WARREN GENERAL HOSPITAL,
Employer

and

WARREN TECHS UNITED,
Petitioner

DECISION AND ORDER

The above-captioned matter is before the National Labor Relations Board (the “Board”) upon a petition duly filed under Section 9(c) of the National Labor Relations Act (“the Act”), as amended. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in the proceeding to me. Upon the entire record, I make the following findings and conclusions.

Warren Techs United (the “Petitioner”) filed the Petition in the above case seeking to represent full-time and regular part-time Physical Therapy Assistants, Radiology Technologists, Ultrasound Technologists, Cat Scan Technicians, Occupational Therapy Assistants, Nuclear Medicine Technologists, Surgical Technicians, Psychiatric Technicians, Chemical Dependency Counselors, Respiratory Care Practitioners, and Licensed Practical Nurses. (the “Petitioned-for Unit”). The Petitioned-for Unit is a portion of a larger wall-to-wall unit of nonprofessional employees (the “Current Unit”) employed by the Employer at its Warren, Pennsylvania facility and currently represented by AFSCME District Council 85 (the “Intervenor”). Petitioner seeks to sever the Petitioned-for Unit from the Current Unit.

An Order to Show Cause was issued on April 15, 2022, directing the parties in this matter to provide, in writing, their legal positions and argument as to whether the Petition should be dismissed based on Board precedent concerning the inappropriateness of severing a bargaining unit that would otherwise be appropriate under the Board’s Healthcare Rule from a larger bargaining unit that pre-dates the Healthcare Rule and does not conform with it. See, e.g., *Kaiser Foundation Hospitals*, 312 NLRB 933 (1993); *In re Mallinckrodt Chemical Works*, 162 NLRB 387 (1966).1

1 In its response to the Order to Show Cause the Intervenor argues that further processing of the petition is not warranted, and that the Petitioner is precluded from presenting evidence or arguments on the matters at hand, because the Petitioner did not present or allege facts or theory in its Responsive Statement of Position rebutting the other parties’ arguments that the craft severance standard in *Kaiser Foundation Hospitals*, 312 NLRB 933 (1993) is not met in this case. Section 102.63(b)(1)(ii) of the Board’s Rules and Regulations simply provides that a
As described below, based on the arguments and evidence submitted by the parties, and relevant Board cases, I find that the Petitioner has not met its burden to establish that it is appropriate to sever the Petitioned-for Unit from the Current Unit.

1. LEGAL STANDARD

In Section 9(b) of the National Labor Relations Act, the Board is afforded broad discretion in determining appropriate units for the purposes of collective bargaining.

Where a petitioner seeks to sever a group of employees from a larger established bargaining unit the Board will examine a number of specific factors, as enumerated in Mallinckordt Chemical Works, 162 NLRB 387 (1966). In analyzing these factors, the Board is weighing the interests of the larger group of employees in maintaining stability in labor relations against the interests of the group desiring to sever itself from the larger unit. In determining whether severance is appropriate the Board will consider: 1) whether the proposed unit consists of a distinct and homogeneous group of skilled journeyman craftsman or a functionally distinct department; 2) the collective-bargaining history related to those employees; 3) the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit; 4) the degree of integration of the employer’s production processes; 5) the qualifications of the union seeking severance; and 6) the pattern of collective bargaining in the industry. Rather than positing these criteria as a hard and fast rule, the Board intended severance determinations to be made after “a weighing of all relevant factors on a case-by-case basis…” Id. at 398. Further, the Board intended these principles to be applied to all industries, including healthcare.

With specific regard to the healthcare industry, after years of wavering standards regarding appropriate units in acute care settings, and in an effort to address longstanding concerns about the proliferation of bargaining units in acute care hospitals, in 1989 the Board issued its “Healthcare Rule” (the “Rule”) establishing eight specific bargaining units that will be found appropriate in acute care hospitals.2 Section 103.30(a) of the Rule provides that, “except in extraordinary circumstances and in circumstances where there are existing non-conforming units,”

Petitioner’s Statement of Position in an RC case must respond to the issues raised in the Statement(s) of Position. In this case the Petitioner’s Responsive Statement of Position form indicated that there is a dispute regarding the appropriateness of the proposed unit and included an Attachment explaining its argument that severance is appropriate. This meets the Board’s requirement as all parties are on notice via the Statements of Position that there is a dispute over the appropriateness of severing the proposed unit. As such, the Petitioner’s evidence and arguments submitted with its Order to Show Cause will be considered herein.

1 All registered nurses.
2 All physicians.
3 All professionals except for registered nurses and physicians.
4 All technical employees.
5 All skilled maintenance employees.
6 All business office clerical employees.
7 All guards.
8 All other nonprofessional employees.
(emphasis added) only the eight bargaining units specifically listed in Section 103.30(a) would be found appropriate in acute care hospitals. Subsequently, in Kaiser Foundation Hospitals, 312 NLRB 933 (1993), the Board was specifically faced with circumstances in which a Petitioner sought to sever a unit of maintenance employees, a unit that conformed with the Healthcare Rule, from a larger nonconforming unit that had existed long before the Board’s implementation of the Rule. The Board in Kaiser examined the plain language of the Rule, as emphasized above, and determined that Section 103.30(a) “is not applicable to petitions which seek to sever, or carve out, a group of employees from an existing unit, whether or not that unit conforms to those established by the Rule.” Id. at 934. The Board found that in pre-existing nonconforming units, rather then the Rule, the factors enumerated in Mallinckrodt would apply.

The Board has also established that severance will not be lightly allowed and that the party seeking severance bears a “heavy burden” in establishing that severance is appropriate. Kaiser Foundation Hospitals, 312 NLRB 933, 935 fn. 15 (1993). The Board further specifically explained in Kaiser that that it “is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio.” Id. at 936.

2. FACTS

A. Certification

On March 15, 1976, in Case 06-RM-541, the Intervenor was selected by the nonprofessional employees of the Employer as their exclusive collective-bargaining representative. The nonprofessional employees of the Employer have continued to be represented by the Intervenor in a single unit since that date. In Case 06-RM-542 the Intervenor was also certified as the exclusive collective-bargaining representative of a unit of the Employer’s professional employees. While specific details were not provided by the parties, based on the Certifications of Representative later issued in Cases 06-RC-011799 and 06-RC-012515 it appears that over time the nonprofessional and professional employees were merged into a combined unit. Subsequently, however, in the year 2000 in Case 06-RC-011799, and in the year 2006 in Case 06-RC-012515, the professional employees were severed from the combined bargaining unit when they selected a new bargaining representative.

The Current Unit remains consistent with the nonprofessional unit originally certified in Case 06-RM-541 and the current collective-bargaining agreement defines the bargaining unit as:

All full-time and regular part-time employees employed by Warren General Hospital at its Warren, Pennsylvania facility; excluding temporary employees, managerial employees, confidential employees and guards, professional employees and supervisors as defined in the Act.
B. The Petitioned-for Unit

The Current Unit consists of all nonprofessional employees working for the Employer at Warren General Hospital. This includes approximately 194 employees working in 22 different departments. From the Current Unit the Petitioner seeks to sever approximately 50 “technical” employees working in the Current Unit’s 22 departments. In some instances, however, the Petitioner is only seeking to represent a portion of the nonprofessional employees in a given department. For example, in the Behavioral Health Department the Petitioner seeks to represent the 11 Psychiatric Technicians and 2 Chemical Dependency Counselors, but not the 2 Patient Care Technicians. In the Imaging Department the Petitioner seeks the lone CAT Scan Technologist, the 1 Nuclear Medicine Technologist, the 11 Radiologic Technologists and 4 Ultrasound Techs, but leaves out the 2 Cardiology Technicians and the 5 Imaging Services Coordinators. Additionally, the Petitioner seeks to represent no employees in the Pharmacy Department or the Lab despite the presence of a number of technicians in each of those departments.

The Petitioned-for Unit employees also do not represent any separate or distinct subset of employees from any part of the Employer’s Organizational Chart. The Employer’s Organizational Chart, presented as Intervenor’s Exhibit C, and the bargaining unit list presented as Intervenor’s Exhibit D, do not reflect that the Petitioned-for Unit employees are a distinct group in the Employer’s reporting structure from others in the Current Unit. The Petitioned-for Unit would sever all, but two, Behavioral Health department employees from the Current Unit despite the fact that the entire department currently shares the same supervisor. The same would occur in the Home Health, Imaging, and Surgical Services Department.

Further, as with the Current Unit, the Petitioned-for Unit employees are a mix of employees who primarily fall under both the Patient Services and Operations portions of the Organizational Chart. For instance, the Behavioral Health employees, only some of whom the Petitioner seeks to represent, are supervised by the Behavioral Health Manager Stephanie Hungiville, who is included in Patient Services on the Organization Chart. The Petitioner also seeks to represent some Imaging Department employees, all of whom are supervised by Dana Molek who appears on the Operations portion of the Organizational Chart.

C. Collective Bargaining History

One collective-bargaining agreement has historically been negotiated for the entire nonprofessional bargaining unit. The terms and conditions of employment set forth in the collective-bargaining agreement do not differentiate between the employees in the Petitioned-for Unit and other nonprofessional employees in any section of the contract other than in the “Seniority Groups” attachment where each job classification in the wall-to-wall nonprofessional unit is assigned a Labor Grade and a Seniority Group. While the employees in the Petitioned-for Unit do tend to be assigned higher Labor Grades, which are used for determining wage rates, they are still not defined here as any separate homogenous group, but instead they are separated into seniority groups in which they are mixed with other nonprofessional employees, both technical and non-technical, and some from other departments, many of whom are not included in the Petitioned-for unit.
No evidence was provided indicating that the Intervenor and the Employer have a history of specifically bargaining over the terms and conditions of employment of the Petitioned-for Unit as a distinct group and separately from the rest of the nonprofessional employees in the Current Unit. The contract reflects that, among other things, the Petitioned-for Unit and the Current Unit share the same hours of work, vacation, holidays, other leave, and health benefits. There is no indication of separate terms and conditions having been negotiated for any subset of the Current Unit.

The information provided also reflects that employees in the Petitioned-for Unit have, and continue, to serve in leadership roles for the Intervenor, including participating in contract bargaining. For instance, the Intervenor’s current Vice President Joshua Madigan, and a Local Executive Board Member, Derek Jensen, are Radiologic Technologists, a job classification included in the Petitioned-for Unit. Derek Jensen and Chemical Dependency Counselor Jessica Uber also signed the most recent collective bargaining agreement in effect from 2019-2022. Further, as then-President of the Local, Jensen also signed the collective bargaining agreement that was in effect from 2017-2019.

D. Integration of Employer’s Production Processes

The Employer is an acute care hospital providing inpatient, outpatient, and emergency patient care. The Intervenor represents that, as an acute care hospital the Employer’s patient care functions are “highly-integrated.” The Intervenor notes that the Employer’s policies apply to all of the employees in the Current Unit, that patients receiving care at the hospital will interact with various members of the Current Unit, and that a high level of integration is necessary in the health care industry in order to provide a high level of care.

The parties did not present any other specific evidence related to the integration of the Employer’s processes.

E. The Petitioner

The Petitioner in this matter, Warren Techs United, appears to be an independent union created for the purpose of severing and representing the employees in the Petitioned-for Unit. The Petitioner’s Responsive Statement of Position and its response to the Order to Show Cause do not address this factor and do not explain the Petitioner’s history or experience and qualifications.

3. PARTIES’ POSITIONS

A. The Petitioner

The Petitioner did not specifically address each of the factors set forth by the Board in Mallinckrodt Chemical Works, 162 NLRB 387 (1966). In support of its position that it is appropriate to sever the Petitioned-for Unit from the Current Unit the Petitioner cites the “Health Care Rule” found in Section 103.30 of the National Labor Relations Act Rules and Regulations,
wherein the Board, in 1989, laid out eight appropriate bargaining units in an acute care hospital. The Petitioner also cites the Board’s longstanding standard that a petitioned-for bargaining unit must only be an appropriate unit, not necessarily the most appropriate unit, and the “disparity of interests” test discussed in *St. Francis Hospital*, 271 NLRB 948 (1984). In arguing that the “disparity of interests” test supports the severance of the Petitioned-for Unit in this case the Petitioner discussed ways in which it believes the employees in the Petitioned-for Unit were disadvantaged by the terms and conditions of employment negotiated in the most recent collective bargaining agreement. For instance, the Petitioner argues that the Intervenor agreed to the issuance of lump sum checks, rather than percentage wage increases, and that this resulted in employees in the higher labor grades, where the “technical” employees largely reside, receiving a lower percentage increase than those in lower labor grades. Additionally, the Petitioner argues that the Intervenor’s agreement to have pay adjustments based upon labor grades, rather than on “job-description basis” resulted in some employees being “paid in the ninetieth or better percentile for their wage within the state while others are paid under the tenth percentile.”

In support its argument for severance, the Petitioner also points to the fact that Region Six previously allowed severance from the Warren General Hospital combined wall-to-wall unit when it conducted the elections in Cases 06-RC-011799 and 06-RC-012515 wherein the professional employees were severed from the overall unit.

**B. The Intervenor**

The intervenor takes the position that the current circumstances do not warrant the severance of the Petitioned-for Unit from the Current Unit under the standards set forth in *Mallinckrodt*. The Intervenor notes that the Petitioned-for Unit employees are not a distinct group and do not come from any functionally distinct department, but are instead from a variety of different departments, and working alongside, and under shared supervision, with Current Unit employees who are not included in the Petitioned-for Unit in the Employer’s “integrated patient-care structure.” Here Intervenor cites *Battelle Memorial Institute* 363 NLRB 1098 (2016) for the proposition that severance is not appropriate where the employees in the proposed unit do not have a separate identity and “normally work as members of integrated teams composed of employees from multiple crafts who work together to complete specific assigned tasks.” *Id.* at 1099.

The Intervenor also notes the 45-year history of shared collective bargaining for all nonprofessional employees and argues that the Petitioned-for Unit has not established or maintained a separate identity, specifically noting that employees in the Petitioned-for Unit who have, and continue to, serve as officials of the Intervenor.

Finally, the Intervenor argues that the Petitioner, having apparently been created for the sole purpose of seeking representation of this Petitioner-for Unit is, at best, minimally qualified to serve in that capacity.
C. The Employer

The Employer concurs with the Intervenor that the Board’s standards as set forth in Mallinckrodt do not support a finding that it would be appropriate to sever the Petitioned-for Unit from the Current Unit.

4. ANALYSIS

The facts and evidence presented in the parties’ respective Statements of Position and responses to the Order to Show Cause lead me to conclude that the Petitioner has not met its burden to establish that severance of its Petitioned-for Unit from the Current Unit would be appropriate under the Board’s craft severance standard as set forth in Mallinckrodt.

As noted earlier, in Mallinckrodt, the Board set forth specific criteria to be considered in weighing whether it is appropriate to sever a group of employees from an established bargaining unit. None of those criteria have been met in this case.

Addressing each of the Mallinckrodt factors in turn, first, the Petitioner has not established that the Petitioned-for Unit is a true craft unit or a functionally distinct department. A true craft unit consists of distinct and homogeneous skilled craftsmen who have skills acquired by apprenticeship or equivalent training. See Burns & Roe Service Corp. 313 NLRB 1307, 1308 (1994). Neither the Petitioner’s Responsive Statement of Position, nor its response to the Order to Show Cause explain any rationale for the grouping it chose for the Petitioned-for Unit or any explanation as to how the Petitioned-for Unit classifications comprise a true craft unit other than to refer to them as a “technical” unit under the Healthcare Rule. The Petitioned-for Unit employees come from a seemingly random smattering of departments that are part of the Current Unit. As a group they clearly do not comprise a functionally distinct department.

Even in circumstances where the existence of a true craft unit or a functionally distinct department has been established the Board has declined to sever a bargaining unit “in the face of a substantial bargaining history on a plantwide basis.” Kaiser, supra. at 935. That is the case here. The nonprofessional employees of the Employer have been represented in a single bargaining unit since 1976. While the professional employees were, for a time, combined with the nonprofessional employees, at no time have the parties diluted the bargaining position of the nonprofessional unit by severing any part of it.

Second, the Petitioned-for Unit has had no separate collective-bargaining history apart from the Current Unit. The current and most-recent collective bargaining agreements reflect that terms and conditions of employment have been negotiated for the Current Unit as a whole and that, as a group, the Petitioned-for Unit has not been differentiated from the rest of the Current Unit in terms of wages, hours, and other terms & conditions of employment.

3 Contrary to the Petitioner’s assertion, in light of the fact that the nonprofessional employees of the Employer have been represented in a nonconforming single bargaining unit since many years before the implementation of the Healthcare Rule, the Rule is not applicable here.
Third, the Petitioner has made no showing that the Petitioned-for Unit has established and maintained a separate identity during its inclusion in the overall unit. Rather, the parties’ proffers show the past, and continuing, participation of members of the Petitioned-for Unit at high levels of leadership within the Intervenor’s Local, and their presence at the contract bargaining table.

The parties did not address in any great detail the fourth and fifth Mallinckrodt factors regarding the degree of integration of the Employer’s production processes or the pattern of collective bargaining in the industry. The Petitioner has not shown that there is any less process integration at the Employer than at other acute care hospitals, such as in Kaiser, where the Board declined to allow severance even after finding that the unit proposed for severance was a true craft unit. Other than its references to the Healthcare Rule, which is inapplicable here, the Petitioner has also not addressed the pattern of bargaining in the relevant industry, or shown that the proposed severance would be in keeping with patterns in the industry.

Finally, with regard to the sixth and final Mallinckrodt factor, the Petitioner appears to be a new independent union that was created for the purpose of attempting to gain certification as the bargaining representative of the Petitioned-for Unit in this case. It has not been shown that it has any particular qualification or expertise to represent the “technical” unit that it seeks.

5. ORDER

I find that the Petitioned-for Unit of employees of the Employer do not constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act and therefore,

IT IS HEREBY ORDERED that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001 within 10 business days from the date of this decision. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board’s Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board’s Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency’s web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board’s Rules do not permit a request for review to be filed by facsimile transmission. A copy of
the request for review must be served on each of the other parties to the proceeding, as well as on
the undersigned, in accordance with the requirements of the Board’s Rules and Regulations. The
request for review must comply with the formatting requirements set forth in Section 102.67(i)(1)
of the Board’s Rules and Regulations. Detailed instructions for using the NLRB’s E-Filing system
can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in
Washington, DC, by close of business (5 p.m. Eastern Time) on July 5, 2022, unless filed
electronically. If filed electronically, it will be considered timely if the transmission of the entire
document through the Agency’s website is accomplished by no later than 11:59 p.m. Eastern
Time on July 5, 2022.

Filing a request for review electronically may be accomplished by using the E-Filing
system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File
Documents, enter the NLRB Case Number, and follow the detailed instructions. The
responsibility for the receipt of the request for review rests exclusively with the sender. A failure
to timely file the request for review will not be excused on the basis that the transmission could
not be accomplished because the Agency’s website was off line or unavailable for some other
reason, absent a determination of technical failure of the site, with notice of such posted on the
website.

Upon good cause shown, the Board may grant special permission for a longer period within
which to file a request for review. A request for extension of time, which must also be filed
electronically, should be submitted to the Executive Secretary in Washington, and a copy of such
request for extension of time should be submitted to the Regional Director and to each of the other
parties to this proceeding. A request for an extension of time must include a statement that a copy
has been served on the Regional Director and on each of the other parties to this proceeding in the
same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review
must be filed, file with the Board a statement in opposition to the request for review. An opposition
must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and
copies served on all the other parties. The opposition must comply with the formatting
requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the
opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate
of service shall accompany the requests. The Board may grant or deny the request for review
without awaiting a statement in opposition. No reply to the opposition may be filed except upon
special leave of the Board.
Dated: June 17, 2022

/s/ Nancy Wilson

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