parties have stipulated, and I find, that the Employer operates an acute care hospital and that the Board's Health Care Rule applies to the unit determination herein. The Board's Health Care Rule (Appropriate Bargaining Units in the Healthcare Industry), 29 CFR § 103.30, 54 Fed. Reg. 16336-16348 (1989), 284 NLRB 1515 (1987), sets forth eight separate appropriate bargaining units as the only appropriate units in acute care hospitals.² Relevant to the instant case are the following three out of eight units; all nonprofessional employees; all technical employees; and all business office clerical employees.

¹ Also referred to as Board.

² Certain exceptions exist to the Health Care Rule, but this matter does not implicate them.

The parties are in agreement regarding unit scope and composition with the following three exceptions: 1) a dispute over employees in several classifications, which the Employer argues must be excluded from the unit as technical employees (i.e., Laboratory Assistants I and II, Lead Laboratory Assistants, Emergency Department Techs 1 and 2, Pharmacy Technicians, and Surgical Technicians 1 and 2); 2) a dispute over certain classifications, which the Employer argues must be included in the unit, but which the Union contends must be excluded as business office clerical employees (i.e., transcriptionists II, health data analysts, and patient information specialists); and 3) a dispute over certain classifications which the parties have agreed to vote subject to challenge. My specific findings and conclusions regarding the unit placement of the disputed classifications and what constitutes an appropriate unit are set forth below.

I. Employees In Classifications Disputed As Technical Employees

A. Laboratory Assistants I and II and Lead Laboratory Assistants

The Employer contends that the laboratory assistants I and II and lead laboratory assistants (collectively called lab assistants) are technical employees who should be excluded from the unit of nonprofessional service employees and Petitioner takes a contrary position. The Employer employs about 28 lab assistants who work in its lab and are supervised by the phlebotomy supervisor and the director of laboratory services.³

The job duties and qualifications of all lab assistants are basically the same. They are phlebotomists who collect and process blood, urine and stool specimens pursuant to physicians' orders and for analysis by other employees, and spend about half their work time so engaged. Orders for lab work typically come to them by computer or on requisition sheets on which physicians check off standard lab tests on a printed menu or handwrite in the tests to be performed. Lab assistants appear to have some limited discretion in deciding how to collect some specimens; for example, there are multiple ways to collect blood samples, involving the selection of a draw site and choosing the type of needle and tube to be used. Such choices are affected by

³ There are about 16 lab assistants I, nine lab assistants II, and three lead lab assistants.

variables such as the amount of blood required for the test; the likelihood of success using different approaches; and a patient's age, size, condition, etc. However, such choices appear largely circumscribed by established protocols. For example, there is a protocol for the order in which tests must be taken and for the selection of different draw sites.

About 25% of the lab assistants' work time is spent processing specimens, which involves putting blood samples into a centrifuge machine that spins them in order to separate blood cells from the fluid portion of the blood; preparing agar plates by dividing them into quadrants, staining them with different mediums, and placing the specimen on them; and placing the agar plates into an incubator or refrigerator in order to grow or preserve cultures. Lab assistants do not analyze or interpret test results.

Although the record does not specifically indicate how the lab assistants spend the remaining portion of their work time, the record indicates that they sometimes testify in court about specimens that they have collected and processed.

Lab assistants are required to have a high school degree or its equivalent, a Basic Life Support (BLS)/CPR certification,⁴ and a State phlebotomy certification.⁵ Laboratory assistants I are promoted to laboratory assistant II positions after three years of satisfactory performance in the laboratory assistant I position. Many of the lab assistants are pre-nursing or pre-med students and some have bachelors or master's degrees in science, but such degrees are not required for their jobs.

The wage range for laboratory assistants I is \$14.40 to \$21.59 an hour; for laboratory assistants II, \$15.87 to \$23.81 an hour; and for lead laboratory assistants, \$17.50 to \$26.24 an hour. The other alleged technical employees whose wage rates

⁴ BLS/CPR training takes about two hours and all patient care employees of the Employer, including employees who, the parties agreed, belong in the nonprofessional service unit, such as certified nursing assistants, are also required to be BLS/CPR-trained.

⁵ The requirements for becoming a certified phlebotomy technician in California are a high school degree or its equivalent; completion of 40 hours of phlebotomy class training from an approved school; completion of 40 hours of phlebotomy practice that includes at least 50 veni-punctures and ten skin punctures; and passing an approved phlebotomy certification exam. The record reflects there is a 13-week course given at a nearby college which satisfies the classroom training requirement. Candidates take a national test after completing the classroom training and they then move on to the clinical portion of the training.

are in the record range from \$14.40 to \$30.38.⁶ Pursuant to the parties' stipulation, among the employees who are properly in the unit as nonprofessional service employees, the endoscopy techs are paid from \$18.37 to 27.56 an hour; the sterile processing techs II are paid from \$14.40 to \$21.59 an hour; and the surgical supply coordinators are paid from \$17.50 to \$26.24 an hour.

Analysis. In general, the Board considers technical employees to be those employees "who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." *Barnert Memorial Hospital Center*, 217 NLRB 775, 777 (1975) quoting *Litton Industries of Maryland*, 125 NLRB 722, 724-725 (1959); *Rhode Island Hospital*, 313 NLRB 343, 353 (1993).

As indicated above, the Employer's laboratory assistants are basically phlebotomists and the Board generally considers phlebotomists to be nonprofessional service employees rather than technical employees. See *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (August 26, 2011); *Southern Maryland Hospital Center, Inc.*, 274 NLRB 1470, 1474 (1985). I see nothing in the record to warrant a different conclusion. The lab assistants are not required to have specialized training or certifications, other than as a phlebotomist. They perform routine collection and processing of blood, urine and throat specimens from patients, most often pursuant to well-established protocols and under the supervision of a phlebotomy supervisor and the director of laboratory services, and exercise minimal independent judgment in the process. Their pay rates are comparable to those of other employees included in the nonprofessional service unit.

In reaching this conclusion I have carefully considered the Employer's arguments but do not find them persuasive. In the cases relied upon by the Employer, *Mercy Hospital*, 220 NLRB 974 (1975), and *Children's Hospital of Pittsburgh*, 222 NLRB 588, 591 (1977), where the Board found lab assistants to be technical employees, the lab assistants were required to have at least one year of training, to be certified by the

⁶ The record does not include the wage rates of all technical employees at the Employer's facility.

American Society of Clinical Pathologists, and to conduct laboratory examinations of bodily fluids and tissue samples. By contrast, the laboratory assistants herein are certified for phlebotomy and not pathology work and do not conduct laboratory examinations.

Accordingly, I find that the laboratory assistants I, II and lead laboratory assistants are not technical employees and they are properly included in the unit of nonprofessional service employees sought by Petitioner. See *William W. Backus Hospital*, 220 NLRB 414, 417 (1975); *Clarion Osteopathic Community Hospital*, 219 NLRB 248, 249 (1975); *Southern Maryland Hospital*, *supra*.

B. Emergency Department Technicians I and II

The Employer contends that emergency department technicians I and II (collectively called ER techs) should be excluded from the unit as technical employees, and Petitioner takes a contrary view. There are about 13 full-time and two relief employees in these classifications.

The ER techs are managed by the director of emergency services and they work with the doctors and nurses in the emergency department. The duties of all ER Techs are basically the same and include putting patients in rooms within the emergency department; assisting patients in preparing for examinations by emergency room physicians; repositioning patients; providing patients with blankets, bedpans and other comfort items; taking vital signs; performing blood draws, urine dips and pregnancy tests; irrigating and cleaning wounds; preparing and placing splints and ace wraps; running EKG tests; reporting to physicians or nurses any changes they observe in the condition of patients; assisting, as directed by a nurse or physician, in emergency situations; acting as part of the "Code Blue" emergency response team; performing CPR as needed and/or directed; and operating a radio to communicate with emergency first responders to obtain information about incoming patients.

The record makes clear that the ER techs serve as the "eyes and ears" of the doctors and nurses in the emergency department by reporting their observations about the condition of patients. However, ER techs possess no authority to assign acuity levels to patients and they do not interpret EKG or other test results.

ER techs are required to have a high school degree or its equivalent, a BLS/CPR certification, and emergency technicians II are also required to have a State phlebotomy certification. The requirements for obtaining a phlebotomy certification are the same as for the lab assistants described above. ER techs are also required to possess knowledge of body mechanics and medical terminology; knowledge of basic anatomy is preferred but not required. Employees in these positions undergo on-the-job training to learn how to do their jobs pursuant to applicable protocols. This training includes how to use the Employer's electronic documentation system; Code Blue team responsibilities;⁷ how to run EKG tests and recognize certain heart arrhythmias;⁸ how to prepare and place splints for fractures;⁹ and how to use the radio to communicate with first responders and obtain information about incoming patients.¹⁰ Many of the employees in these positions are former paramedics or EMTs and/or are pre-med or pre-nursing students, but this type of background is not required for the position.

Emergency department technicians I are paid an hourly wage rate ranging from \$11.19 to \$16.12 an hour, and emergency department technicians II are paid an hourly rate from \$14.40 to \$21.59 an hour.

Analysis. The Board considered the unit placement of emergency department techs in *Southern Maryland Hospital Center, Inc.*, supra, 274 NLRB at 1474, and found them not to be technical employees where the qualifications for the position were a high school diploma and/or experience as a medical corpsman, and their duties included eliciting medical histories from emergency room patients; taking vital signs; preparing

⁷ ER techs provide basic CPR as part of the Code Blue team by doing chest compressions or otherwise assisting physicians and nurses as directed.

⁸ ER techs do not interpret EKG results but rather give them to a physician for interpretation.

⁹ An orthopedic surgeon and/or physician's assistant conduct a yearly class to teach ER techs how to place pre-fabricated splints on patients. Such work is performed by the ER techs under a physician's direction.

¹⁰ ER techs take a four-hour class with a pre-hospital nurse administrator to learn how to operate the radio to communicate with first responders and the protocols used by first responders in providing treatment en route to the hospital. ER Techs are then observed on three occasions using the radio before they are allowed to perform this work. They use a list of prepared questions, which they do not create, in order to obtain patient information from paramedics. However, it is the paramedics and not the ER techs who make decisions regarding the patients' medical care en route to the hospital.

splints for fractured limbs; and drawing blood samples. The Board concluded that their non-technical status was shown by their lack of specialized training and their performance of “routine procedures in which they utilize[d] no independent judgment.” *Id.*¹¹

In the instant case, I likewise find that the ER techs are not technical employees. As in *Southern Maryland Hospital, supra*, their jobs do not require specialized training. In this regard, I find that the requirement that the emergency department technician IIs obtain a State phlebotomy certification does not alter this conclusion given that the emergency service technicians found *not* to be technical employees in *Southern Maryland* also performed phlebotomy work (i.e. taking blood draws) and the Board does not generally view phlebotomists as technical employees. See *St. Vincent Charity Medical Center, supra*. In addition, the other work performed by the ER techs here, such as taking vital signs and preparing splints, is the same work as was performed by the emergency techs in *Southern Maryland*, which the Board found to be routine and non-technical in nature. The other duties of the ER techs in this case are likewise routine, including putting patients in waiting rooms; preparing them for examination; repositioning them; offering them comfort items; and asking emergency responders questions about patients from a pre-established checklist. The CPR they perform does not distinguish them from other nonprofessional service employees who are trained to provide and expected to provide similar life saving actions. Moreover, the ER techs' duties are performed under the supervision of nurses and doctors in the emergency department and according to established instructions and protocols. ER techs do not interpret EKG or lab tests nor do they have authority to assess patient acuity. Rather, they are authorized only to report their observations to doctors and nurses. See *William*

¹¹ In contrast, see *Jewish Hospital Association of Cincinnati d/b/a Jewish Hospital of Cincinnati*, 223 NLRB 614, 621 (1976), where the Board found emergency service techs to be technical employees because they were required to have experience as medical corpsman or have completed a 2-year period of informal on-the-job training, during which time specific procedures and techniques were taught to them by registered nurses and the department instructor; and because the employer utilized them interchangeably in its emergency department with licensed practical nurses (LPNs), who were technical employees. The emergency service techs performed the same duties, were in the same pay grade, and received the same shift differential as LPNs.

W. Backus Hospital, 220 NLRB 414, 417 (1975); *Trinity Memorial Hospital of Cudahy, Inc.*, 219 NLRB 215, 218 (1975).

Lastly, the pay rates of the emergency department technicians I and II do not support a finding that they are technical employees. Indeed, they fall at the low end of technical employees' wage scales that are cited in the record, and are closer to the pay ranges of employees included in the petitioned-for nonprofessional service unit.

In reaching my conclusion that the ER techs are not technical employees, I have carefully considered the Employer's arguments to the contrary and its comparison of the ER techs in this case to the orthopedic technicians and EKG monitor techs in other Board cases where the Board or Regional Director found such employees to be technical employees.¹² Based on the analysis above, however, I do not find the Employer's arguments and reliance on such cases to be persuasive.

Accordingly, I find that the emergency technicians I and II are not technical employees and they are properly included in the petitioned-for nonprofessional unit.

C. Pharmacy Technicians

The Employer employs about 13 pharmacy technicians (herein called pharmacy techs). The Employer contends they should be excluded from the unit as technical employees and Petitioner takes a contrary view.

Pharmacy techs spend most of their time working at three different pharmacies (i.e., ambulatory infusion center, inpatient pharmacy and Redwood pharmacy), but they also work throughout the entire hospital. They are supervised by the pharmacist and pharmacy manager, who review and approve their work, and by the area director of pharmacy. Their job is to prepare and distribute primarily sterile and non-sterile IV-administered drugs, as well as oral, injection and topical drugs. Some drugs come in pre-prepared form, but many drugs must be reconstituted from a bulk vial form and be tailor-made to meet individual patient needs.¹³ This includes sterile IV mixtures, which are prepared by the pharmacy techs pursuant to orders from physicians and using

¹² See *Barnert Memorial Hospital Center*, 217 NLRB 775, 779-780 (1975) and Decision and Direction of Election in *Eden Medical Center Case 32-RC-4715* (March 23, 2000), cited by the Employer in its Post-Hearing Brief. I note that Regional Director Decisions do not constitute Board precedent.

¹³ The Employer utilizes about 3,400 drugs and about 1,000 of these are IV drugs that must be mixed.

information supplied by the pharmacist about the patient, such as the patient's condition, age, gender, size, etc.

The preparation of IVs and shots by the pharmacy techs requires them to make precise mathematical computations to determine the correct mixture of medicine and diluents based on their training and expertise. The pharmacy techs must exercise their own judgment in preparing drugs, taking into consideration such variables as the patient's weight, organ condition and fluid restrictions. For example, the record indicates that quite often the pharmacist informs the pharmacy tech that a patient is in renal failure and fluid-restricted. The pharmacy tech must then make up the medication so as to minimize volume. Other variables that pharmacy techs must take into account in constituting medications are variations in drug dissolution and the best type of solution to add to a concentrated mixture in order to ensure proper dosage. Pharmacy techs mixing drugs for chemotherapy must also utilize special procedures in order to protect against health hazards posed by such drugs.

Pharmacy techs specialize in various tasks, including four who specialize in preparing IV-administered mixtures; two who specialize in preparing chemotherapy IV mixtures; one who specializes in purchasing pharmaceuticals; one who specializes in managing export files for all drugs dispensed to patients; one who specializes in unit dosing and bar coding for drugs;¹⁴ and one who specializes in the hardware, software and trouble-shooting for the Employer's electronic drug-dispensing technology used to dispense drugs in about 30 nursing units throughout the hospital.¹⁵ Pharmacy techs also work in the critical care unit assisting physicians in determining appropriate drug therapies for patients; they distribute oral and topical drugs to patients throughout the Employer's facilities; and they ensure that electronic drug dispensing cabinets in nursing units are kept safely stocked with appropriate drugs.

Pharmacy techs are required to have a high school degree or its equivalent and be licensed by the State of California as Registered Pharmacy Technicians, which

¹⁴ Pharmacy techs are responsible for ensuring that all drugs are bar coded.

¹⁵ Pharmacy techs undergo training with the vendor to enable them to maintain, program and troubleshoot the electronic drug-dispensing system.

requires about nine months to two years of training either by obtaining a pharmacy technician associates degree or by completing an equivalent program¹⁶ approved by the California State Board of Pharmacy.¹⁷ The two pharmacy techs who specialize in chemotherapy were sent to a two-week chemotherapy training program in Texas.

Analysis: In the absence of requirements for extensive training and certification, the Board has generally found pharmacy techs not to be technical employees.¹⁸ For example, in *Meriter Hospital, supra* at 601, the duties of the pharmacy technicians II were quite similar to those of the pharmacy techs in the instant case, including preparing orders for prescriptions; compounding IV solutions; re-stocking drugs in nursing units; and ordering drugs. Nevertheless, the Board in *Meriter* affirmed the Regional Director's finding that the pharmacy techs II were not technical employees, noting that they were not required to have certifications. By contrast, in *Duke University*, 226 NLRB 470, 472 (1976), the Board found pharmacy techs to be technical

¹⁶ I note there is some variation in testimony regarding the duration of the programs (other than an associate's degree) which are considered "equivalent" to such a degree for purposes of obtaining a pharmacy tech license. Pharmacy Tech Anthony Ruggeri testified that he had researched the issue and found online courses varying in length from three to six months that could be taken to become a pharmacy tech, but the Employer's area director of pharmacy testified that these on-line courses had not been approved by the California Board of Pharmacy and that approved courses are typically nine to 12 months duration. No contrary evidence was introduced to dispute the area director's testimony in this regard. I therefore rely on his testimony that such courses typically require from nine to 12 months to reach my finding that it takes approximately nine months to two years of training to obtain a pharmacy tech license.

¹⁷ A national pharmacy board also oversees pharmacy techs and provides a national certification, which assures that a pharmacy tech has taken his or her training from a nationally-approved licensing program. The Employer's area director of pharmacy testified that the Employer requires both the State license and the national certification. However, only the requirement for the State license is set forth in the job description. Pharmacy tech Ruggen testified that the Employer did not require a national certification and although he had obtained one, it was not current. Because of the ambiguity in the evidence regarding whether the Employer actually requires its pharmacy techs to have a national certification, I do not consider the national certification in making my decision, but instead rely upon the undisputed requirement for possession of a State license and the training required for such a license.

¹⁸ See *Rhode Island Hospital, supra*, 313 NLRB at 356 (pharmacy techs not found to be technical employees where only requirements were a high school education, one to two years of college or comparable work experience, and successful completion of a 15-week technician training program); *Meriter Hospital*, 306 NLRB 598, 601 (1992) (pharmacy techs I and II found not to be technical employees where there was no requirement for outside training or certification); and *Southern Maryland Hospital Center, Inc., supra* (pharmacy techs not found to be technical employees where they were required to complete only a six-week training course and to receive on-the-job training).

employees because they pulled orders and filled prescriptions under a pharmacist's direction, and were required to complete a six-month course of study at a technical institute to obtain a certification.

After carefully considering the above cases in comparison with the facts in the instant case, I find that the pharmacy techs herein are technical employees based on their duties described above, which appear to require a significant amount of independent judgment in preparing drugs, and based on the requirement that they obtain a State license requiring about nine months to two years of training. In reaching this conclusion, I have carefully considered the arguments of Petitioner and find them to be unpersuasive. Accordingly, I find the pharmacy techs to be technical employees and I am excluding them from the nonprofessional service unit herein. *Id.*

D. Surgical Technicians I and II

The Employer employs six surgical technicians I and II (collectively called surgical techs).¹⁹ The Employer contends they should be excluded from the unit as technical employees and the Union takes a contrary position.

The Employer provides many types of surgeries, including complex trauma, neurologic, cardiac and orthopedic procedures. Surgical techs spend almost all of their work time in surgery or preparing for surgery. They scrub in and they remain in the operating room throughout the surgery. They assist in choosing surgical instruments for operations²⁰ and their primary job is to prepare and arrange such instruments on tables and trays in the operating room and to make them available to the surgeon as they are needed during a surgical procedure. If an instrument is needed that is not in the operating room, the surgical tech asks the circulating nurse to retrieve it. Surgical techs are also responsible for maintaining a sterile field in the operating room. Usually they do not work within the surgical site, but sometimes they hold retractors at the surgeon's

¹⁹ The Employer contracts with an outside agency for approximately six additional surgical techs (also called traveling surgery techs) who work for the Employer for about 13 weeks at a time. As noted below, the parties are in agreement, and I find, that these surgical techs are not employees of the Employer within the meaning of the Act, and they are not included in the unit.

²⁰ Although there is an established list (preference card/pick list) of standard instruments that must be available in the operating room during each type of surgery, surgical techs can also add other instruments at the request of the surgeon or because in their own judgment such instruments may be needed.

request. The record reflects that the work of the surgical tech was historically performed by RNs, but over the years the functions were taken over by the surgical tech position and the operating room circulating nurse no longer scrubs in or is able to interchange with the surgical tech.

Surgical techs must have familiarity with between six to ten thousand different surgical instruments used by the Employer and be able to anticipate the next instrument needed by the surgeon and quickly make it available. They must also be able to anticipate complications that may arise during various types of surgeries and have the instruments necessary to deal with such complications.

All surgical techs are required to complete four to six months of intensive surgical technology training in a hospital or school, but the Employer does not require them to be certified. They are trained in physiology, instrumentation, equipment needs, sterile technique, how to set up surgical instruments on tables and stands, and how to anticipate a surgeon's needs and possible complications that can arise during different types of surgeries.²¹

The major differences between the surgical technicians I and II are that the surgical technicians II must have about five to eight more years of experience. The Employer gives them more responsibility to coordinate with nurses concerning the preference cards that show the instruments required for each type of surgery, and to confer about future surgical equipment needs. Surgical techs II also interact with surgical equipment vendors.

Surgical techs are supervised by the operating room manager and the director of surgical services. On a daily basis, they interact with the surgical team, consisting of surgeons, surgeons' assistants, the operating room circulating nurse and anesthesiologists.

Analysis. Based on the foregoing facts and the entire record, I find the surgical technicians I and II to be technical employees who are properly excluded from the unit

²¹ There are certain pre-established surgical instrument sets for some types of surgeries; the instruments that go into these sets are selected by the surgeon, operating room nurses and surgical techs; the sets are put together by sterile processing techs who are included in the unit; the sterile processing techs have no role in the selection of the instruments comprising the sets.

of nonprofessional service employees. Although no certification is required for their position, they must complete four to six months of specialized training and their duties appear to require a significant degree of skill and the exercise of independent judgment. They must be familiar with between six and ten thousand surgical instruments; choose instruments that may be needed during particular surgeries beyond those normally required; decide how to arrange surgical instruments on tables and trays so they are most readily available to the surgeon; and anticipate the needs and preferences of individual surgeons during many different types of surgeries, including complex procedures. Further, they are responsible to anticipate potential complications that arise during different types of surgeries and to ensure that the instruments necessary to deal with such complications are readily available. Additionally, in the past registered nurses performed this work in the operating room. Accordingly, I am excluding the surgical technicians I and II from the unit as technical employees. See *Rhode Island Hospital, supra*, 313 NLRB at 313; *Meriter Hospital, supra*, 306 NLRB at 600-601 (1992); *William W. Backus Hospital, supra*, 220 NLRB at 418.

II. Classifications Disputed As Business Office Clerical Employees

A. Transcriptionists II (Histology Lab)

The Employer employs three transcriptionists II who work in the histology department of the Employer's Humbolt Central Lab, which is located across the street from the main hospital. The Employer seeks the inclusion of these transcriptionists II in the unit and Petitioner contends that they should be excluded because they are business office clericals.

The only job performed by the transcriptionists II is to transcribe pathology reports. They do not work on Medicare or Medicaid reimbursements or handle accounting or billing work or perform any other type of transcription or clerical work. They are required to have a high school degree or its equivalent and knowledge of medical terminology. Most of their training is done on the job. They report to the manager of histology. Other employees working in the same lab include cystologists, microbiologists and histology techs and one clerical position called an administrative assistant/histology. The transcriptionists II also interact with physicians, physician

practices employees, and medical records employees, such as health data analysts, whose unit placement is addressed below.

Analysis. The Board has long recognized a distinction between “business office clericals” and other hospital clericals in the health care industry. Employees are generally classified as business office clericals when they: (1) have minimal contact with unit employees or patients; (2) work in isolated geographic areas of the hospital; or (3) perform functions, separate and apart from service and maintenance employees, which typically include accounting, billing and/or handling reimbursement systems such as Medicare and Medicaid. See *St. Luke’s Episcopal Hospital*, 222 NLRB 674, 675 (1976). Other relevant factors include separate supervision from other nonprofessional employees. See *Rhode Island Hospital*, supra, 313 NLRB at 359.

The Board has generally considered transcriptionists to be hospital clericals and not business office clericals. See *Jewish Hospital of Cincinnati*, 223 NLRB at 621; *William W. Backus Hospital*, supra, 220 NLRB at 415. I see no reason for a different conclusion here given that the transcriptionists II have no specialized business office type training; are not separately grouped in an area with business office clericals; and do not perform typical business office clerical work, such as accounting, billing, or handling Medicare or Medicaid reimbursements. Rather, they work in a lab area and perform work that is integrated with patient care functions. In these circumstances, I find that the transcriptionists II are hospital clericals rather than business office clericals and that they are properly included in the nonprofessional service unit herein.

B. Health Data Analysts

The Employer employs five health data analysts (formerly called medical records clerks), whom the Employer contends should be included in the unit and whom Petitioner argues should be excluded as business office clericals.

The health data analysts manage patient health records, including both electronic and paper records, to ensure their accuracy and completeness as required by Employer policies and state and federal regulations. They also perform some compilation of patient records in response to patient requests and subpoenas. They do not handle any billing, accounting, or Medicare or Medicaid reimbursement work. They work in the health information management department located in the lower level of the main

hospital, but they also regularly visit patient care areas and interact with unit secretaries and other unit personnel in order to pick up and deliver patient records and ensure that all necessary signatures have been obtained on medical forms. Their departmental manager also supervises the patient information specialist, whose unit placement is addressed below.

Qualifications for the health data analyst position include a high school diploma or its equivalent; one-year of experience in medical records or related health care experience; competency in Windows; and knowledge of medical terminology. No license or certification is required.

As with transcriptionists, the Board has generally found medical records clerks (a/k/a the health data analysts herein) to be hospital clericals rather than business office clericals, especially when they have contact with employees who deal directly with patients. See *Rhode Island Hospital*, *supra* at 362-363; *Baptist Memorial Hospital*, 225 NLRB 1165, 1168 (1976); *William W. Backus Hospital*, *supra* at 415; *Jewish Hospital of Cincinnati*, *supra* at 621; *Sisters of St. Joseph of Peace*, 217 NLRB 797, 798 (1975). The health data analysts here do not perform typical business office clerical work; they are not grouped together with other business office clericals; and they regularly visit patient care areas in performing their job. Accordingly, I find the health data analysts to be hospital clericals who are properly included in the nonprofessional service unit.

C. Patient Information Specialist

The Employer employs one patient information specialist who works in the same department under the same manager as the health data analysts. The patient information specialist's job is to respond to subpoenas for medical documents and patient requests for such documents. The job does not involve any billing, accounting, Medicare or Medicaid reimbursement work. This employee works in the lower level of the main hospital and interacts with the health data analysts as well as employees in other clinical departments in retrieving patient records. The employee also interacts directly with patients or their designees in handling medical records requests. The position requires a high school diploma or its equivalent and one year of medical record or related health care experience.

I find that the patient information specialist is properly included in the unit as a hospital clerical for the same reasons that I find the health data analysts are properly included in the unit. See *Rhode Island Hospital, supra*; *William W. Backus Hospital, supra*; *Jewish Hospital of Cincinnati, supra*; *Sisters of St. Joseph of Peace, supra*.

In sum, I have reached the above conclusions regarding the transcriptionists II (Histology Lab), the health data analysts, and the patient information specialist after carefully considering the Petitioner's arguments. Petitioner mistakenly relies on *St. Luke's General Hospital*, 220 NLRB 488, 489 (1975), in which, contrary to Petitioner's assertion, the Board found the medical records employees to be hospital clericals who were properly *included* in the unit of nonprofessionals sought by the union.²² Petitioner's reliance on *Seton Medical Center*, 221 NLRB 120, 122 n. 21 (1975) and *St. Luke's Episcopal Hospital*, 222 NLRB 674, 676-677 (1974), is also misplaced because in those cases, the medical records employees at issue worked in close proximity to business office clerical employees, and did not have regular contact with employees in other patient care areas as do the employees at issue herein.

III. Employees in Classifications To Vote Subject to Challenge

Petitioner does not seek to represent the DI radiology coordinator; lead clerical worker, lead diagnostic scheduler, and lift team coordinator, and contends that the positions are supervisory in nature and fact. The Employer, on the other hand, seeks to include them in the unit. Petitioner did not submit sufficient evidence to establish that I ought to exclude them as supervisors, and the Employer did not establish that they are nonprofessional service employees whom I ought to include. In the absence of sufficient record evidence to find one way or the other, I defer to the parties' agreement to allow the DI radiology coordinator; lead clerical worker, lead diagnostic scheduler, and lift team coordinator to vote subject to challenge.

Likewise, the record does not enable me to determine whether I should include the dept sec/admin secretary III (admin assistant St. Joseph Hospital/clinical patient educator) classification in the unit, as the Employer advocates, or exclude it because it

²² The Board's finding in *St. Luke's*, included, *inter alia*, the laboratory secretary position that had replaced the medical stenographer and/or transcriptionist position(s).

is a business office clerical position, as Petitioner argues. Accordingly, any employee in the dept sec/admin secretary III (admin assistant St. Joseph Hospital/clinical patient educator) classification may vote subject to challenge.

CONCLUSIONS AND FINDINGS

Based on the record, 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 parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in the business of operating an acute care hospital, is engaged in commerce within the meaning of Sections 2(6) and (7) and (14) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3) The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act.

4) The parties stipulated, and I find, that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5) I find that the following employees of the Employer constitute an appropriate unit for the purposes of collective-bargaining within the meaning of the Act:²³

²³ As indicated above, the parties are in agreement as to the unit description above, except for the disputed classifications and the challenged voters addressed in this Decision. The parties have reached agreement as to several unit scope and composition matters, and I find in accordance with their agreements, as follows:

- (1) The five addresses listed in the unit found appropriate herein are the work locations of unit employees at the Employer's Eureka, California facility;
- (2) The Employer's sleep center disorder laboratory and its employees are not included in the unit.
- (3) The following classifications, which were included in the original petition, are not included in the unit because they are vacant positions and/or are positions that do not exist and/or are covered under other job classifications which are included in the unit: benefits coordinators, café cooks, prep cooks, catering employees, OR scrub techs, and nurse technicians.
- (4) The Employer contracts with an outside agency which provides approximately six surgical technicians who work for the Employer for about 13 weeks at a time. These surgical technicians are not employees of the Employer under the Act and are not included in the unit.

All nonprofessional service employees including registration specialists, PBX-operators/receptionists, admissions counselors, food service workers, diet aides, cooks, stockpersons (lead stockpersons), EVS/linen room workers, housekeepers, PT/OT (PT/Rehab) aides, lift team technicians, nursing assistants, certified nursing assistants, unit secretaries, ward clerks (unit clerk/tech assistants), monitor technicians, distribution technicians, surgical supply coordinators, supply chain operations assistants, sterile processing techs 1, sterile processing techs 2, endoscopy technicians, OR aides, administrative assistants I (clinical lab administrative assistants), cath lab monitor techs-dept sec, clinic DI imaging clerical specialists, clinic health data analysts, clinic radiology assistants, clinic technologists assistant-mammo, surgery center schedulers (surgery supply coordinators), dept sec/admin secretaries III (insurance clerks chemo clinic), dept sec/admin secretaries III (surgical services clerical specialists (St Joseph's Hospital)), DI authorization/scheduler specialists, diagnostic imaging clerical specialists, EVS floor techs, GI processing techs, outpatient rehab coordinators, patient transporters-diagnostic imaging, quality management assistants, SJE CT/MRI tech assistants, transportation specialists, laboratory assistants I, laboratory assistants II, lead laboratory assistant, emergency department technicians I, emergency department technicians II, transcriptionists II (Histology Lab), health data analysts, and patient information specialist employed by the Employer at St. Joseph Hospital (Main Hospital), 277 Dolbeer Street; General Hospital Campus, 2200 Harrison Avenue; North Coast Pain Center a/k/a St. Joseph Surgery Center, 2705 Harris Street; Outpatient Imaging Center, 2330 Buhne Street; and Humbolt Central Lab, 2770 Dolbeer Street, Eureka, California;

and excluding all other employees, administrative assistants/room schedulers, appeals coordinators, cancer data specialists, coordinators-cath lab, coordinators-radiation oncology, department secretaries/admin assistants II, dept secretaries/admin secretary III (room schedulers/room assistants), department secretaries/admin secretary III (business analyst-community benefits), diagnostic scheduler, materials management data administrator, information coordinator /receptionist, all sleep center disorder employees, pharmacy technicians, surgical technicians I, surgical technicians II, confidential employees, guards, and supervisors as defined in the Act.

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 National Union of Healthcare Workers or by no union. 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. 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.

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.). This 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.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **March 7, 2014**. 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's website, www.nlr.gov,²⁴ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing, 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 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.

²⁴ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions

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 **March 14, 2014**. The request may be filed electronically through the Agency's web site, www.nlr.gov,²⁵ but may not be filed by facsimile.

DATED AT San Francisco, California, this 28th day of February 2014.



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

²⁵ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.