

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

CHILDREN'S MEMORIAL HOSPITAL

Employer

and

Case 13-RC-21611

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 399**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, ("the Act") a hearing on this petition was held on April 25, 2007 before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

Children's Memorial Hospital ("Employer" or "the Hospital") is an acute care hospital with approximately 4,200 employees working at its hospital campus located in Chicago, Illinois.² The Hospital provides specialized children's care with approximately 265 patient beds. On the hospital campus, the Employer maintains a medical research center, Children's Memorial Research Center ("CMRC"), a charitable foundation, Children's Memorial Foundation ("CMF"), and other medical facilities.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. 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.

² At the hearing, the parties stipulated to Children's Memorial being an acute care hospital as that term is defined by the Board's Health Care Rule, 29 CFR § 103.30(f)(2). The parties also stipulated to Children's Memorial hospital campus in Chicago, Illinois as consisting of the following buildings: Nellie Black Building, Professional Building (2356 N. Lincoln), Bigler Auditorium, White Elephant Building, Children's Memorial Research Center, Annex Building, Kohl's House, Bakery Building, Outpatient Center (Clark & Deming), Marcy Street Building, and an outpatient facility in Westchester, Illinois

The Petitioner, International Union of Operating Engineers, Local 399, seeks a unit of skilled maintenance and engineering employees in the Hospital's Plant Operations department. Employees in the petitioned-for unit are located in either the hospital's Plant Facilities or Plant Operations department (herein "Plant Operations department").³ The parties agree that a skilled maintenance unit properly includes the following 10 classifications: Building Engineer, Locksmith, Maintenance Engineer, Plumber/Fitter, Refrigeration Engineer, Carpenter, Maintenance Engineer, Maintenance Engineer Lead, Stationary Engineer, and Operating Engineer Lead. The petitioned-for unit contains 36 employees. At issue are an additional six job classifications which the Employer contends must be included in a skilled maintenance unit; the Petitioner argues that the petitioned-for unit is appropriate and that none of the other six job classifications should be included in that unit.⁴ The total number of employees in the disputed job classifications is 31.

II. Decision

For the reasons set forth below, including the applications of the Board's Health Care Rules and precedent under that Rule, I find that none of the 6 disputed job classifications must be included in a skilled maintenance unit at Children's Memorial. 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 skilled maintenance employees employed by the Employer in its Plant Operations Department at its Chicago and Westchester, Illinois facilities in the following classifications: Building Engineer, Locksmith, Maintenance Electrician, Plumber/Fitter, Refrigeration Engineer, Carpenter, Maintenance Engineer, Maintenance Engineer Lead, Stationary Engineer, Operating Engineer Lead; but excluding all other employees, professional employees, technical employees, clerical employees, guards and supervisors as defined in the Act.

This unit of all the skilled maintenance employees at Children's Memorial is comprised of 36 employees for whom no history of collective bargaining exists.

III. Statement of Facts and Analysis

The Board's Health Care Rule delineates eight bargaining units, including a unit of all skilled maintenance employees, as the only appropriate units in acute care hospitals

³ The exact unit sought by the Petitioner is: All full-time and regular part-time skilled maintenance employees working the maintenance and engineering department, including Building Engineer, Locksmith, Maintenance Electrician, Plumber/Fitter, Refrigeration Engineer, Carpenter, Maintenance Engineer, Maintenance Engineer Lead, Stationary Engineer, and Operating Engineer Lead; excluding professional employees, technical employees, clerical employees, guards and supervisors as defined in the Act.

⁴ The six job classifications in dispute are: Desktop Analyst, Desktop Coordinator, Application Specialist CMF, Technology Analyst, Technology Analyst senior, and Network Analyst/Manager, Research Computing (CMRC).

absent extraordinary circumstances.⁵ 54 Fed.Reg. 16336, 16347-48, 284 NLRB 1579, 1596-97 (1989); *American Hospital Assn. v. NLRB*, 499 U.S. 606, 111 S.Ct. 1539, 137 LRRM 2001 (1991) (upholding the validity of the Rule). Skilled maintenance employees are those who generally are engaged in the operation, maintenance, and repair of the hospital's physical plant systems, such as heating, ventilation, air conditioning, refrigeration, electrical, plumbing, and mechanical, as well as their trainees, helpers, and assistants. *Collective Bargaining Units in the Health Care Industry: Second Notice of Proposed Rulemaking*, 53 Fed.Reg 33900, 33920-33924, 284 NLRB 1527, 1557, 1561 (1988); *Ingalls Memorial Hospital*, 309 NLRB 393, 393, 94 (1992). These classifications also typically require the completion of high school; some postsecondary training such as vocation or trade school in the field, formal or informal apprenticeship programs, or an associate's or bachelor's degree; and continued education in technological changes in building maintenance. *Id.* Skilled maintenance employees frequently have separate supervision in the engineering or maintenance department, higher wage rates reflecting skills and training, incidental contact with employees outside the maintenance department, and no direct involvement with patient care. *Id.* The Board has identified a non-exclusive list of job classifications which generally should be included in skilled maintenance units: carpenter, electrician, mason/bricklayer, painter, pipefitter, plumber, sheet metal fabricator, automotive mechanic, HVAC mechanic, maintenance mechanic, chief engineer, operating engineer, fireman/boiler operator, locksmith, welder, and utility person. 53 Fed.Reg 33924; 284 NLRB at 1561-62.

In cases decided following issuance of the Rule, the Board developed the legal standard and additional criteria for determining whether employees should be included in a skilled maintenance unit. The central focus is to determine whether the employees in the disputed classifications possess the types of skills and perform similar levels of job duties as those employees in the other skilled maintenance classifications. *St. Luke's Health Care Association*, 312 NLRB 139 (1993). Employees who perform skilled work on complex, sophisticated machinery in hospitals are generally included in skilled maintenance units. *The Toledo Hospital*, 312 NLRB 652, 653 (1993), *San Juan Regional Medical Center*, 307 NLRB 117 (1992).

In this case, the question of whether the six disputed job classifications should be included in the petitioned-for skilled maintenance unit is answered by first examining the skills and duties of the classifications which the parties agree should be in the unit, and then comparing them to the skills and duties of the employees in the disputed classifications. Those disputed classifications which the record evidence demonstrated have similar skills and job duties to the other skilled maintenance classifications are included in the skilled maintenance unit.

A. Job Duties and Skills of Employees in the Included Skilled Maintenance Job Classifications

The parties agree that a skilled maintenance unit must include Building Engineer, Locksmith, Maintenance Electrician, Plumber/Fitter, Refrigeration Engineer, Carpenter,

⁵ Neither party contends that extraordinary circumstances are present in this case.

Maintenance Engineer, Maintenance Engineer Lead, Stationary Engineer, and Operating Engineer Lead.

All undisputed skilled maintenance positions are within the Plant Operations department. These classifications have responsibility for the Hospital's heating, ventilation, and cooling ("HVAC") systems, and water, fire suppression, and power systems. Computer systems⁶ monitor these physical plant systems, but these computer systems are monitored by Plant Operations employees not Information Management employees. Further, Plant Operations employees perform any minor repair work to these computer systems and all other work on these computer systems is done by their respective vendors or subcontractors. Two general groups exist among the undisputed classes, stationary engineers and maintenance employees, with the stationary engineers being supervised by the Director of Plant Operations and the maintenance employees reporting to the Director of Maintenance. Stationary engineers are assigned to each building on the Hospital's campus and cover those buildings 24 hours a day, 7 days a week, on 3 shifts. The Stationary Engineer operates and maintains high pressure boilers, fans, pumps, and other systems related to the physical plant; the building energy management system to insure that this equipment is running correctly; and the standby emergency generators and automatic transfer switches when power is lost. Stationary Engineers must have a high school degree or equivalent experience and a City of Chicago, Illinois stationary engineer's license, as well as two years of experience as a licensed stationary engineer working with high pressure boilers. The maintenance employees primary duties are preventative and corrective maintenance of the various hospital physical plant systems⁷, and all except the Carpenter require some sort of certification. All undisputed skilled maintenance positions utilize and maintain tools and hand tools as part of their job duties and require minimal job experience of at least two years sometimes more depending on the exact position. A high school diploma or equivalent also is mandated.

B. Disputed Classifications

All six of the disputed job classifications are not a part of the Plant Operations Department. However, an employer's administrative placement of employees in a department separate from the maintenance or engineering department does not, per se, warrant the employees' exclusion from a skilled maintenance unit. *The Jewish Hospital of St. Louis*, 305 NLRB 955 (1991); *San Juan Medical*, 307 NLRB at 117. These classifications all fall under the umbrella of Information Technology ("IT") and can be grouped into those in the Information Management Department; those that work in the CMRC and are supervised by its Director of Information Technology, and those that work for the CMF and are supervised by the Associate Directors of Information Systems for the CMF.

⁶ Record testimony shows these systems include a building automation system manufactured by Andover Building and sold and serviced by ITG, an air conditioning chiller system by Carrier, and a computer controlled fire suppression system.

⁷ The Plumber/Fitter works on the Hospital's plumbing system, the Refrigeration Engineer works on the Hospital's refrigeration system, the Locksmith works on the Hospital's keying and locking equipment, etc.

The Board has yet to give definitive guidelines on whether IT classifications should be included in skilled maintenance units in acute care hospitals. In *Toledo Hospital*, the Board was presented with the question of whether to include in a skilled maintenance unit a Technical Analyst who was responsible for microcomputer equipment and a Network Analyst who was responsible for the mainframe computer network. The Board concluded that “resolution of these issues requires further study and perhaps additional facts” and had those job classifications vote subject to challenge.⁸ 312 NLRB at 655. No subsequent decisions have addressed this specific topic. However, the Board’s criteria of comparing whether the employees in the disputed classifications possess the types of skills and perform similar levels of job duties as those employees who are undisputedly skilled maintenance employees is equally applicable to these types of positions. Thus, to be included in the unit, the disputed IT employees must possess similar skills and perform similar levels of jobs duties as the skilled maintenance employees perform in operating, maintaining, or repairing a physical plant system, or performing work on complex, sophisticated machinery.

Because the record evidence, including the job descriptions for these positions, fails to demonstrate that any of these classifications perform work similar to or at a level of skills to the work performed by the skilled maintenance employees in the petitioned-for unit, all of the IT classifications must be excluded from the skilled maintenance unit. Maintaining and repairing equipment such as HVAC systems, boilers, electrical switchgears, and refrigerators does not equate to replacing malfunctioning computer devices and peripherals (e.g., monitor, mouse, hard drives, network cards, etc.) or using a keyboard to address a software issue. These different job duties also involve distinct skill sets. For these reasons and the specific reasons stated below with respect to each disputed IT classification, the skilled maintenance unit at the Hospital cannot include these positions.⁹

1. Information Management Department

The disputed job classifications within this department are Desktop Analyst, Desktop Analyst-Coordinator, Technology Analyst, and Technology Analyst Senior. Desktop Analyst and Desktop Analyst-Coordinator are supervised by the Manager of the Help Desk and Desktop Services¹⁰ while Technology Analyst and Technology Analyst Senior are supervised by the Director of Information Services.

⁸ Given the number of employees in the IT classifications in dispute, which totals more than 40 percent of the total largest potential bargaining unit (31 of 77 employees), having the employees in the IT classifications vote subject to challenge is not appropriate. See *NLRB Casehandling Manual (Part Two Representation Cases)*, Section 11084.2.

⁹ The weight of the record evidence supports this conclusion. To the extent any of the testimony in the disputed information management’ classifications was ambiguous as to the nature of the job duties of any of the disputed information system employees, the undersigned relied upon the job descriptions to reach the conclusions found herein.

¹⁰ The Help Desk is the Hospital’s first line of IT support and is an outsourced function. Help Desk employees are not employees of the Hospital, and therefore do not fall into a disputed classification.

a. Desktop Analyst and Desktop Analyst-Coordinators

The Hospital has nine employees working in the Desktop Analyst position, and three employees work in the Desktop Analyst-Coordinator position. The primary role of a Desktop Analyst is end-user support and maintenance of client systems. The Desktop Analyst troubleshoots software and hardware related issues for end users spending approximately 70 percent and 30 percent of their time, respectively, on software and hardware issues, with only 5 percent of that time going toward physically opening up computers in order to repair a hardware problem. Hardware tasks include replacing rather than repairing malfunctioning or inoperable computer devices and peripherals, attaching peripherals to computers, and “patching” computers into the Hospital network which merely consists of plugging a prefabricated network cable from one device into another. The only tool a Desktop Analysts and Desktop Analyst-Coordinators unquestionably use during the course of their work, and then only in hardware-related issues, is a screwdriver, but they *may* also use tweezers or a wrench. The Desktop Analyst-Coordinator has many of the same duties as the Desktop Analyst such as installing and deploying new and replacement computer hardware and software, but the main focus of their job is project coordination. Desktop Analyst-Coordinators spend less than five percent of their time dealing with hardware issues.

Desktop Analysts and Desktop Analyst-Coordinators have no more interaction with the Plant Operations department than does any other Hospital employee who makes a call regarding a specific issue involving the physical facilities of the Hospital. For example, if grommets needed to be installed in desks.

These two classifications must be excluded from the skilled maintenance unit because their job duties and skills are not typical or similar to job duties performed by skilled maintenance employees; they do not operate, maintain, or repair complex, sophisticated machinery, but rather work on software as well as replace computers and peripherals. Any complex repairs on hardware require that parts under warranty are sent to the manufacturer while out-of-warranty parts are replaced. Their use of tools is very limited to the occasional use of a screw driver as they typically replace defective equipment rather than engaging in repairing the defective equipment.

b. Technology Analyst and Technology Analyst Senior

There are 13 employees in the Technology Analyst and Technology Analyst Senior positions. The positions have virtually identical job duties with the primary main difference being experience. The Technology Analyst Senior has more experience. Technology Analysts and Technology Analysts Senior are responsible for software- and hardware-related preventative maintenance on the Hospital’s network. Three employees in these classifications spend a significant amount of time working with hardware. Two of the employees spend approximately 50 percent of their time on hardware issues while the third employee spends approximately 25 percent. These three employees are responsible for installing and troubleshooting network equipment (e.g., routers, switches,

servers, etc.). Technology Analysts and Technology Analysts Senior use prefabricated cabling and screwdrivers when mounting servers in network closets.

Technology Analysts and Technology Analysts Senior have no more interaction with the Plant Operations department than does any other Hospital employee who makes a call regarding a specific issue involving the physical facilities of the Hospital. For example, if there were a fire in a network closet.

The job duties in these classifications, as described above, again center on the use of software to insure the Hospital's local area networks and computers attached to that network are operating properly. This requires minimal use of a screwdriver on occasion. The "maintenance" performed by these employees is essentially monitoring the performance of those networks and occasionally patching into the network by plugging in prefabricated cable into a designated slots. They do not engage in repairing the actual machinery involved, and their use of tools in their work is limited. Thus, their work is dissimilar in both as skills and job functions from the maintenance and repair work conducted by the skilled maintenance employees in the petitioned-for unit, and the Technology Analyst and Technology Analyst Senior must be excluded from the petitioned for unit.

2. Children's Memorial Research Center

a. Network Analyst and Manager of Research Computing

There are three employees in these two positions at the Hospital with the Manager of Research Computer performing the same job functions as the Network Analysts excepting that he also negotiates licenses and vendor agreements. These positions install, maintain, and troubleshoot software- and hardware for computers, computer devices and peripherals in the CMRC. Unlike the Desktop Analysts and Desktop Analyst- Coordinators who work exclusively on Hewlett Packard computers, these positions work on Dell and Apple computers. Further, the CMRC houses computers with equipment not found elsewhere in the Hospital such as computer systems attached to microscopes. However, hardware-related issues that arise with any of the computer systems in the CMRC are handled in a similar manner to those in the rest of the Hospital: replace the inoperable or malfunction device with a new or working device. These two job classifications spend approximately 40 percent of their time working with hardware and 60 percent of their time working on software.

Network Analysts and the Manager of Research Computing have no more interaction with the Plant Operations department than does any other Hospital employee who makes a call regarding a specific issue involving the physical facilities of the Hospital.

As is the case with the Desktop Analysts and Desktop Analyst Coordinators, the Network Analysts and the Manager of Research Computing do not operate, maintain, or repair complex, sophisticated machinery, but rather work on software and isolated

computer equipment that is not a physical plant system. Their job requires minimal use of a screwdriver. The job functions are distinct from those performed by the skilled maintenance employees, and the skills they possess are also distinct from the skills of the skilled maintenance employees. Therefore, these classifications must be excluded from the skilled maintenance unit.

3. Children's Memorial Foundation

a. Application Specialist

There are three employees in the Application Specialist position. All three are cross-trained to perform the job duties of the other two; however, only one of them has a focus on hardware where he spends 70 percent of his time dealing with hardware-related issues. Similar to the above job classifications, the hardware-related job duties of these employees involve troubleshooting malfunctioning or inoperable computer devices and peripherals, assembling new computers by connecting individual components by prefabricated color- and plug-coded cables and connecting computers to the Hospital's network by plugging in prefabricated connectors via a prefabricated cable. The list of equipment that the Application Specialists work on only rarely requires the use of a screwdriver.

Applications Specialists have no more interaction with the Plant Operations department than does any other Hospital employee who makes a call regarding a specific issue involving the physical facilities of the Hospital.

This classification must be excluded from the skilled maintenance unit because the employees' job duties are not similar to the typical job duties of skilled maintenance employees; they do not use tools to operate, maintain, or repair complex, sophisticated machinery, but rather swap out computers and peripherals as well as work on software. Any complex repairs on hardware are performed by subcontractors.

4. Conclusion

As described above, the record evidence and legal precedent do not require inclusion of all six of the disputed job classifications in the skilled maintenance unit at the Hospital. In reaching this conclusion, I have considered the cases cited by the Employer, including the cited Regional Director decisions, where information technology positions have been included in skilled maintenance units. However, I find that the positions considered herein are distinguishable from the cases cited by the Employer as the level of skills and the use of tools to engage in repair and maintenance work functions by the disputed employees herein is, on this record, less than that found in the cases cited by the Employer.

In making the determinations concerning the unit inclusion of each disputed job classification in this case, the record evidence regarding employees' departments and supervisors, work location in the hospital, interaction with other employees, and wage

rates does not warrant altering any of the determinations made above. Although the all disputed job classifications are outside of the Plant Operations department, an employer's administrative placement of employees in a separate department does not per se warrant their exclusion from the skilled maintenance unit. *Jewish Hospital*, 305 NLRB 955 (1991). With respect to supervision, the supervisory positions (Director of Maintenance, Director of Plant Operations, and Administrator Facility Services) of the undisputed Plant Operations employees were excluded by stipulation of the parties. With respect to employees' location in the hospital, the record reflects that Plant Operations employees themselves are not all based in the same location, and while they may spend a majority of their time stationed at one building, they have occasion to work at any building throughout the hospital campus as work requires. Thus, the fact that many of the employees in the disputed classifications do not work near the locations of the employees in the undisputed classifications is irrelevant. With respect to employee interaction, the evidence establishes that employees in these classifications work together where a particular job requires the expertise of more than one discipline, such as when maintenance engineers drill holes for grommets or security cabling or when stationary engineers troubleshoot heating and cooling problems in the network and server closets. With respect to wage rates, employees in the undisputed classifications earn a standard wage between \$19.36 and \$37.94 per hour, and employees in the disputed classifications earn a standard wage between \$18.46 and \$37.94 per hour (with all but the Desktop Analysts and Desktop Coordinators making the salaried equivalent). None of this evidence mandates an alternative conclusion regarding the inclusion or exclusion of any of the disputed classifications.

IV. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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(s) who were 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. 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. 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 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, AFL-CIO.

V. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VI. List of Voters

To insure that all eligible voters 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); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list for each unit containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). This list may initially be used by me to assist in determining an adequate showing of interest in each unit. I shall, in turn, make this list available to all parties to the election only after I shall have determined that an adequate showing of interest among the employees in each unit found appropriate has been established. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before **June 8, 2007**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VII. 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 NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **June 15, 2007**.

Dated at Chicago, Illinois this 1st day of June, 2007.

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60604

CATS – Unit Healthcare
Blue Book – 470-5820; 470-5880