

Laboratory Corporation of America Holdings and United Food and Commercial Workers Union, Local 1358, AFL-CIO, Petitioner. Case 4-RC-20624

May 28, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND MEISBURG

On May 2, 2003, the Regional Director for Region 4 issued a Decision and Direction of Election in the above-entitled proceeding. She found appropriate the petitioned-for multifacility unit of phlebotomists, administrative team leaders, technical team leaders, and reference tests clerks employed by the Employer at seven Patient Service Centers (PSCs), located in southeastern New Jersey under the supervision of Phlebotomist Supervisor Lana Gray.

Thereafter in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, contending, *inter alia*, that the smallest appropriate unit must include employees at all 29 PSCs that comprise its Southern New Jersey Region.

By Order dated May 28, 2003, the Board granted the Employer's request for review solely with respect to whether the petitioned-for unit of seven PSCs, excluding the Employer's remaining 22 PSCs in its Southern New Jersey Region, is an appropriate unit.¹ The election was conducted as scheduled on May 30, 2003, and the ballots were impounded pending the Board's Decision on Review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record in this proceeding, we reverse the Regional Director's finding that the petitioned-for unit is appropriate.

Facts

The Employer, headquartered in Burlington, North Carolina, operates PSCs in various locations throughout the United States. Each PSC has a reception area, a waiting room for patients, and clinical testing rooms where blood is drawn. The PSCs are staffed primarily by phlebotomists, technical team leaders, and administrative team leaders. Some PSCs have as few as two employees and others have as many as five.²

¹ The Board denied the Employer's request for review of the Regional Director's exclusion of the customer service representatives and drivers from the unit.

² Of the petitioned-for PSCs, the Absecon, Pleasantville, and Somers Point PSCs each has five employees; the Vineland and Cape May

PSC employees take specimens from patients and send the specimens to the Employer's laboratory in Raritan, New Jersey for physician-ordered blood, saliva, and urine tests. Phlebotomists take patient samples, assist patients, answer telephones, and prepare necessary paperwork. Technical team leaders and administrative team leaders are phlebotomists with additional administrative duties. The administrative team leaders are the highest-ranking employees at most of the PSCs.³ There is also one reference test clerk. She is not trained to draw blood, but she greets patients, inputs information into the computer, and helps maintain the integrity of samples taken for drug screens.

The Employer's organizational structure is based on geography. Harry Bush is the Employer's director of operations for its Northeast Division, which extends from Maine to Virginia. Bush has an office in Raritan, New Jersey. The Northeast Division is segmented into four smaller subdivisions, each headed by a general manager. One such subdivision, called the Cloverleaf Division, encompasses southern New Jersey, eastern Pennsylvania, the Eastern Shore of Maryland, and the State of Delaware. Elke Beyer is the Employer's general manager for the Cloverleaf Division. Her office is located in the Employer's New Castle, Delaware office, which also houses the human resources department for the Cloverleaf Division.

Within the Cloverleaf Division there are several smaller administrative groupings, including the Southern New Jersey Region, which encompasses 29 PSCs. Michael Boylan is the director of field operations for this region, and his office is located in Marlton, New Jersey. The supervision of nonunit drivers, dispatchers, and customer service representatives conforms to the Southern New Jersey Region administrative grouping.⁴ The phlebotomists, technical team leaders, administrative team leaders, and reference test clerk in the 29 PSCs in the Southern New Jersey Region are supervised by four dif-

Courthouse PSCs each has four employees; and the Marmora and Mays Landing PSCs each has two employees.

³ No party contends that the administrative teams leaders are supervisors with the meaning of Sec. 2(11) of the Act, and the parties agreed to their inclusion in the unit.

⁴ There are 30 drivers and 3 dispatchers that service the Southern New Jersey Region, all of whom are commonly supervised by the distribution supervisor, whose office is located in the Marlton, New Jersey facility. Drivers pick up and deliver test reports and samples among PSCs, physicians offices, the Raritan laboratory, and various third-party locations along specific routes. The Marlton facility is also the home of 11 customer service representatives who are commonly supervised by the customer service supervisor. The customer service representatives respond to questions from PSC employees, doctors, and patients concerning billing or test results and handle various clerical tasks.

ferent phlebotomist supervisors, each of whom handles a different geographic area.

Phlebotomist Supervisor Lana Gray oversees the Absecon, Cape May Courthouse, Marmora, Mays Landing, Pleasantville, Somers Point, and Vineland PSCs—the seven PSCs sought by the petition.⁵ These PSCs are located in the southeastern part of New Jersey. At the hearing, the Employer made an offer of proof that it was seeking to hire an additional phlebotomist supervisor for the Southern New Jersey Region in order to reduce the number of employees reporting to each supervisor; therefore, the supervisors' areas of responsibility will be changing. The new position was requested and approved prior to the filing of the petition in the instant case and a copy of the job announcement was included in the record.

The Employer has had a practice of changing its administrative structure and supervisory assignments. For example, the Hammonton PSC, which is also located in southeastern New Jersey, was included in a grouping with the seven petitioned-for PSCs until 2002, when it was reassigned to Phlebotomist Supervisor Darlene Hines.⁶ Prior to that time, the Employer had made some significant administrative changes. Before 1997, there had been three distinct operating units within the Southern New Jersey geographic area. These units were commonly referred to as Marlton, Brick, and Pleasantville. Each unit operated separately under the direction of an operations manager who reported directly to a general manager. In 1998, Harry Bush became regional operations manager for what would become the Southern New Jersey Region.⁷ In this role, Bush made changes to the organizational structure of the Marlton, Brick, and Pleasantville operations. He consolidated the operations of all three areas, and instead of having three operations managers, he served as regional operations manager and managed the entire Southern New Jersey Region.⁸

The Employer's labor relations policies emanate from its corporate headquarters, and consequently the employees at the seven PSCs encompassed by the petition, as well as at the Employer's other PSCs in the Southern New Jersey Region, enjoy the same benefits and working conditions. Employees are all paid on an hourly basis and are governed by the same employee handbook. They

also have similar lunch and break times. The wage rates for all employees in the Southern New Jersey Region are the same. The Employer's human resources department in New Castle, Delaware, maintains personnel files for all employees in the Cloverleaf Division. Phlebotomist supervisors maintain employee files containing copies of paperwork that they send to the human resources department regarding employees and notes about conversations they have with employees. Supervisors also maintain files concerning attendance and leave matters.

Gray is based in the Absecon PSC, but she regularly visits each PSC in her area, and she provides employees with day-to-day directions as needed. Gray oversees employee performance and approves vacation requests,⁹ other types of leave requests, and overtime. She distributes company-wide and region-wide directives to employees in her PSCs on such subjects as timecards and patient sign-in sheets, but she also issues memoranda at her own initiative to employees concerning such matters as the use of "special care" rooms for patients and the scheduling of meetings, among other things. Gray prepares the employees' weekly work schedules.

Gray evaluates employees by filling out a form on a computer that generates a score for the employee. She then inputs the score into a matrix formulated by the corporate office in North Carolina in order to determine what salary increase to give the employee. Gray is free to recommend that an employee receive a raise higher than the one dictated by the preformulated matrix; however, she must justify her request in writing and a senior manager or senior vice president must approve the increase. Gray testified that she was instructed by the director of field operations not to give out too many evaluations in the "outstanding" range but instead give more in the "great" range.

As a phlebotomist supervisor, Gray may also issue verbal and written disciplinary warnings without approval. Nevertheless, she must consult with higher authority concerning more severe levels of discipline, including suspension and termination. Gray gathers all of the facts and recommends to the human resources department that disciplinary action be taken. The department then evaluates the facts and makes the final decision as to the appropriate degree of discipline.

If Gray wants to hire a new employee, she must fill out a requisition form. The requisition form and supporting documentation are reviewed by the director of field operations, who must approve the request. Additional approval is required from the general manager and vice

⁵ The parties stipulated that Gray is a supervisor within the meaning of Sec. 2(11) of the Act.

⁶ The petition initially included the Hammonton PSC, but at the hearing the Union amended the petition to remove this location.

⁷ This position is analogous to the current director of field operations position held by Michael Boylan.

⁸ The Employer also consolidated the customer service and driving operations for the entire Southern New Jersey Region and reduced the number of supervisors for the area.

⁹ Vacation is approved on a "seniority" or "first come" basis. If the request is in excess of 2 weeks, it must be approved by the director of field operations.

president. Upon approval, the human resources department solicits applications, and a human resources representative conducts an initial telephone screening of applicants. Gray then interviews a prescreened applicant, personally tests the applicant's skills, and recommends to the human resources department whether the applicant should be hired.¹⁰ The human resources department makes the final offer to the candidate. If a current employee of the Employer applies for a different position within the organization, such as a phlebotomist applying for a team leader position, the application is sent to the human resources department to determine if the candidate is eligible for the position. A human resources representative may participate in the interview by telephone, while Gray meets with the applicant face-to-face. Gray's hiring recommendations are generally accepted, but on at least two occasions human resources did not follow her recommendations.

Gray conducts quarterly meetings that are attended by the employees she supervises. According to Gray, the employees from the Hammonton PSC, who are supervised by Darlene Hines, also attend those meetings. Recently, all of Gray's employees attended a meeting with all of Hines' employees to discuss safety and billing issues. Several times a year, the Employer conducts employee "speak-out" meetings. These meetings are open to all employees throughout the Southern New Jersey Region and are forums for employees to ask management questions as well as discuss any concerns.

There are four phlebotomists currently serving as "floaters," who work at all seven of these PSCs supervised by Gray depending on the needs of the facilities. Additionally, employees commonly transfer among PSCs in their areas to work closer to home, for example, or to change from a floater position to a regular site position. However, employees also transfer among PSCs not in their area. The two employees in the Hammonton PSC, which is supervised by Darlene Hines, each work in Gray's area once every 3 weeks, on a designated Saturday, because the Hammonton PSC is closed on the weekend. In turn, Gray assigns her employees to work at Hammonton to cover the shifts of those employees who work at her PSCs on Saturday. She also assigns floaters to work at Hammonton when it is short staffed. While most floaters stay within their assigned areas, in the past Gray has assigned a phlebotomist to work outside her area at the Tuckerton PSC.

All of the Employer's employees receive training throughout their employment. New employees in the Cloverleaf Division attend a 3-day training/orientation

session at the New Castle, Delaware divisional headquarters. They are then trained by their local phlebotomist supervisor who monitors their initial work. Team leader training was conducted in New Castle in late 2002. Team leaders from all over the Cloverleaf Division, including some of Gray's employees, were in attendance. Further, employees from all over the Southern New Jersey Region attended ICD-9 code training in Marlton, New Jersey. These employees also must take an annual skills assessment exam that is given in Marlton. A Vineland PSC employee under Gray's supervision regularly trains employees in the area how to perform drug-screening tests, and employees report to the Vineland PSC for this training. Those that cannot attend the Vineland training session go to the Brick PSC where they are trained with employees not supervised by Gray.

With regard to the 7 petitioned-for facilities, approximately 25 miles separates the 2 most distant PSCs, Vineland and Cape May Courthouse, and most of the 7 are within 10 miles of each other. Of the excluded locations, it appears from the record that the Tuckerton PSC is within 25 miles of the Absecon, Pleasantville, Mays Landing, and Somers Point PSCs; and the excluded Hammonton PSC is within 25 miles of all but the Marmora and Cape May Courthouse PSCs.

There is no bargaining history for any of the employees in the petitioned-for unit. In 1997, the Employer and Service Employees International Union Local 455 stipulated to a unit of phlebotomists, drivers, technicians, customer service representatives, clerk typists, supply clerks, data entry clerks, and general clerks employed by the Employer at 11 PSCs, including 6 of the 7 PSCs in the petitioned-for unit in this case.¹¹ At that time, these 11 PSCs comprised the old Pleasantville unit. At the subsequent election, the employees did not vote for union representation.

Analysis

In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986).

¹¹ The only PSC currently in Gray's area that was not included in that voting unit was Vineland. After 1997, the Ocean City PSC was closed, and the Pomona PSC was merged into the Absecon PSC. The Atlantic City and Linwood PSCs no longer exist.

¹⁰ The operations manager interviews candidates at job fairs.

In this case, the Union maintains that the Regional Director did not err in finding that employees at the seven PSCs share a separate and identifiable community of interest and therefore constitute an appropriate unit. The Employer, on the other hand, contends that the petitioned-for unit is inappropriate and that the unit must include the other 22 PSCs comprising its Southern New Jersey Region because: the supervisory responsibility of Lana Gray is not stable enough to form the basis of a finding that the 7-PSC unit is appropriate; there is common supervision at the Regional level; there is significant temporary interchange between the 7 included PSCs and the excluded PSCs; and there is contact among all the employees in the Region during attendance at meetings and training programs.

We agree with the Employer that the petitioned-for unit is not an appropriate unit for collective bargaining, as we find that the employees of the seven petitioned-for PSCs as a group do not share a community of interest distinct from that shared with employees from other PSCs in the Southern New Jersey Region. As set forth below, the seven PSCs do not comport with any of the Employer's administrative divisional or regional groupings; the Employer's supervisory structure is in flux; there is employee interchange with other PSCs; the seven PSCs do not constitute a coherent geographic grouping; the terms and conditions of employment of the included employees are the same as those of the excluded employees; and there is no collective-bargaining history for the employees sought by the petition.

Thus, it is clear that the Employer has divided its organizational structure into divisions, subdivisions, and regions. Notably, the seven petitioned-for PSCs do not comport with any of these administrative groupings. See *Stormont-Vail Healthcare, Inc.*, 340 NLRB No. 143, slip op. at 4 (2003). By contrast, supervision of the Employer's drivers and customer service representatives conforms to one of the Employer's regional groupings.

In finding the petitioned-for unit appropriate, the Regional Director relied heavily on the fact that Lana Gray commonly supervises all seven petitioned-for PSCs. Contrary to the Regional Director, we find that management of all of the Southern New Jersey PSCs is relatively centralized, that there are limitations on Gray's supervisory authority, and that the Employer's supervisory structure is in the process of changing.

As a phlebotomist supervisor, Gray is responsible for distributing companywide and regionwide directives to her employees. Gray prepares employee evaluations but is constrained by a preformulated matrix when determining what salary increase to give to employees. While she is free to recommend increases above the norm, higher

management must approve any increase. She must also consult with the human resources department when imposing any sort of discipline above the warning level. Gray may also not create a new position nor hire a new employee without express approval from her superiors and the human resources department respectively, although her hiring recommendations are usually followed. These limitations are consistent among the four current supervisors in the Southern New Jersey Region.

Furthermore, we must also consider Gray's supervisory authority in light of planned future changes and recent past changes. The documentary evidence supports the Employer's contention that a new phlebotomist supervisor will be hired shortly. Gray may be supervising a different set of PSCs once this new supervisor is hired. Indeed, as one employee testified, "Management's always changing." In 1998, the Employer reengineered its entire southern New Jersey operation by placing the region under the central control of one regional operations manager. In 2002, the Employer reorganized the supervision of its southern New Jersey PSCs, removing the Hammonton PSC from Gray's supervision and placing it under Phlebotomist Supervisor Darlene Hines' responsibility. Less than a year later, the Employer once again initiated plans to alter the supervisory complement of this region. Based on these changes (both past and future), when viewed in the light of the other facts set forth, we find that the seven PSCs currently under Lana Gray's supervision do not constitute a sufficiently stable collection of facilities forming a cohesive, coherent unit. See *Burlington Food Store, Inc.*, 235 NLRB 205, 206 (1978).

Further, there is regular interchange between the petitioned-for PSCs and the excluded Hammonton PSC. Every weekend phlebotomists from the Hammonton PSC work in a PSC under Gray's supervision because the Hammonton PSC is closed on the weekend. In return, Gray sends one of her phlebotomists to cover open shifts at Hammonton. Additionally, she sends a phlebotomist to work at Hammonton when it is short staffed. Gray has also assigned one of her supervisees to work at the Tuckerton PSC.

Employees from Hammonton regularly attend meetings with Gray's employees and recently all employees under Gray's and Darlene Hines' supervision attended a joint meeting. Furthermore, employees throughout the Southern New Jersey Region interact during various training programs and can attend "speak-out" meetings together.

In addition, we find that the Regional Director improperly relied on the geographic proximity of Gray's

PSCs.¹² She found that the petitioned-for PSCs are generally within 10 miles of each other and are no more than 25 miles apart. Of the excluded locations, however, the Tuckerton PSC is within 25 miles of the Absecon, Pleasantville, Mays Landing, and Somers Point PSCs; and the excluded Hammonton PSC is within 25 miles of all but the Marmora and Cape May Courthouse PSCs. Instead of supporting a separate unit, we believe that the proximity of the excluded PSCs supports a finding that the petitioned-for unit is not appropriate. See *Bashas' Inc.*, supra at 711.

It is undisputed that the employees at the 29 southern New Jersey PSCs have identical skills, duties, and functions and work under identical terms and conditions of employment. All PSCs perform the same basic functions—drawing blood or urine for laboratory testing—and all are staffed in the same manner. All employees enjoy the same benefits and are subject to the same labor policies that are set by the corporate office in North Carolina. Wage rates for all employees in southern New Jersey are the same. The human resources department, located in New Castle, Delaware, maintains personnel files for every employee in Cloverleaf Division.

Finally, there is no collective-bargaining history for the employees sought by the petition. Although the peti-

tioned-for unit is similar to the Pleasantville unit that was stipulated as appropriate in 1997, there was no Board finding as to its appropriateness. It has long been the Board's policy not to consider itself bound by a bargaining history (or lack of bargaining history) resulting from a consent election in a unit stipulated by the parties rather than one determined by the Board. *Amoco Production Co.*, 233 NLRB 1096, 1097 (1977); *Mid-West Abrasive Co.*, 145 NLRB 1665, 1667 (1964). Furthermore, at the time of the election, the Pleasantville unit operated as a separate and distinct area. As mentioned above, since that time organizational changes have been made which have had an impact on the separateness of the unit.

In conclusion, we find for all of the foregoing reasons that the petitioned-for facilities do not constitute an appropriate unit. See *Bashas' Inc.*, supra; *Alamo Rent-A-Car*, supra; *Acme Markets, Inc.*, 328 NLRB 1208 (1999). Although it is clear that the employees in the petitioned-for unit share a community of interest, we find that the evidence fails to establish that it is separate and distinct from the community of interest they share with other employees of the Employer's Southern New Jersey Region. Accordingly, we reverse the Regional Director's finding that the petitioned-for unit is appropriate and remand the case to the Regional Director for further appropriate action.

ORDER

The Regional Director's Decision and Direction of Election is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Order.

¹² The Union contends that the seven facilities that constitute the petitioned-for unit are within the local union's jurisdictional area and that the remainder of the southern New Jersey facilities (with the exception of the Hammonton facility) are outside its jurisdictional area. While this may be true, the Board has long held that a union's territorial jurisdiction and limitations do not generally affect the determination of the appropriate unit. See generally *Groendyke Transport*, 171 NLRB 997, 998 (1968); *CCI Const. Co.*, 326 NLRB 1319, 1319 (1998); *Alley Dry-wall, Inc.*, 333 NLRB 1005, 1008 (2001).