

**Mercy Hospital and District 1199P, National Union of Hospital & Health Care Employees, Division of RWDSU, AFL-CIO, Petitioner. Case 6-RC-6938**

September 30, 1975

**DECISION ON REVIEW AND DIRECTION OF ELECTION**

BY CHAIRMAN MURPHY AND MEMBERS JENKINS  
AND PENELLO

On March 25, 1975, the Regional Director for Region 6 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a service and maintenance unit which included, among others, technical employees and excluded medical records department clericals at the Employer's hospital facility. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Petitioner filed timely requests for review of the Regional Director's Decision on the grounds, *inter alia*, that the unit found appropriate by the Regional Director was inappropriate and that he made erroneous findings as to substantial factual issues and departed from officially reported Board precedent.

The National Labor Relations Board, by telegraphic order dated May 5, 1975, granted the requests for review and stayed the election pending decision on review. Thereafter, the Employer and the Petitioner filed briefs on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding with respect to the issues on review and makes the following findings:

Petitioner in this case seeks a unit of all service and maintenance employees, excluding all other employees, office clerical employees, technical employees, licensed practical nurses, registered nurses, guards, supervisors, and professionals as defined in the Act. The Regional Director found appropriate a unit of all service and maintenance employees but he included in the unit certain employees Petitioner contends are technical employees, and excluded from the unit medical records department clericals. Employer contends that the appropriate unit is a wall-to-wall unit including all service and maintenance employees, all LPN's, all technical employees, all clerical employees, and all professional employees. Alternatively, Employer submits the appropriate unit consists of all

service and maintenance employees, all LPN's, all technical employees, and all clerical employees. Finally, Employer maintains that, if the Board concludes that neither of the Employer's two suggested units are approved, the Board should find at the very minimum a unit composed of all service and maintenance employees, all LPN's, all plant clericals, and all nonregistered, noncertified, or nonlicensed technicians. Petitioner argues that the appropriate service and maintenance unit should be as found by the Regional Director, except that technical employees should be excluded and medical records clerical employees should be included in the broad service and maintenance unit.

For the reasons set forth in *Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Memorial Hospital Center*, 217 NLRB No. 132 (1975), we find that a unit limited to the service and maintenance employees constitutes an appropriate unit. For the reasons set forth in *Sisters of St. Joseph of Peace*, 217 NLRB No. 135 (1975), we shall include medical records clerical employees in the service and maintenance unit.

We still must decide, under the guidelines set forth in *Barnert Memorial Hospital, supra*, which classifications should be excluded from the service and maintenance unit because they are technical.

**1. Certified Laboratory Assistant**

This employee works under the supervision of a medical technologist and performs chemical, microscopic, serologic, hematologic, and bacteriologic examinations of body fluids and tissues in the clinical laboratory. The incumbent must have an education equivalent to high school and 1 year of training in an approved hospital course leading to registration as a Certified Laboratory Assistant by the American Society of Clinical Pathologists (ASCP). We therefore find this employee to be technical.

**2. Junior Histological Technician**

This employee performs a variety of duties in the preparation and processing of histopathological specimens to assist in the diagnosis and treatment of diseases. He receives specimens and prepares slides. He uses stains and records and files slides. The incumbent in this position must have an education equivalent to high school plus 2 years of training in a laboratory certified for histopathology training by the ASCP. The employee must be certified by either the ASCP or the American Society of Medical Technology. We therefore find this employee to be technical.

### 3. Cytotechnologist

This employee examines and prepares slides for examination to provide the pathologist with information for the diagnosis and treatment of diseases. He performs a variety of duties in connection with the preparation of slides and observes and analyzes them for cancer cells. The incumbent must have an education equivalent to 2 years of college and 1 year of hospital training in an approved school of cytotechnology leading to ASCP registration. We therefore find this position to be technical.

### 4. Radiological Technologist

This employee takes and processes radiographs and administers therapeutic treatment under the direct supervision of a radiologist. He also operates radiographic equipment, positions patients, keeps records, and maintains equipment in good condition. The incumbent must have an education equivalent to high school plus 2 years of training in an accredited X-ray school. The incumbent should also be registered by the American Registry of Radiologic Technologists. We therefore find the radiological technologist to be a technical employee.

As to the following employees, the record is insufficient to determine whether or not they are technical employees. *Barnert Memorial Hospital, supra*. We shall therefore allow the following employees to vote subject to challenge: medical technician, surgical technician, physical medicine technician, respiratory therapy technician, electrocardiogram technician, tissue technician, and autopsy technologist.

We find the appropriate unit in this case to be:

All regular full-time and part-time employees in the service and maintenance functions, including medical records clerical employees, employed at the Employer's Altoona, Pennsylvania, facility but excluding technical employees, licensed practical nurses, business office clericals, professional employees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election <sup>1</sup> omitted from publication.]<sup>2</sup>

MEMBER PENELLO, dissenting:

For the reasons set forth in the dissenting opinions in *Barnert Memorial Hospital Center*,<sup>3</sup> and in *Newington Children's Hospital*,<sup>4</sup> I disagree with the decision of my colleagues to exclude the technical employees from the service and maintenance unit herein.

Mindful of the congressional mandate, as evidenced by the legislative history preceding the passage of the 1974 health care amendments to the National Labor Relations Act,<sup>5</sup> to avoid proliferation of bargaining units in the health care industry, I would require, unlike my colleagues, that all technical employees, including LPN's, be included in the unit.

<sup>1</sup> The Regional Director shall determine whether the showing of interest is sufficient before proceeding with the election

<sup>2</sup> [Excelsior fn. omitted from publication.]

<sup>3</sup> 217 NLRB No. 132 (1975).

<sup>4</sup> 217 NLRB No. 134 (1975).

<sup>5</sup> S. Rept. 93-766, 93d Cong., 2d Sess. 5 (1974); H. Rept. 93-1951, 93d Cong., 2d Sess. 7 (1974)