

Labor and Employment Alert



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NLRB Finds Bargaining Unit at Multi-facility Health System Inappropriate

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Executive Summary

The National Labor Relations Board ("NLRB") recently decided that a petitioned-for bargaining unit of maintenance employees at a multi-facility health system in Indianapolis was inappropriate. The unit, which included employees of only two of the health system's three hospitals, was inappropriate because the included members did not share a "community of interest" distinct from those maintenance workers at the third hospital. This decision is significant for multi-facility health systems because it emphasizes the factors considered by the NLRB in determining when it is appropriate to combine employees at separate facilities in the same bargaining unit. *Reference: Clarian Health Partners (344 NLRB No. 28, February 28, 2005).*

Detailed Analysis

Appropriate Bargaining Units Under the National Labor Relations Act

If a union desires to represent a group of employees of a private employer it will petition the NLRB for a secret ballot election. Under the National Labor Relations Act ("NLRA") a union election can be held only in an "appropriate bargaining unit." If the union and the employer cannot agree on the appropriate bargaining unit, the NLRB will decide if the bargaining unit that the union requested in its petition is appropriate or not. Because the outcome of the election is determined by a majority vote of the

employees in the bargaining unit, the determination of the appropriateness of the unit and what employees are in that unit can have significant practical and legal consequences. The determination of the composition of the bargaining unit is crucial because it can affect the outcome of the vote.

Determining Appropriate Bargaining Units for Multi-facility Employers

The NLRB's analysis in the *Clarian* decision was complicated by the fact that the petitioned-for unit included employees who worked at more than one facility. Where workers at multi-facility employers are involved, the NLRB determines the appropriateness of a bargaining unit by evaluating the following factors:

- (1) employees' skills;
- (2) terms and conditions of employment;
- (3) employee interchange;
- (4) functional integration;
- (5) geographic proximity;
- (6) centralized control of management and supervision; and
- (7) bargaining history.

In *Clarian*, the union petitioned for a bargaining unit consisting of approximately 50 employees, primarily skilled maintenance workers, at two of Clarian's three hospitals. Those employees were located at the "West Campus" consisting of Indiana University Hospital and James Whitcomb Riley Hospital for Children. Clarian counter-proposed a bargaining unit of approximately 180 employees, which included the skilled maintenance workers at Methodist Hospital. Ultimately, the NLRB found that the union's petitioned-for unit was not appropriate for bargaining. The NLRB's decision was based on evidence which established that the employees at the two hospitals included in the petitioned-for unit did not share a "community of interests" distinct from that shared with the skilled maintenance employees at the third hospital.

Integration of the Clarian Health System

In determining that the unit consisting of the skilled maintenance at only two of Clarian's three hospital facilities was not appropriate, the NLRB focused on the integrated nature of Clarian's operations. Specifically, the NLRB noted that: Clarian Health Partners is a health system that owns and operates three acute care hospitals, all within one mile of each other in downtown Indianapolis. Clarian's entire health system is incorporated, accredited and licensed as one system. All three hospitals are overseen by a single board of directors and the same chief administrative officers. In addition, there is a significant amount of functional integration among the hospitals with numerous single departments

covering all facilities, including human resources, marketing, patient records and billing, laundry, email and publications.

According to the *Clarian* decision, employees at all three of Clarian's hospitals are covered by the same personnel policies, receive the same benefits, are within the same compensation system and work under the same terms and conditions of employment. Hiring is centralized to the extent that all job openings, regardless of location, are posted electronically on the single hospital website and on bulletin boards at separate locations, and there is a single employment application and human resources department which oversees the hiring process. Finally, employees retain system-wide job seniority in the event of transfer or promotion between hospitals.

Skilled Maintenance Position Same at All Three Hospitals

The NLRB also found it significant that the primary function of all the skilled maintenance employees is the same regardless of the hospital at which they are based: to inspect, maintain and repair the same types of medical equipment using the same repair skills and tools.

Further, a single dispatching office assigns maintenance work to each of the three hospitals. The maintenance workers wear the same uniforms, clock in to work in the same fashion, and are subject to the same training, safety policies, and terms and conditions of employment. All of the skilled maintenance workers, regardless of location, are in regular contact with each other, exchanging information and supporting each others' duties. It is not uncommon for the workers to go to different locations to discuss problems, borrow equipment and engage in training. Skilled maintenance workers regularly share common supervision on evenings and weekends, and there are regular temporary assignments of personnel from one location to another.

No Distinct "Community of Interest" Among Separate Hospitals

The NLRB acknowledged that two of Clarian's hospitals (I.U. Hospital and Riley Hospital) are geographically closer together than the third, and that they have been historically linked and are jointly referred to as one campus. However, this was not enough to persuade the NLRB that the "community of interest" among workers at those hospitals was sufficiently distinct from that of the third. In reaching this conclusion, the NLRB placed the most emphasis on the following factors:

- The skilled maintenance workers at all three hospitals regularly share common supervision on evenings and weekend shifts;
- The skilled maintenance workers have regular contact with one another through temporary assignments away from their permanently assigned hospital;
- All three hospitals are within close geographic proximity of each other;

- There is a significant degree of centralized administration, management, and functional integration throughout the Employer's system, especially regarding the personnel and labor relations policies, hiring process, and terms and conditions of employment;
- The skilled maintenance workers share similar skills and duties; and
- There is evidence of interchange among skilled maintenance workers at all three hospitals.

Conclusion

Although the determination of an appropriate bargaining unit is always made on a case by case basis, the *Clarian* decision provides helpful insight as to which factors the NLRB considers most significant in the context of multi-facility employers. The more that a health system's facilities are integrated the more likely that a system-wide bargaining unit will be found to be appropriate for collective bargaining. Conversely, the more autonomous a system's facilities are the more likely that a union's petition to represent a unit of employees at only one of the facilities will be found to be appropriate.

Should you have any questions, please do not hesitate to contact your local counsel or Steve Lyman, John Ryan, Jon Bumgarner, Kevin Stella, Dana Stutzman or Kevin Gfell at Hall, Render, Killian, Heath & Lyman, P.S.C., at 317/633-4884.

About Hall Render:

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