

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SILVER CROSS HOSPITAL

Employer

And

Case 13-RC-21277

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 399,
AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

I. Background, and Issues Presented by the Board's Remand

Silver Cross Hospital hereinafter referred to as “the Employer” or “the Hospital”, filed its Request for Review in the above-captioned matter on February 16, 2005. In its Request for Review, the Employer maintains, *inter alia*, that the Board’s Healthcare Rule necessitates that the eight job classifications within the Hospital’s Information Systems Department--Computer Operator, Electronic Technician/Data Processing, Information Systems Coordinator, PC Analyst, Program Analyst, System Integration Specialist, Clinical Systems Coordinator, and Administrative Secretary--be included in the petitioned for unit. By a Decision on Review dated March 2, 2005, the Board remanded the instant Decision to the undersigned for further analysis, based upon the Board’s Healthcare Rule¹ of whether the disputed classifications possess the types of skills, and perform similar levels of duties as those of employees in other skilled maintenance classifications. The Board further noted that that the Regional Director should consider that the Information Services department employees must be included in one of the units specified in the Health Care Rules, and it may be necessary to determine if any or all of them are professional or technical employees.²

II. Decision

Based on the entire record in this proceeding and for reasons discussed more fully below, I find that the computer operators, electronic technician/data processing, and PC analyst to be skilled maintenance employees and should be included in the skilled

¹ Collective Bargaining Units in the Health Care Industry, 54 Fed. Reg. 16336, 16348, reprinted at 284 NLRB 1580, 1597 (1989).

² In response to the Board’s Decision on Review and Order Remanding, the Regional Director solicited the positions of the respective parties regarding the substantive issues raised by the Remand. Both parties submitted a written statement to the Regional Director indicating that they had no further evidence to present on the issues remanded by the Board and did not wish to have the instant record reopened.

maintenance unit. I find, however, that the Information Systems Coordinator, Clinical Systems Coordinator, System Integration Specialist, and Program Analyst possess skills and related job duties that are sufficiently distinct and require a greater level of intellectual skill and abstraction than that expected of a skilled maintenance employee. I further find that the skills and related duties of the Information Systems Coordinator, Clinical Systems Coordinator, System Integration Specialist, and Program Analyst are technical in nature and involve the use of independent judgment requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses to the extent that they fit the Board's definition of technical employees under the Board's Healthcare Rule. As such, I will exclude the Information Systems Coordinator, Clinical Systems Coordinator, System Integration Specialist, and Programmer Analyst from the skilled maintenance unit found appropriate herein. Finally, with respect to the IS Department's Administrative Secretary, I find that her job duties and functions do not encompass the job duties, relative skills, and functions of a skilled maintenance employees, and I will exclude her from the unit.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and regular part-time operating engineers, refrigeration mechanics, maintenance mechanics, electricians, computer operators, electronic technician/data processing, and PC analysis employed by the Employer at its Joliet Illinois acute care hospital facility; but excluding all other employees, including the building services department coordinator, dispatcher/clerical, IS department systems coordinator, clinical systems coordinator, system integration specialist, program analyst, and administrative secretary, professional employees, technical employees, service employees, clerical employees, confidential employees, casual employees, guards and supervisors as defined in the Act.

III. Statement of Facts and Analysis

The unit placement issues presented herein under the Board's Healthcare Rule requires a determination as to whether the employees in the disputed classifications possess the types of skills, and are required to perform similar levels of duties as those of employees in the other skilled maintenance classifications. See *St. Luke's Health Care Association*, 312 NLRB 139 (1993). Thus, under this analysis, if the disputed classifications are determined to be "skilled maintenance" positions, they must be included in the skilled maintenance unit sought by the Petitioner. However, if they meet the Board's definition of technical employees, they must be placed in a technical employees unit under the Board's Healthcare Rule.

As previously noted, the Information Services ("IS") Department is responsible for the processing and maintenance of the Employer's computerized hospital information system, which connects the several hundred personal computers, or PCs, in the Hospital into a network. The departmental employees are responsible for providing support and

maintenance services to the PCs, network, and software operating systems throughout the Hospital. The operational area of this department is located in the basement of the Medical Arts building, a structure physically separate from the main hospital campus. The day to day operations of the department are managed by Jesse Rojo, Director, Information Services, and Bob Paprockas, Manager of Computer Operations. They report to Don Bansemer, Vice President of Information Systems. The Employer maintains that all departmental employees, including departmental clerical employees, should be included in the skilled maintenance unit. The disputed job classifications include Computer Operator, PC Analyst, Electronics Technician/Data Processing, Information Systems Coordinator, Clinical Systems Coordinator, System Integration Specialist, Program Analyst, and Administrative Secretary. The Petitioner contends that the duties and functions of the Information Services Department employees are more closely related to those of technical employees or business office clericals under the Rules and should not be included in a skilled maintenance unit.

The computer operators are hourly-paid employees that work in the Information Services Department under the supervision of Manager of Computer Operations Bob Paprockas. The operators work on a 24 hour seven day a week basis, and are scheduled to cover this operational time frame as required. The operators do not wear ties but do wear business casual attire and have an hourly wage rate range of between \$12 and \$18 per hour. According to Donald Bansemer, the computer operators are not required to wear ties as part of their business attire because the operators work with equipment where the ties may interfere with the services or repairing of the computer or related equipment. There are eight computer operators working in the IS Department, and they are principally responsible for continuously monitoring the Hospital's online systems for problems; processing, monitoring, printing, and distributing various computer generated reports for the Hospital's office such as billing and payroll reports; monitoring and manning a help desk for consulting with employees with problems that as they arise on the Hospital's PC system; and, responding to hardware problems as they occur throughout the facility. With respect to the hardware problems, the operators will use simple hand tools such as a screwdriver to install or remove cables linking PC computers to printers and other peripheral devices and "swap-out" the inoperable device and replace it with another printer or monitor as the case may be. There is no evidence in the record showing that the operators provide an electronic diagnosis or mechanically repair the inoperable devices as the hardware problems occur. Instead, the operators will troubleshoot the problem, check for simple software or hardware solutions, clear paper jams and reload printer ribbons and cartridges, and if the problem is not resolved, the operator will exchange the inoperable PC computer or peripheral device and turn the devices over to the electronics technician for repair.

The job description of the computer operator lists a variety of skills associated with the essential duties of the position. Most of the skills listed by the Employer in the description involve the utilization of software commands for the purpose of monitoring, processing, and maintenance of the Hospital's on-line computer system. Most, if not all of these functions are performed in the IS Department office located in the lower level of the Medical Arts Building on the Hospital's main campus. The operator position calls for

an education level of a high school diploma or its equivalent, and does not require any specialized training or certification.

There is one electronics technician/data processing, working in the IS Department. The position is paid on an hourly basis, and earns more than the computer operator position. According to Donald Bansemer this position is responsible for repairing and maintaining the Hospital's PCs and peripheral equipment, as well as the installation and repair of the Hospital's network equipment. The position's job description clearly indicates that the electronics technician's main job duties involve the installation and repair of computers, peripheral equipment, and network hardware. There is no evidence in the record that shows that the position is engaged in maintenance and installation of software on the PCs and network hardware. The position also clearly requires a specialized set of education and training programs focusing on the electronics and circuitry used in computer service and maintenance. Additionally, the position's maintenance and repair duties require that the person occupying this position go throughout the Hospital to service the defective PC's in the user department when possible and repairing the devices in the shop when required. In repairing the defective devices, the technician uses a variety of tools that are routinely used for the repair of electrical and computer-based devices. In this regard, the technician's skills and job duties are similar to that of other skilled maintenance employees, such as electricians. The duties of the position are also similar to the other skilled maintenance trades insofar as the nature of their work assignments and the skills require them to work largely unsupervised throughout the hospital's campus.

There is one PC analyst in the IS department. The position is essentially responsible for the installation and support of PC hardware and software throughout the entire hospital; to a lesser degree, the employee in that position works with the other IS departmental employees in project-related duties as assigned. Specifically, the PC analyst spends 90 to 100% of her time planning, organizing, and effectuating the systematic upgrade or new installation of PC software and hardware on the hundreds of PC computers scattered throughout hospital campus. In addition to these duties, the PC analyst must be available for emergency consultations and support for daily problems that arise throughout the hospital. In an effort to resolve these emergency or urgent repair calls, the PC analyst will consult or request the assistance of any number of the IS department computer or systems experts, including the programmer analyst or the systems specialists. The PC analyst has, in the past, interacted with the skilled maintenance employees in the building services department on matters involving power problems, such as adding or repairing electrical outlets and changing light bulbs; however there is no interchange between the PC analyst and the skilled maintenance employees regarding their individual job duties. The majority of the work performed by the PC analyst is on location throughout the hospital where a PC is either being installed or maintained. The PC analyst works under the supervision of IS Manager Jesse Rojo and works regular business hours of 8:00 a.m. - 4:30 pm Monday through Friday. Unlike the computer operator and electronics technician, the PC analyst is required to wear a dress shirt and tie every day. The reason for this distinction, according to Donald Bansemer, Vice President of Information Systems, is that the Hospital does not expect the position to work on PCs and peripheral equipment where the tie would interfere with the

installation, maintenance, or repair of the item. With regards to the education and training required for the position, the Hospital requires that the PC analyst hold a bachelor degree in computer science or the technical training equivalent, and, in addition, prefers 6 months of previous experience installing PC hardware and software.

The next set of employees in the IS department, the info systems coordinator, clinical systems coordinator, systems integration specialist, and programmer analyst, are all positions that focus primarily on the software environment of the Hospital's computer system. As noted throughout the hearing, the IS department operates a network connecting hundreds of PC as well as other computer-based equipment throughout the hospital. These employees design voice and data communication systems or procure the systems from outside vendors, supervise the installation of those systems, and provide maintenance and other services to the user departments after the system is installed. All of these employees are salaried, work regular business hours of 8:00 am – 4:30 pm, and are directly supervised by IS Department Manager Jesse Rojo.

There are three info systems coordinators employed by the Hospital. They spend most of their work time in the IS department coordinating and maintaining the application software used in the Hospital's main information system called MedTech, as well as a variety of other information systems used by a variety of user departments. The position requires an educational background of a bachelor's degree or its technical equivalent, in a healthcare profession and/or computer science, as well as three years experience in healthcare or computer-based information systems. The coordinators are also involved in consulting with the user departments on ways to change or refine the current system in order improve or add necessary functions to the system. In matters involving the acquisition of new department-specific systems, the info systems coordinators work with the user department to determine their objective needs and then use their expertise to acquire a suitable vendor for the project. Such work also entails skills involving project management consultations as well as particular expertise in the installation of the new software packages. There is no objective evidence in the record showing that the info systems coordinators are involved in the physical maintenance or repair of the Hospitals computer and related hardware, however, it is clearly within their job duties to ensure adequate support for the various software applications to which they are particularly assigned to maintain.

The Hospital has another employee working in the information systems category called a clinical systems coordinator. This position is similar to that of the info systems coordinator except for the fact that it concentrates on the Hospital's clinical information systems. The required qualifications are again similar to those of the info systems coordinator, an educational background of a bachelor's degree or its technical equivalent, in a healthcare profession and/or computer science, as well as three years experience in healthcare or computer-based information systems, except that the Hospital requires a clinical background, such as a nursing or medical laboratory experience, to assist the position in servicing the applications software used by the clinical departments of the Hospital.

The next position at issue is the systems integration specialist. There are two employees currently in the position and they are primarily used for the installation of systems and application software at the Hospital. Donald Bansemer, Vice President of Information Systems, testified that he felt the position to be “highly technical,” in the common sense of the terms, as well as one of the most highly trained positions in the department. The position requires an educational background of a bachelor’s degree or its technical equivalent, preferably in computer science, as well as three years of experience in information systems supporting personal computers. The focus of the position is to install, upgrade, maintain and support the system software operating the Hospital’s computer network. The position is salaried, works between 8:30 and 5:00 p.m. and reports to Jesse Rojo, Director of Information Services.

There is one programmer analyst in the IS Department. This position works primarily within the confines of the IS Department and focuses on the maintenance and development of the Hospital’s application and interface software. The position requires a bachelor’s degree or its equivalent preferably in computer science, as well as three years experience in information systems support and installation. The programmer analyst works closely with the systems integration specialist in maintaining the operational integrity of the Hospital’s system principally from the confines of the IS Department. The position is salaried, works between 8:30 and 5:00 p.m. and reports to Jesse Rojo, Director of Information Services.

There is one Administrative Secretary in the IS Department. She works as the assistant to the Vice President Information Systems Donald Bansemer in a wide range of administrative duties. She is required to be competent in a variety of computer based software products, such as word processing software and power-point graphic presentations, used in the administrative functioning of the department. There is no evidence in the record that administrative secretary possesses technical expertise in computer or peripheral installation and repair, nor is she required to possess knowledge of hospital-wide system and application software. It is also no evidence in the record showing that the position spends any time circulating through the Hospital performing maintenance or repair services to PC and related peripheral equipment.

In determining whether the disputed classifications in the IS department possess the types of skills, and are required to perform the kinds of job duties common to the other skilled maintenance classifications, at similar skill levels, it is clear that the vast majority of the duties assigned to the computer operator, PC analyst, and electronic technician are skilled in nature and relate directly the installation and servicing of the computer hardware and peripheral equipment used in the Hospital’s computer system. These positions also perform, to a varying degree, maintenance functions on the computer equipment using many of the same types of tools as used by other skilled maintenance employees in the building services department. Additionally, while there is some variance in the specific duties of the computer operator, PC analyst, and electronic technician from the skilled maintenance employees in the building services department, there are also a wide range of distinctions in the job functions and skills found within the skilled maintenance classifications.

The Board acknowledges variance in the skill and education levels of various employee classifications included in a skilled maintenance unit. *Toledo Hospital*, 312 NLRB 652 (1993); *San Juan Medical Center*, 307 NLRB 117 (1992). Some of the employee classifications included in the skilled maintenance unit in *Toledo Hospital*, for example, worked in separate departments and received separate supervision. In its decision reversing the Regional Director's exclusion of the lead communications technician and telecommunications technician, the Board noted that "the telephone system [which those employees maintained and repaired] is an integral and necessary part of the physical plant, with cabling running through the walls." The Board went on to state that "employees who maintain, repair and operate complex, sophisticated equipment will not be excluded from a skilled maintenance unit solely because that equipment is not directly part of the physical plant." *Toledo Hospital*, 312 NLRB at 654. I find, based upon the instant facts and in light of the applicable case law that the Hospital's computer operator, electronic technician, and PC analyst are properly classified as skilled maintenance employees and should, therefore, be included in the skilled maintenance unit found appropriate herein. They work on computer hardware and peripheral equipment that is utilized by the staff throughout the Hospital for reasons as diverse as business office monthly reports to clinical information systems. Additionally, while providing support, maintenance and installation services on the Hospital's computer system, which is an integral and necessary part of the physical plant, they use many of the same type tools that are used by the skilled maintenance employees in the building services department. Moreover, they work independently throughout the Employer's facilities as do the skilled maintenance employees in the Employer's Facilities department, and they have skill levels that are comparable to those of some of the skilled maintenance employees in the Employer's facilities department.

With respect to the information systems coordinator, clinical systems coordinator, system integration specialist, and program analyst, however, I find that the duties and skills associated with these positions are more akin to that of a technical employee under the Rules rather than those of a skilled maintenance employee. The Board in *Barnett Memorial Hospital Center*, 217 NLRB 775,777 (1975) stated the following test for determining the definition of a technical employee:

....we apply the Board's standard criteria that technical employees are those 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. [Quoting *Litton Industries of Maryland, Incorporated*, 125 NLRB 722, 724-725 (1959).]

There can be simply no question that the educational, technical training and experience requirements for the information systems coordinator, clinical systems coordinator, system integration specialist, and program analyst are far greater than those required for any of the skilled maintenance employees. Unlike the computer operators and the electronics technicians who are not required to possess education beyond that of high school, the information systems coordinator, clinical systems coordinator, system

integration specialist, and program analyst are each required to have a college degree in computer science or its equivalent. Additionally, each of the latter positions required specialized training and experience in one or more specialty field of computer science such as PC-based network systems or specialized computer applications or programming skills. Moreover, the systems employees and programmer job duties and functions are centered mainly on the maintenance and development of software solutions for application and systems problems and the focus of their work is in the IS department as opposed to the physical examination and repair of computer hardware and peripheral equipment in the user departments throughout the Hospital. The positions are also required to maintain a higher standard of professional development and judgment in the application of their skills in the Hospital in terms of project management and implementation of modifications and improvements in the user department's software environment. Accordingly, I find that the information systems coordinator, clinical systems coordinator, system integration specialist, and program analysis to be technical employees and therefore not appropriately included in a unit of skilled maintenance employees.

The Board has excluded secretaries and clerks from a skilled maintenance unit where there is no evidence that they perform any skilled maintenance work, fill the position of a trainee, or serve as assistants or helpers to skilled maintenance employees in the performance of their work. *Barnes Hospital*, supra., *Ingalls Memorial Hospital*, 309 NLRB 393, 394 (1992). In *Ingalls*, the Board excluded from skilled maintenance unit secretaries and clerks, who routed service requests, dispatched maintenance personnel, processed purchasing paperwork, filed and updated preventative maintenance procedures, and prepared maintenance reports. In the instant matter, there is no evidence in the record showing that administrative secretary for Vice President Donald Bansemer performs any skilled maintenance functions or assists others in the performance of skilled maintenance work. I therefore conclude that the IS department administrative secretary is not a skilled maintenance employees and is appropriately excluded from the petitioned-for unit of skilled maintenance employees.

Based on the foregoing, I find that the computer operator, electronic technician, and PC analyst perform similar levels of duties as those of employees in the other skilled maintenance classifications. Accordingly, I will include them in the unit found appropriate herein. Having found that the systems coordinator, clinical systems coordinator, system integration specialist, program analysis, and administrative secretary are not skilled maintenance employees, I will exclude them from the unit. There are approximately 25 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also

eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or since been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 399.

LIST OF VOTERS

In order to insure 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 with their full names and addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **June 1, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 8, 2005**.

DATED May 25, 2005 at Chicago, Illinois.

/s/Roberto G. Chavarry

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