

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Teamsters Local Union No. 284, IBT,

Petitioning Employee Organization,

and

Communications Workers of America Local 4501,

Intervening Employee Organization,

and

The Ohio State University,

Employer.

Case No. 2004-REP-04-0072

DIRECTION TO ELECTION
(OPINION ATTACHED)

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich: March 3, 2005.

On April 14, 2004, the Teamsters Local Union No. 284, IBT ("Teamsters"), filed a Petition for Representation Election under Ohio Revised Code §§ 4117.05 and 4117.07, seeking to represent a bargaining unit of Unit Clerical Associates, Patient Care Associates, and Licensed Practical Nurses employed by The Ohio State University ("OSU"). The Teamsters filed an amended petition on April 29, 2004. OSU filed a position statement opposing the proposed bargaining unit. The Communications Workers of America, Local 4501, AFL-CIO ("CWA"), filed a motion to intervene in accordance with Ohio Administrative Code Rule 4117-1-07(B). On July 22, 2004, the State Employment Relations Board ("Board") granted the motion to intervene and directed this case to mediation and to hearing to determine an appropriate bargaining unit and for all other relevant issues.

On September 28, 2004, after the parties narrowed the disputed issues through mediation, a hearing was held, during which all parties had the opportunity to present testimonial and documentary evidence. Subsequently, CWA and OSU filed post-hearing briefs. On December 13, 2004, an Administrative Law Judge's Recommended Determination was issued. The administrative law judge recommended that the Board find that the Licensed Practical Nurses should be included and the OSU East employees should be excluded from the proposed bargaining unit, and that the Board direct an election in the appropriate unit. No exceptions were filed to the Recommended Determination.

After reviewing the Recommended Determination and the record in this matter, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Recommended Determination, incorporated by reference, and directs an election in the appropriate bargaining unit at a time and place established by the Representation Section in consultation with the parties.

The bargaining unit is described as follows:

INCLUDED: All full-time employees (meaning employees with an appointment of 75 percent or greater) in the classifications of Patient Care Associate, Unit Clerical Associate, and Licensed Practical Nurse employed at The Ohio State University Hospital, The James Cancer Hospital, and The Ross Heart Hospital.

EXCLUDED: All other employees, including confidential and supervisory employees and all employees at OSU East Hospital.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than March 14, 2005, The Ohio State University shall serve on the Teamsters Local Union No. 284, IBT and Communications Workers of America Local 4501 and shall file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of the pay period ending immediately prior to March 3, 2005.

It is so ordered.

DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.

/s/ CAROL NOLAN DRAKE, CHAIRMAN

I certify that a copy of this document was served upon each party's representative by regular U.S. Mail this 4th day of March, 2005.

/s/ DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

TEAMSTERS LOCAL UNION NO. 284, IBT,	:	
	:	CASE NO. 04-REP-04-0072
Petitioner,	:	
	:	
and	:	
	:	
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 4501, AFL-CIO,	:	
	:	BETH A. JEWELL
	:	ADMINISTRATIVE LAW JUDGE
Intervenor,	:	
	:	
and	:	
	:	
THE OHIO STATE UNIVERSITY,	:	
	:	<u>RECOMMENDED DETERMINATION</u>
Employer.	:	

I. INTRODUCTION

On April 14, 2004, the Teamsters Local Union No. 284, IBT (“Teamsters”), filed a Petition for Representation Election under Ohio Revised Code §§ 4117.05 and 4117.07¹, seeking to represent a bargaining unit of Unit Clerical Associates, Patient Care Associates, and Licensed Practical Nurses employed by The Ohio State University (“OSU”). The Teamsters filed an amended petition on April 29, 2004. OSU filed a position statement opposing the proposed bargaining unit. The Communications Workers of America, Local 4501, AFL-CIO (“CWA”), filed a motion to intervene in accordance with Ohio Administrative Code Rule 4117-1-07(B). On July 22, 2004, the State Employment Relations Board (“SERB” or “Board”) granted the motion to intervene and directed this case to mediation and to hearing to determine an appropriate bargaining unit and for all other relevant issues.

On September 28, 2004, after the parties narrowed the disputed issues through mediation, a hearing was held, during which all parties had the opportunity to present testimonial and documentary evidence. Subsequently, CWA and OSU filed post-hearing briefs.

¹ All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117.

II. ISSUES

1. Whether Licensed Practical Nurses should be included in the proposed bargaining unit.
2. Whether employees in the petitioned-for classifications who work at OSU East Hospital should be included in the proposed bargaining unit.

III. FINDINGS OF FACT²

1. All employees in the petitioned-for jobs are employees of OSU who work within the University Medical Center. (S. 1)
2. "Full-time employees" includes employees with an appointment of 75 percent or greater. (S. 2)
3. OSU East Hospital is located approximately five miles from University Hospital, the Ross Heart Hospital, and the James Cancer Hospital. (S. 3)
4. Patient Care Associates ("PCAs"), Unit Clerical Associates ("UCAs"), and Licensed Practical Nurses ("LPNs") support patient care. The LPN position requires a state license and is regulated by the State Board of Nursing. (S. 4)
5. The Ohio State University Health Services is divided into six business units. This proceeding involves four of the six units: University Hospital ("UH"), a 960-bed tertiary care center located on OSU's main campus; the James Cancer Hospital, a 130-bed cancer service provider adjacent to UH; the Ross Heart Hospital, a 90-bed heart patient hospital adjacent to UH and scheduled to open in October 2004; and OSU East Hospital ("OSU East"), a 400-bed family practice and community hospital located five miles east of the main campus. (T. 12-15; OSU Exhs. 1, 2)
6. Approximately 5,000 employees work in the hospitals on the main campus. The main campus hospital complex is a comprehensive academic medical center, where

²All references to the transcript of the hearing are indicated parenthetically by "T.", followed by the page number. All references to the CWA's Exhibits are indicated parenthetically by "CWA Exh.," followed by the exhibit letter. All references to OSU's Exhibits are indicated parenthetically by "OSU Exh.," followed by the exhibit number. All references to the Stipulations of Fact are indicated parenthetically by "S.," followed by the stipulation number. References to the transcript and exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

teaching and research is done in addition to patient care. OSU East is located five miles away on the east side of Columbus. OSU East is a community hospital focusing primarily on patient care and has approximately 900 employees. Of the employees in the three petitioned-for job titles as of September 28, 2004, 605 worked at the main campus hospital complex and 111 worked at OSU East. In the LPN classification, 41 were employed at the main campus, and 15 worked at OSU East. (T. 93-95, 104; OSU Exh. 14)

7. UCAs' duties are carried out primarily at the nursing unit to which they are assigned. UCAs answer and direct internal and external telephone calls and the patient call lights at the nursing unit. UCAs assemble patient records and transfer them to the medical records department when a patient is discharged. UCAs report to the Nurse Manager of the nursing unit and are responsible to the Charge Nurse on each shift. To be hired as a UCA, an applicant is required to pass a civil service test. (T. 18-21, 210)
8. PCAs assist Registered Nurses ("RNs") with patient care. PCAs have responsibility for assisting patients with activities of daily living ("ADLs"), which include bathing, eating, walking, and sitting up. PCAs take and record vital signs, including blood pressure, pulse, and respirations. PCAs at the main campus hospitals also have responsibility for phlebotomy (blood draws) and electrocardiograms ("ECGs") for the patients on their nursing unit. At OSU East, lab technicians are responsible for phlebotomy, and ECGs are performed by respiratory therapists. PCAs are assigned to a nursing unit and have the same reporting structure as UCAs. To be hired as a PCA, an applicant must have a high school diploma or graduate equivalency diploma. (T. 23-29, 61, 145-149)
9. LPNs perform all of the functions PCAs perform. Additionally, LPNs assess patient treatment needs, provide tube feedings, put catheters in patients, change complex wound dressings, observe wounds and look for indications of infection, document findings on patient medical records, and make decisions about whether to report their findings to the patient's RN or physician. LPNs also administer oxygen and medications either by injection or by mouth, including administering narcotics for pain relief. LPNs must have a high school diploma and complete a licensed practical nursing program of 12-18 months. LPNs must pass a State Board of Nursing test to obtain a license to practice. To administer medication, LPNs must have an "LPNP" designation, indicating that they have completed a pharmacology course. An LPN's license expires every two years, and LPNs must acquire 24 continuing education units over each two-year period in order to renew the license. (T. 31-36, 76, 78)
10. When caring for a patient, LPNs may, under certain circumstances, administer treatment that they feel is warranted. For example, LPNs monitor skin condition and

blood pressure. If an LPN sees a red spot on a patient, the LPN will determine whether the red spot needs a prescribed surface treatment, whether it needs to be monitored and rechecked, or whether an RN needs to be notified. If an LPN sees that a spinal patient's blood pressure is elevated, the LPN will evaluate what actions should be taken, such as administering a catheter, looking for other problems, or doing a rectal exam, and will take these or other actions until the situation is alleviated. The LPN would also review the patient's medical record and physician's orders and administer any medications that the physician may have ordered for that patient, such as a blood pressure medication to be administered as necessary. A PCA who recognizes an elevated blood pressure or skin condition warranting attention would instead notify the RN on duty. (T. 38-39, 81-85)

11. LPNs typically care for a portion of the group of patients for whom a particular RN is responsible, and the PCAs assist the RN with the remainder of his or her patients. LPNs are assigned to a nursing unit and have the same reporting structure as UCAs and PCAs. (T. 40)
12. The position description for each of the three classifications states that the incumbent "[f]unctions as an integral member of a team of care providers on a patient care unit." The RN-Patient Care Coordinator directs the work of the team. (OSU Exhs. 3-5)
13. OSU East is a community hospital. OSU East has a family atmosphere, and was purchased by OSU to provide an opportunity for training in a community setting because ultimately most doctors, nurses, and other health care professionals find employment and careers in a community setting. Because OSU East is small in size, its employees get to know each other and their administrators. Also contributing to the community atmosphere is the fact that many OSU East employees also live in the surrounding neighborhoods and know the patients OSU East serves. OSU East functions as an autonomous business unit, with a separate Board of Directors, a separate provider number, a separate administrative staff, a separate Chief Executive Officer, Chief Operating Officer, Chief Nursing Officer, and Chief Financial Officer. Physicians who work at any of the main campus hospitals must apply separately for privileges to practice at OSU East. (T. 93-95, 97-98, 154)
14. The hospitals on main campus provide certain complex services that cannot be obtained at OSU East. University Hospital is a tertiary care center, designated as a Level I Trauma Center, which is the highest level of trauma that a hospital can accept. University Hospital also provides care for highly complex transplant patients and services for women and infant care, including a level three N.I.C.U., which is the highest level of care that can be provided for neonates. In addition to the medical and surgical services provided at University Hospital, the facility has rehabilitation services. (T. 12, 15, 95)

15. No interchange or interaction exists among PCAs, UCAs, and LPNs at OSU East and those at the main campus hospitals. The PCAs, UCAs, and LPNs at OSU East and the main campus hospitals have separate reporting structures. Employees at the three main campus hospitals interact frequently. (T. 99, 100, 133)
16. Working conditions at OSU East are different from those at the main campus hospitals. OSU East has its own cafeteria and free parking for employees. Employees at the main campus hospitals share common eating areas and must pay for parking. Social functions or celebrations that relate to all entities are generally held on the main campus separately from similar events held for employees at OSU East. (T. 110, 111, 114, 154)
17. The Ross Heart and James Cancer hospitals share with or purchase services from University Hospital, such as dietary, pharmacy, radiology, facilities maintenance, and respiratory therapy services. OSU East makes its own arrangements for such services. The hospitals have two separate Human Resource Offices - one for OSU East and one serving the main campus hospitals. (T. 117, 118, 164)
18. RNs at the main campus hospitals are represented by the Ohio Nurses Association ("ONA"), but RNs at OSU East are not. CWA represents two wall-to-wall bargaining units of employees, service and skilled trades, who work in these classifications throughout OSU. The service classifications include custodial, food service, and bus drivers. The skilled trade classifications include maintenance, carpenters, plumbers, and HVAC. These bargaining units have existed for over 20 years. (T. 120-121, 174-175, 181)
19. UCAs and PCAs spend their first day in a common orientation with all new hires that covers University-wide benefits and safety issues. On their second day of employment, they spend a half-day in a business unit-level orientation. UCAs then move on to classroom training and transition to the particular nursing unit to which they are assigned. PCAs hired to work at main campus hospitals have a four- to five-week training program. Half of their training program is devoted to gaining competency in phlebotomy and ECGs. The orientation for PCAs at OSU East is shorter because their responsibilities do not include phlebotomy or ECGs. (T. 21-22, 29-30)

IV. ANALYSIS AND DISCUSSION

In State ex rel. Glass, Molders, Pottery, Plastics & Allied Workers v. SERB (1994), 70 Ohio St.3d 252, 1994 SERB 4-64, 638 N.E.2d 556, the Ohio Supreme Court set forth procedural guidelines for unit determinations when the employer objects to the unit description proposed by the employee organization or when more than one proposed unit description is pending before SERB. SERB's first opportunity to apply these procedural guidelines was in In re St. Marys City School District Bd of Ed, SERB 95-007 (4-21-95) ("St. Marys"). In St. Marys, the Board stated that an employer who objects to the employee organization's proposed unit has the burden to show by substantial evidence that the objectionable unit is inappropriate. If the employer carries its burden of proof, the petitioned-for unit will not be found to be appropriate.

Section 4117.06(B) provides as follows:

The board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors: the desires of the employees; the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining.

This framework is utilized in determining the appropriate bargaining unit. St. Marys, supra at 3-47. The determination of the appropriate unit must be made on a case-by-case basis, examining the particular facts involved and analyzing all relevant factors. Id.

In this case, OSU filed objections to the bargaining unit proposed in the Teamsters' Petition for Representation Election. The Teamsters sought to represent UCAs, PCAs, and LPNs who work at University Hospital. In its position statement, OSU proposed excluding LPNs and including UCAs and PCAs who work at the James Cancer and Ross Heart hospitals. CWA proposes a bargaining unit consisting of UCAs, PCAs, and LPNs who work at University, James Cancer, Ross Heart, and OSU East hospitals. All parties agreed to submit only the following two issues to SERB for resolution: (1) Whether LPNs should be included in the proposed bargaining unit, and (2) whether the bargaining should include employees who work at OSU East.

A. LPNs should be included in the proposed bargaining unit

In examining the first issue, the only evidence of the desires of the employees is the confidential showing of interest that SERB's investigation found sufficient to determine that a question concerning representation exists. This factor favors including LPNs in the bargaining unit.

The community of interest factors, including wages, hours, and other terms and conditions of employment, also favor the inclusion of the LPNs in the bargaining unit. Smaller units with less variety of classifications have tighter community of interest than larger units with more variety of classifications. Additional factors to be considered in analyzing community of interest include a similarity in job functions, geographic proximity, common supervision, the degree of employee interchange, and operational integration. University of Akron, supra at 3-31; In re Stark County Bd of Mental Retardation and Developmental Disabilities, SERB 93-018 (12-16-93). PCAs, UCAs, and LPNs are all based on nursing units and are supporting members of a patient care team based on the unit to which they are assigned. These three employees serve as part of an integrated operation and share common supervision at the nursing unit. They share common benefits.

Their wages vary, with the average UCA wage being \$11.71 per hour, the average PCA wage being \$12.21 per hour, and the average LPN wage being \$17.57 per hour. The minimum qualifications are different for each position as well, with the LPN position requiring 12-18 months of post-high school education. These differences, however, are not sufficient to override the overall community of interest shared by these support workers. Both PCAs and LPNs assist RNs with direct patient care. Both PCAs and LPNs assist patients with ADLs. PCAs at the main campus hospitals are trained in drawing blood and performing ECGs, each of which demands a level of technical competence. While OSU emphasizes the differences between LPNs and the other two classifications in the proposed bargaining unit, no evidence was presented that LPNs share common duties, working conditions, educational requirements, or supervision with other allied health workers employed by OSU and only briefly mentioned by OSU witnesses at hearing. Such workers as respiratory therapists, radiology technicians, medical technicians, laboratory technicians, and dieticians are not based at a nursing unit with the LPNs, and do not share common supervision with the LPNs as do the PCAs and UCAs.

This proposed bargaining unit would be efficient for OSU's administrative structure, which at the patient care level is designed around the nursing unit. Moreover, with reference to the history of collective bargaining, the only other bargaining unit specific to OSU Health Services consists of RNs represented by the ONA. No evidence is present that any other employees desire to organize and be represented by an employee organization that includes the LPNs. OSU has not succeeded in its burden of demonstrating that a unit of UCAs, PCAs, and LPNs is not appropriate for collective bargaining.

OSU argues that SERB should follow a National Labor Relations Board ("NLRB") administrative rule that supports categorizing LPNs as technical employees who belong in separate bargaining units. SERB has not enacted an analogous administrative rule. Indeed, before this administrative rule was promulgated, the NLRB applied a community of

interest analysis to proposed health care bargaining units that included LPNs with other classifications that support patient care. See, e.g., Vicksburg Hospital Inc. v. NLRB, 653 F.2d 1070 (5th Cir. 1981). Rather than establishing presumptions in favor or against certain combinations of employees, except as identified specifically in § 4117.06, SERB's case law supports a case-by-case review of proposed bargaining units. None of the specific situations identified in § 4117.06 is applicable to alter the case-by-case analysis of the appropriate bargaining unit.

B. OSU East Employees Should Be Excluded From the Proposed Bargaining Unit

A bargaining unit including the UCAs, PCAs, and LPNs at OSU East would not be appropriate. OSU and the Teamsters agree on this point; only CWA argues for their inclusion. OSU East's administrative functions would be hampered were its employees included in the proposed bargaining unit. The evidence reveals that OSU acquired OSU East for specific education, training, and community service purposes. Maintaining the cohesive, family-oriented atmosphere at OSU East is an important goal of OSU, and it has structured OSU East accordingly as a separate business entity.

Employee interaction between the main campus hospitals and OSU East exists only at the most senior management levels. OSU East is geographically remote, serving a local community population. The human resource functions are decentralized, with OSU East maintaining its own human resources office. The job duties of the PCAs at OSU East differ significantly from those at the main campus hospitals in that the most complex job duties, phlebotomy and ECGs, are not handled by PCAs or even at the nursing-unit level at OSU East. This difference reflects the different business operations in place at OSU East. OSU East maintains a small hospital atmosphere, with 900 employees — less than 20 percent of the number of employees at the main hospital complex. OSU East employees enjoy plentiful, free, on-site parking. The patient population is different at OSU East, which is a primary care facility. The main campus hospitals treat many patients who require highly specialized care, including, for example, heart patients, cancer patients, and transplant patients.

While maintaining OSU East as a separate facility may result in some fragmentation of bargaining units, over-fragmentation would not result from continuing to maintain OSU East as a separate entity. A single-facility bargaining unit at OSU East would be aligned with the administrative goal of maintaining OSU East as a separate business entity. Moreover, with 111 OSU East employees in the UCA, PCA, and LPN classifications, a single-facility bargaining unit of these employees would not be inefficient or unworkable.

V. CONCLUSIONS OF LAW

1. The Ohio State University is a “public employer” within the meaning of § 4117.01(B).
2. The Teamsters Local Union No. 284, IBT and the Communications Workers of America, Local 4501, AFL-CIO are “employee organizations” within the meaning of § 4117.01(D).
3. The following described unit is appropriate for collective bargaining:

INCLUDED: All full-time employees (meaning employees with an appointment of 75 percent or greater) in the classifications of Patient Care Associate, Unit Clerical Associate, and Licensed Practical Nurse employed at The Ohio State University Hospital, The James Cancer Hospital, and The Ross Heart Hospital.

EXCLUDED: All other employees, including confidential and supervisory employees and all employees at OSU East Hospital.

VI. RECOMMENDATIONS

It is respectfully recommended that:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board direct a representation election in accordance with § 4117.07 and the rules set forth in Ohio Administrative Code Chapter 4117-5 in the bargaining unit described below:

INCLUDED: All full-time employees (meaning employees with an appointment of 75 percent or greater) in the classifications of Patient Care Associate, Unit Clerical Associate, and Licensed Practical Nurse employed at The Ohio State University Hospital, The James Cancer Hospital, and The Ross Heart Hospital.

EXCLUDED: All other employees, including confidential and supervisory employees and all employees at OSU East Hospital.