

**RD # 17-03
Elizabeth, New Jersey**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

TRINITAS REGIONAL MEDICAL CENTER¹

Employer

and

**INTERNATIONAL ASSOCIATION
OF EMTS AND PARAMEDICS, SEIU,
LOCAL 5000²**

CASE NO. 22-RC-193804

Petitioner

DECISION AND ORDER

I. INTRODUCTION

On February 24, 2017, International Association of EMTs and Paramedics, SEIU, Local 5000 (“Petitioner”), filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act seeking to represent a unit of “all full time, part time and per diem Mobile Intensive Care Paramedics (MICP), Mobile Intensive Care Nurses (MICN), and Specialty Care Transport Nurses (SCTN) whom provide Pre-Hospital Advanced Life Support (ALS) Mobile Intensive Care Unit (MICU) and Specialty Care Transport Unit

¹ The name of Employer appears as amended at the hearing.

² The name of Petitioner appears as amended at hearing.

(SCTU)” (sic) but excluding “Managers, Coordinators, Educators and all others not providing Pre-Hospital Advanced Life Support, MICU Services or having the title of MICN, MICP or SCTU Nurse.”

The parties stipulated that Trinitas Regional Medical Center (“Employer” or “Hospital”), is an acute care hospital. Employer asserts that because it is an acute care hospital, the Petitioned-for unit is inappropriate under the National Labor Relations Board’s (“the Board”), Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry), Board Rules and Regulations Section 103.30, (“the Rule”), and that therefore, the only appropriate unit is a wall-to-wall unit of technical employees and Registered Nurses (RNs). Petitioner asserts that the petitioned-for unit is made up of employees from a facility which, while owned by Employer, operates separately from the Hospital, that the Rule therefore does not apply and that I should order an election in the petitioned-for unit.

I have considered the evidence and arguments presented by the parties as well as relevant Board precedent, the Rule and exceptions thereto. Based on the following, and as discussed *infra*, I find that the Employer is an acute care facility. I find that the petitioned-for employees are employees of that acute care facility, that the Rule applies to the instant matter, that the facts of this case indicate that petitioner’s unit does not conform to a unit specified in the Rule and therefore, that the petitioned-for unit is inappropriate. As I have concluded that Petitioner’s unit is inappropriate, and the only alternative unit in which

Petitioner is willing to go to an election is also inappropriate, I shall therefore, dismiss the Petition for the reasons further set forth below.³

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Employer is engaged in commerce within the meaning of the National Labor Relations Act, as amended ("the Act") and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The labor organization involved claims to represent certain employees of Employer.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act would be a unit of all full-time, regular part-time and per diem technical employees and Registered Nurses employed by the Employer at its Elizabeth, New Jersey facilities.

³ At the hearing, Petitioner stated that the only alternative unit in which it was willing to go to an election was its original unit with the addition of the Employer's dispatchers and Emergency Medical Technicians ("EMTs"). The alternative unit also does not conform to a unit specified by the Rule.

⁴ The parties stipulated that the Employer is involved in interstate commerce. From the record as a whole, I find that the Employer, a New Jersey corporation, is an acute care hospital located at 225 Williamson Street and other locations in Elizabeth, New Jersey. During the calendar year ending December 31, 2016, the Employer derived gross revenues in excess of \$250,000 and provided goods and services valued in excess of \$50,000 directly to points located outside the State of New Jersey.

II. FACTS

Employer operates a hospital on two main campuses in Elizabeth, New Jersey. Employer's campus on Williamson Street includes a cancer center, medical-surgical floors, an emergency room, an inpatient dialysis center, a wound care center and an occupational medical center. A psychiatric services center and hospital-based nursing home are located at Employer's New Point Street Campus. Separate from those two campuses is Employer's Human Resources Department, located on South Broad Street in what is called the Jersey State building. Adjacent to the Jersey State building, at 1164 Elizabeth Avenue, is the Center of Regional Education building ("CORE"). The CORE building houses Employer's fundraising Foundation and all its ambulance and paramedic services, including a Mobile Intensive Care Unit ("MICU"), and Specialty Care Transport Unit ("SCTU"), which collectively Employer refers to as the "Pre-hospital Services Department." Employer owns the CORE building; it was built with funds raised by its Foundation in 2011. The CORE Building has two floors; the first housing a garage and open area with MICU and SCTU vehicles, a dispatch center, offices, a training center, crew rooms and bathrooms for the Department's employees. On the second floor are Employer's Foundation offices and four classrooms for training employees and community leadership meetings.

The parties stipulated that Employer employs the employees in the petitioned-for unit. The parties also stipulated that Employer is an acute care facility. The matter turns then, on whether the Pre-Hospital Services Department is distinctly separate from the acute care facility in order to avoid application of the Rule. The record is replete with evidence concerning the community of interest of employees between the petitioned-for unit and

Employer's other employees. In this regard, the parties adduced some evidence, regarding the interactions of Pre-Hospital Services Department employees with employees in other departments, their patient contact and responsibilities, employee transfers between departments, uniforms, the equipment employees in the Pre-Hospital Services and other departments utilize, and their qualifications and licensures. I need not rely on these facts to make my findings in this matter; the crux of the issue presented is whether Employer's Pre-Hospital Services Department is part of an acute care facility or is somehow removed from that facility and therefore, not subject to the unit limitations of the Rule. Once I have made that determination the presence or lack of community of interest factors becomes irrelevant.

Employer's Human Resources Department covers all its employees, including those in Petitioner's unit. The Human Resources Department administers benefits and is involved in hospital-wide employee hiring, firing and discipline. None of the Human Resources employees are dedicated to any one department or specialty. Employer's employees, except for an organized unit of skilled craft employees, physicians and the Employer's leadership group, have the same health and welfare benefits, are eligible for employee awards programs, utilize the same time and attendance procedures, utilize the Employer's intranet and are subject to the same Human Resources policies.⁵ All of Employer's employees attend a common new employee orientation. All Employer's hourly workers, with the exception of those covered by the skilled craft collective-bargaining agreement, receive annual across-the-board wage increases. However, employees earn leave at different rates, depending on their classification. Employer has a system for appealing disciplinary actions that begins at the

⁵ Employer employs approximately 15 engineers, carpenters, painters, plumbers, HVAC mechanics and general mechanics in a skilled craft unit represented by the Operating Engineers.

unit level, proceeds to Human Resources and ends with a committee of two of the Hospital's Vice Presidents. Individuals in the petitioned-for unit can avail themselves of this appeals procedure. Employer's Information Technology Department serves all of Employer's departments, including the Pre-hospital Department. Its Environmental Services Department is responsible for all Employer's facilities, including the CORE Building.

Gerard Muench is the Director of Pre-Hospital Services. He reports directly to Joseph McTernan, Employer's Senior Director of Community and Clinical Services. McTernan reports to Nancy DiLiegro, the Vice President for Clinical Operations and Physician Services, who is also Employer's Chief Clinical Officer. As such, not only is DiLiegro responsible for Pre-Hospital Services but, among other hospital services, she oversees the Operating Room, Ambulatory Surgery Center, Cardiac Services, Physician Practices, and Interns and Residents. Muench participates in hospital-wide committees with the managers of Employer's other departments, including Environmental Care, Stroke Committee and Emergency Preparedness Committee.

The Pre-Hospital Department is staffed by Dispatchers, Paramedics, RNs, EMTs, Instructors, Supervisors and a Coordinator. The parties stipulated that the Employer's Paramedics and EMTs are technical employees. Raffee Matossian is its Medical Director. Matossian also works in the Emergency Department and performs quality assurance for the Hospital.

The Pre-Hospital Department has 15 vehicles including 4 MICU vehicles. The Department operates the following different types of vehicles: van ambulances, for less critical patient transport; box ambulances, used by the SCTU; MICU vehicles, 3 Ford

Expeditions containing equipment for Paramedics which do not transport patients; a supervisor's vehicle; and a vehicle for transporting education equipment.

Basic Life Support ("BLS") is Employer's ambulance service, which is staffed by EMTs. EMTs have completed a 250 hour training course, are certified in CPR and hazardous materials procedures, and have driver's licenses. The majority of Employer's EMTs' work is non-emergency patient transport, although EMTs also perform some emergency transportation. EMTs transport patients on or off Employer's medical/surgical floors, the dialysis unit, the nursing home, psychiatric center and cancer center. The majority of their trips either begin or end at Employer's facilities. They utilize van ambulances which carry basic life support equipment including: stretchers, oxygen, bandaging equipment, cervical collars and blood pressure equipment.

EMTs receive their transport instructions from a supervisor. They also receive documents that allow Employer to bill the patient for its services. It is the Hospital, not the Pre-Hospital Department, that bills insurers, Medicare and Medicaid for transportation and services. Employer also issues combined bills covering, for example, transportation and dialysis, if the patient is transported to the Hospital's dialysis center. Thus the EMTs, as well as Paramedics and RNs, record the treatment they have provided to patients, allowing Employer to bill for those services.

MICUs are staffed by Paramedics or a combination of a Paramedic and RN. Paramedics are EMTs who have completed an additional 18 month training course after they have been certified as an EMT and passed a State exam. Paramedics perform the following duties which EMTs cannot: starting intravenous lines, defibrillating cardiac patients, reading electrocardiograms used to monitor cardiac patients and dispensing certain medication. They

operate non-patient transport vehicles and respond only to emergencies of a critical nature. Paramedics are dispatched by the City of Elizabeth. They treat, stabilize and then transport patients in City of Elizabeth-owned ambulances to Emergency Rooms; the Employer's and others. When they arrive at the Hospital Emergency Room with their patient, they report to the Charge Nurse and then to the RN assigned to care for the patient. They monitor the patient until the RN takes over. The equipment the paramedics use includes equipment used by EMTs as well as cardiac monitors, defibrillators, medication, IV bags and airway equipment. At night the Paramedics use a box ambulance which also contains the equipment listed above.

According to New Jersey Statute, only a hospital with an accredited emergency service, with authorization from the State Commissioner of Health, may operate a MICU. *New Jersey Code Section 26:2K-12(a)*. In the instant matter, Employer holds the MICU's State license.

MICUs are the only units in the Hospital that use emergency service charts. EMTs do not staff the MICUs; only Paramedics and MICU nurses do. New MICU employees undergo a 3-day orientation in addition to the new employee orientation Employer provides hospital-wide. Employer has a policy which indicates that the Paramedics' primary function is the "provision of out of hospital, Advanced Life Support to sick or traumatized patients. The only function that Paramedics may have with the Emergency Department is in the case of a disaster."

The SCTU consists of an RN and an EMT or Paramedic operating an ambulance. They transport patients when an RN is needed to treat and monitor a patient during transport between critical care facilities or taking patients to, or bringing patients out of, the Hospital's

intensive care unit. The SCTU RNs are licensed by the Board of Nursing of the State of New Jersey, have Paramedic training and at least one year of critical care experience.

The SCTU primarily uses one vehicle; a second box ambulance owned by Employer which carries the same equipment as used by the MICU, as well as additional medications, a ventilator and a doppler, a piece of equipment used to detect a patient's weakened pulse. Four other ambulances are licensed as SCTUs and can be used interchangeably as BLS vehicles, MICUs or SCTUs.

Employer's Dispatch Center dispatches ambulances and the SCTU. The training center trains EMTs, providing classes such as advanced cardiac life support, pediatric cardiac life support and CPR.

III. THE PARTIES' POSITIONS

Employer's position is that the Pre-Hospital Services Department and its Paramedics and RNs, are inseparable from Employer; which is an acute care hospital. Employer contends that in fact, and by statute, it is the operator of the MICU. As an acute care hospital, Employer asserts that the Rule applies and, therefore, Petitioner's unit is inappropriate. Noting that the MICU is a licensed part of the Hospital, Employer asserts that the MICU is not a standalone facility. Rather, it contends that the Pre-Hospital Services Department is part of the Hospital's clinical operations. It asserts that Pre-Hospital Services is functionally integrated with the rest of its operation, since members of that Department pick up and drop off patients from the Emergency Room, the medical/surgical floors and the nursing home and bring them to other facilities of the Hospital.

While Petitioner has stipulated that Employer is an acute care hospital, it contends that the Pre-Hospital Services Department, and the MICU and SCTU in particular, is

separate from the Hospital, and that therefore, the Rule does not apply and the petitioned-for unit is an appropriate unit. Petitioner asserts that there is no community of interest between employees in the petitioned-for unit and those that work in the Employer's other departments. According to Petitioner, while Employer adduced evidence of "centralized administration", it failed to produce evidence related to functional integration. Petitioner contends that the RNs in the MICU and SCTU have specialized functions and notes the lack of transfers from Employer's other departments to the MICU and SCTU. Employer counters that all its RNs have different specializations, credentials and certifications.

III. ANALYSIS

A. The Rule Applies to the Case at Hand.

Congress has admonished the Board against undue proliferation of bargaining units in healthcare institutions. In the Rule, the Board mandated that in acute care hospitals, absent extraordinary circumstances, only the following eight units are appropriate: all RNs, all physicians, all professionals except for RNs and physicians, all technical employees, all skilled maintenance employees, all business office clerical employees, all guards and all other nonprofessional employees. *Board Rules and Regulations, Section 103.30*. The Rule provides that a petitioner can request a consolidation of two or more of these units and that, absent a statutory restriction, such a combined unit may be found appropriate. Therefore, a combined unit of RNs and technical employees may be found appropriate.⁶

The threshold issues are (1) whether Employer is an acute care hospital, and (2) whether there is record evidence to suggest that the Pre-Hospital Services Department is a

⁶ RNs, as professional employees, would be polled to ascertain whether they wish to be included in a unit with non-professional employees in a *Sonotone* election. *Lakewood Health Center*, 365 NLRB No. 10, pg. 17 (2016).

free-standing, separate entity from that hospital. The parties have stipulated that Employer is an acute care hospital and that it employs the individuals sought by Petitioner. Therefore, if the Pre-Hospital Services Department is a separate entity from Employer will the Rule not apply, and a unit other than the wall-to-wall units therein prescribed may be found to be appropriate. The record does not support such a finding.

In this regard, the benefits, policies and procedures enjoyed by the employees throughout the Hospital are shared by the employees in Petitioner's unit. The MICU is licensed and operated by Employer. Organizationally, the Pre-Hospital Services Department is fully integrated into the Employer's chain of command. The Pre-Hospital Service Department's Director reports to individuals with responsibilities for both his department and Employer's other departments. The Director sits on committees with managers from Employer's other departments in an effort to improve the operation of the entire facility. Services rendered by the Pre-Hospital Services Department are invoiced by Employer. There is no record evidence that the funds collected are *not* part of Employer's ordinary revenue stream. The Pre-Hospital Services Department is housed in an Employer-owned facility. While the members of Petitioner's unit perform many of their duties outside of the Hospital proper, this is not dispositive. See, e.g., *Virtua Health, Inc.*, 344 NLRB 604, 606 (2005).

Petitioner cites, *Health East Care System*, Case 18-RC-142171 (January 2, 2015), where the Regional Director found an MICU standing on its own, despite centralized administration, was an appropriate unit, to support its contention that I should find the Rule does not apply and order an election in the petitioned-for unit. *Health East Care System* is readily distinguishable from the instant matter. There the employer operated a multi-county

health care system consisting of three distinct acute care hospitals, a long-term care center, skilled nursing facilities, 15 medical clinics and the ambulance service at issue. The majority of medical transportation services provided in *Health East Care System* was to healthcare facilities not owned or operated by the employer, the medical transportation operation had been in existence as a separate entity since 1910 and it was held out as a separate entity to the public. The *Health East Care System* medical transportation operation had its own billing department. The Regional Director thus found the medical transportation operation was more akin to one of the employer's hospitals, an independent business entity, and not one of the departments at one of those hospitals. The record here does not support a finding that the Pre-hospital Department or the MICU is a similar freestanding unit or is an independent business entity. I find, therefore, that the Rule applies.

B. Petitioner's Unit is Inappropriate Under the Rule.

Under the Rule, absent extraordinary circumstances, all technical employees in a single acute-care hospital must be included in one unit. The parties have stipulated that the Paramedics and EMTs are technical employees. The record reveals that the Hospital employs other technical employees, such as Patient Care Technicians. Thus, a unit limited to Paramedics, or Paramedics, dispatchers and EMTs at this acute-care hospital, who constitute only a portion of the employer's technical employees, would be inappropriate. See *Virtua Health, Inc.*, 344 NLRB 604, 605 (2005). While a combined unit of RNs and technical employees might be found appropriate, without extraordinary circumstances, not present here, a unit limited to such employees of the Pre-Hospital Services Department would also be inappropriate.

The factors upon which the Board relied in devising the Rule also support finding the petitioned-for unit inappropriate. The Board, considering particularly the skill and backgrounds of technical employees, placed the various types of technicals together, even though they worked in different areas, with no showing of common supervision or interchange. Further, the Board considered that technical units, encompassing a wide range of classifications, met Congressional concerns to avoid proliferation of bargaining units in health care institutions. See, *Virtua Health, Inc.*, 344 NLRB at 606. Thus a unit limited to technical employees in one of the Employer's departments with addition of RNs does not fulfill the required criteria.

I further find that the record reveals no extraordinary circumstances in the instant matter which would remove the Petitioned-for unit from application of the Rule.

IV. CONCLUSION

Based on the above and the record as a whole, I find that the petitioned-for unit is inappropriate, as Employer is an acute care facility and the Pre-Hospital Department is part of that facility, and the Rule applies. Thus the unit sought by Petitioner is inappropriate, as it does not include all technical employees and all RNs employed by Employer. The petition is therefore dismissed.

V. ORDER

IT IS HEREBY ORDERED that the Petition herein be, and hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provision 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, D.C. 20570-0001.

This request must be received by the Board in Washington by **May 9, 2017**. The request may be filed electronically through E-Gov on the agency's website, www.nlr.gov, but may not be filed by facsimile.⁷

Signed at Newark, New Jersey this 25th day of April, 2017.

A handwritten signature in black ink that reads "David E. Leach III". The signature is written in a cursive style with a large initial "D" and a stylized "L".

David E. Leach III, Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110

⁷ 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.