UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

SAN MIGUEL HOSPITAL CORP., d/b/a
ALTA VISTA REGIONAL HOSPITAL[1]

Employer

and **Case 28-RC-6518**

DISTRICT 1199NM, NATIONAL UNION OF
HOSPITAL AND HEALTHCARE EMPLOYEES

Petitioner

DECISION AND DIRECTION OF ELECTION

District 1199NM, National Union of Hospital and Healthcare Employees (Petitioner) has filed a petition seeking to represent a unit of all full-time, regular part-time and per diem professional employees and a unit of all full-time, regular part-time and per diem nonprofessional employees employed at San Miguel Hospital Corp., d/b/a Alta Vista Regional Hospital (Employer) excluding physicians, guards and supervisors. The Petitioner seeks an election wherein the professional employees would either constitute a separate bargaining unit or be included in the unit of nonprofessional employees depending on the results of the election. *Sonotone Corp*., 90 NLRB 1236 (1950). The Employer contends that the petition should be dismissed as the Petitioner has failed to demonstrate "extraordinary circumstances" which the Employer believes the Petitioner is required to show before it may combine any of the bargaining units defined by the Board in its healthcare rules.[2] The Employer argues that a wall-to-wall unit as defined above would be inappropriate. It argues that the Petitioner must demonstrate extraordinary circumstances before the Board will certify any unit other than one of the eight individual units set forth under the Board's rulemaking. The Employer further argues that none of the eight rule-made units may be combined in any fashion without a showing of extraordinary circumstances. Moreover, the Employer also contends that a single petition may not seek both nonprofessional employees and professional employees with a *Sonotone* election, as it is inappropriate to include these two units in the same petition regardless of whether a *Sonotone* self-determination option is granted to the professional employees.

The Employer further contends that its seven registered nurses who serve as nurses as well as permanent team leaders, as well as 13 registered nurses that perform the team leader function on a rotating basis are supervisors and must be excluded from any bargaining unit found

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[1] The name of the Employer appears as corrected at the hearing.

[2] Board's Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry), 29 CFR § 103.30(a)-(g) (1990); 54 Fed. Reg. 16,336-16,348 (1989), 284 NLRB 1515 (1987), et seq.

appropriate. The Petitioner has stipulated to the supervisory status of one permanent team leader but contends that the remaining team leaders are not supervisors under the Act.

As discussed more fully below, I find that the petition and the petitioned-for units are appropriate. I also find that the permanent team leaders are supervisors within the meaning of the Act and should be excluded from the professional bargaining unit. I find that all of the registered nurses who serve as rotating team leaders should be included in the professional unit because they are not supervisors within the meaning of Section 2(11) of the Act.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. Hearing and Procedures: The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. On April 24, 2007 and April 30, 2007, the Employer filed appeals with the undersigned seeking to dismiss the petition on the basis that the Petitioner had failed to demonstrate "extraordinary circumstances" which would warrant adjudication of the petition. By Orders dated April 26, 2007 and May 2, 2007, respectively, (Board Exhibits Nos. 3 and 4) the appeals were denied without prejudice to the Employer's right to renew its contentions in its post-hearing brief filed under Section 102.67(a) of the Board's Rules and Regulations. The Employer and Petitioner have each filed a post-hearing brief.

The Employer has raised similar issues in its post-hearing brief and elaborates that:

> …the Board's Health Care Rule, itself, which mandates that the eight distinct rule and regulated units are the only appropriate units in health care, dictates by its very nature the extent to which employees may effectively organize…and as such constitutes an abuse of the Board's discretion and runs afoul of Section 9(c)(5) of the Act.
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> …States (sic) differently, the Board's Health Care Rule operates to strip away consideration of any factor other than the extent of employee organization as determining the appropriateness of collective bargaining unit (sic) in the health care industry, by defining the "only appropriate" units in health care as being coextensive with, and entirely derivative of, the sanctity of the extent to which employees must organize."

The Employer's argument that the Board's Healthcare rules are invalid has been raised in its essence in another forum and rejected by the Supreme Court. *American Hospital Association v. NLRB*, 111 S. Ct. 1539, 1541-1542 (1991). Accordingly, the Employer's argument that the petition should be dismissed because of invalidity of the Healthcare rules, is without merit.

The Employer also asserts in its motions that I should dismiss the petition because the units sought by the Petitioner are inappropriate and, additionally, it would be inappropriate to conduct a self-determination election among the Employer's professional employees. Moreover, the Employer contents a self-determination election of the type petitioned for herein may not be sought through a single petition. Again, the Employer cites no caselaw in support of its arguments, nor does the Employer cite any provision in the Board's Rules and Regulations or

Casehandling Manual that would preclude the processing of a petition seeking a multi-unit self-determination election. Therefore, I find the Employer's arguments meritless. The reasons for my findings are set forth in more detail later in this Decision, where the appropriateness of the units is discussed.

Later in its post-hearing brief, the Employer moves the undersigned to reopen the record in this matter "for the purpose of permitting the Hospital to fully develop the Record as concerns its claims that the unit being sought by the Petitioner here is coextensive with the extent of employee organization underlying the Petition, and thus it would therefore be a violation of Section 9(c)(5) of the Act for the Regional Director, consistent with the Board's Healthcare Rule, to direct an election in the unit sought by the Petitioner." An argument of this nature is generally made when a union seeks to represent a limited group of employees and the Employer believes that a larger group of employees is the only appropriate unit. Here, the Petitioner is essentially seeking "wall-to-wall" units of all of the Employer's employees, except for guards and supervisors, working at the Employer' hospital. Thus, it would be impossible for the Petitioner to organize a larger group of employees. Moreover, the Employer does not contend that a larger group of employees exist that is the only appropriate unit. Rather, the Employer is renewing its contention that the Board's Healthcare rules are invalid, as noted above, and I find no merit to the argument. To the extent that the Employer is arguing that the units petitioned-for are inappropriate, I also find no merit to that argument.

Accordingly, I deny the Employer's motions that the petition be dismissed and that the record be reopened.

2. Jurisdiction: At the hearing, the parties stipulated, and I find, that the Employer operates an acute care hospital in Las Vegas, New Mexico (Employer's facility). During the 12-month period ending April 10, 2007, the Employer derived gross revenues in excess of $250,000. During the same period of time, the Employer purchased and received at the Employer's facility goods valued in excess of $50,000 directly from suppliers located outside the State of New Mexico. Based on the parties' stipulation to such facts, I find that the Employer is a health care institution within the meaning of Section 2(14) of the Act. I also find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

3. **Labor Organization Status and Claim of Representation**: The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. Statutory Question: As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Unit Finding: The issues presented in this matter are: (a) whether the petitioned-for units of professional employees and nonprofessional employees are appropriate under the Board's Healthcare rules; and (b) whether the Employer's permanent and rotating registered nurse team leaders are supervisors within the meaning of the Act, and thus, should be excluded from the professional bargaining unit sought by the Petitioner.

To provide a context for my discussion, I will begin this Decision with a brief overview of the Employer's operations and organizational structure and the parties' positions on the appropriate units. I will then review the relevant facts related to the duties and responsibilities of permanent and rotating team leaders, per diem employees, and conclude with my analysis and determinations.

I. Employer's Operations and Organizational Structure

The Employer employs approximately 254 employees at its 54-bed acute care hospital in Las Vegas, New Mexico. The hospital includes an emergency room (ER), intensive-care unit (ICU), operating room (OR), day surgery, and general medical and surgical beds. It offers respiratory and physical therapy, obstetrics, gynecology, labor, delivery and nursery services, orthopedic, cardiac, cardiopulmonary, pediatric, radiology and urology services, and nutritional counseling. Four physicians work at clinics not owned by the hospital. It is unclear from the record whether they are directly employed by the Employer. The parties agreed to exclude the clinics from any bargaining unit found appropriate pursuant to this petition. Another eight to ten physicians, not employed by the Employer, have been accorded hospital privileges. The Petitioner does not seek to represent these physicians and the Employer does not argue that they would be appropriately included in any bargaining unit.

Brian Gibbons is the Chief Executive Officer. Reporting to him are the Chief Financial Officer, the Chief Nursing Officer, and the Physician Practice Manager. Also reporting to him are the Human Resources department, Quality Management and Regulatory Compliance (QMRC), Marketing department, Plant Operations department, and Radiology.

The Chief Financial Officer oversees the business office, registration department, Controller, Accounts Payable/Payroll, IS, HIM, materials management, and case management. The Chief Nursing Officer oversees the medical-surgical unit that includes the intensive-care unit, the Nursing Administration department, the emergency room, and the operating room and Post-Anesthesia Care Unit (sometimes jointly abbreviated as OR/PACU). The OR/PACU includes the cardiovascular laboratory, the operating room and the obstetrics unit. The Chief Nursing Officer is also in charge of the areas of respiratory therapy, the pharmacy, the laboratory, and nuclear medicine.

The medical-surgical unit includes two wings of the hospital and treats patients with acute-care illnesses, or patients requiring preoperative or postoperative care, for periods of hours to weeks. The intensive-care unit is located near the medical-surgical unit and treats the most infirm patients. The unit has a higher degree of patient monitoring, uses more invasive procedures, requires employees with more skill and mandates a higher ratio of nurses to patients, currently about one nurse for two patients.

The nursing administration office employs an administrative assistant who maintains nursing logs, time records, schedules, performs staffing coordination, and types policies and procedures. The emergency room is where emergency care is provided. Patients arrive by private vehicles or ambulance and are screened and classified, treated, admitted, transferred, and discharged to go home. The operating room consists of operating suites, service areas, sterile corridors, and anesthesia work rooms. Following surgery, patients are moved to the Post Anesthesia Care Unit, formerly known as the recovery room.

The cardiovascular laboratory performs diagnostic catheterization angiographies. The obstetrics (OB) unit is located near the medical-surgical unit and provides labor and delivery services, as well as some physician-ordered diagnostic procedures and post-obstetric care. The respiratory therapy area provides respiratory therapy services, electrocardiograms (EKGs), stress tests, electroencephalograms (EEGs), and stress testing.

The pharmacy is overseen by Keith Packard, Pharmacy Director, and provides acute inpatient pharmacological supplies and records and reviews all medications given to patients. The laboratory provides a myriad of inpatient and outpatient testing, including blood and urine testing, sputum and urine cultures, and provides the blood needed for blood transfusion services. The nuclear medicine area provides thallium skins, and nuclear tag studies for cardiovascular testing.

House supervisors report directly to the Chief Nursing Officer, Maxine Flora, and substitute for her in her absence. They work off-shifts, weekends and holidays. Currently, only Michelle Manzares and Hope Montoya routinely serve as house supervisors. The parties stipulated that the house supervisors should be excluded from any unit found appropriate as they are supervisors within the meaning of the Act. I adopt the parties' stipulation which is consistent with the record evidence adduced and will exclude the house supervisors from the units found appropriate herein.

Interim Director Darren Maestas currently oversees the medical-surgical unit and intensive-care unit. Nicole Roybal is the permanent team leader used in the medical-surgical unit and reports to Maestas. The Employer also uses team leaders in the emergency room, OR/PACU, and the obstetrics unit.

The Physician Practice Manager oversees two clinics, located close to the hospital, but not owned by the Employer. The Human Resources department oversees the dietary department, security, environmental services (EVS), and rehabilitative services. QMRC oversees the risk management quality department, medical staff coordinator, education and infection control. Marketing encompasses public relations and a department entitled "Senior Circle." There are no sub-departments or sub-units under Plant Operations and Radiology.

II. The Parties' Respective Positions on the Units

A. Employer's Position on the Petitioned-for Units

As noted above, the Employer argues that the Board's Healthcare rules constitute an unlawful abdication of the Board's decision-making authority and should not be used as guidelines in determining an appropriate unit. The Employer also argues that the proposed units violate the Board's Healthcare rules, because the rules and regulations of the Board, Board precedent, and the General Counsel's guidelines show that any petition that is not co-extensive with one of the eight defined healthcare units is non-conforming and requires a showing of extraordinary circumstances before it may be processed. The Employer believes that any attempt to combine any of the eight healthcare units requires the Petitioner to demonstrate extraordinary circumstances.

The Employer specifically states that a petition that seeks a wall-to-wall unit with a *Sonotone* election provided for professional employees, or, a petition that seeks a unit of all professional employees and a unit of all nonprofessional employees, involves non-conforming units and must be dismissed absent a showing of extraordinary circumstances.

B. Petitioner's Position on Appropriateness of Petitioned-for Units

The Petitioner states that the "exceptional circumstances" provision of the healthcare rules was created to justify departure from the eight-unit rule to avoid situations where parties desired to create a unit smaller than one of the eight. The Petitioner notes that the Code of Federal Regulations (CFRs), at § 103.30, identifies two exceptions to the eight units. The first exception is any union, if they so choose, may combine one, two, three, four, or more of the eight units to create a combined unit.

The second exception is the exceptional circumstances exception that only applies when there is an attempt to create a unit smaller than one of the eight units. The Petitioner quotes from the notes of the National Labor Relations Board when the Rules were adopted.

> "The number of units found appropriate should not be so many as to lead to a splintering of the workforce into the myriad of occupations and professions found within the industry. The Board has examined the units found appropriate to ensure that they are not so numerous as to create a never ending round of bargaining sessions and that each unit represents truly distinctive interests and concerns." Proposed Rules of the National Labor Relations Board - Collective-Bargaining Units in the Health Care Industry, 53 Federal Register 33900, 33933, (1988).

The Petitioner notes that the above-cited comment outlines the motivating force both from Congress and for the Board behind the eight-unit rule. Thus, the Board permits units to be combined. Moreover, the Board states:

> "While there are some combinations that while not required under these rules would obviously be appropriate, such as all professionals or all nonprofessionals, there may be other more unusual combinations that need to be examined for appropriateness." Proposed Rules, above, 53 Federal Register 33900, at 33932 (1988).

The Petitioner proposes to combine Category (1) all registered nurses, with Category (3) all professionals except for registered nurses and physicians. The Petitioner does not seek to represent physicians. The Employer does not employ any physicians at the hospital although physicians are employed at off-site clinics. The record is unclear as to who employs the physicians involved herein as the Employer maintains that the clinics are not owned by the Employer. In any case, the Petitioner and the Employer agree that the clinics are not appropriately included in the petitioned-for units.

The Petitioner then proposes to combine Category (4) all technical employees, with Category (5) all skilled maintenance employees, and Category (6) all business office clerical employees, and Category (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees.

The Petitioner does not seek to represent guards, and it cannot represent them by virtue of a statutory prohibition under the Act that prohibits unions representing non-guard employees from also representing guards.

C. Classifications within the Six Categories of Units

On the record the parties combed through each classification covered by the petition and took positions as to which of the petitioned-for categories of employees the classification would properly fall under. Sometimes the Employer asserted that Petitioner had not properly placed some classifications into the correct rule-made category. The Petitioner, stating that it desired to expedite the hearing, agreed to amend its position to conform to the Employer's claims, with the exception of certain registered nurse team leaders. Thus, each category was configured in accordance with the Employer's assertions as to which category each classification of employee should be placed into. The results were as follows:

Category (1) All registered nurses

The parties agreed that the following classifications of employees should be included under Category (1): registered nurses and the registered nurse case manager. The parties also agreed, at the suggestion of the Employer, to include the licensed practical nurse case manager under this category. The parties disagree as to whether certain registered nurse team leaders are supervisors and this issue is discussed later in this Decision.

Category (3) All professionals except registered nurses and physicians

The parties agreed that the following classifications of employees should be included under Category (3): cardiac catheritization laboratory supervisors; medical technologists; nuclear medicine technicians, pharmacists; registered pharmacists; occupational therapists; physical therapists; registered respiratory therapists; and speech pathologists. About 17 employees fall under this category.

Category (4) All technical employees

The Petitioner originally sought to include the following classifications under Category (4): CS technicians; operating room technicians; pharmacy technicians; certified pharmacy technicians; and surgical (scrub) technicians. The Employer maintained that these classifications would be more appropriately included in Category (8), and the Petitioner acquiesced.

The parties agreed that the following classifications of employees should be included under Category (4): certified respiratory technicians (CRTs); certified surgical technicians; CT technicians, laboratory technicians; licensed practical nurses; mammogram technicians; radiology technicians; ultrasound technicians; and x-ray technicians. About 45 employees fall under this category.

Category (5) All skilled maintenance employees

The parties agree that only two maintenance employees work for the Employer. The Petitioner sought to include four PBX (switchboard) operators in the business office clerical

employee Category (No. 6). The Employer insisted that the Employer classified them as skilled maintenance employees and thus they should be included in Category (5). The Employer was asked to describe the job of the PBX Operators and stated, "It's essentially answering the telephone." (Transcript, at p. 82) The Petitioner agreed to the Employer's position. After the Petitioner acquiesced, the Hearing Officer attempted to confirm that the Employer's position was that the end-result, a Category (5) Skilled Maintenance unit comprised of maintenance employees and PBX operators, as configured by the Employer, was an appropriate unit. The following transpired on the record:

> HEARING OFFICER IRVING: Okay. All right. Hearing that now, Employer, what is your position on the appropriateness of those six employees comprising the skilled maintenance unit?
>
> MR. CARMODY: My position is that by Board rule regulated -- by Board rule regulation, it is the only appropriate unit, skilled maintenance, absent the extraordinary circumstances.
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> HEARING OFFICER IRVING: So that means that you're suggesting that it would be an appropriate unit?
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> MR. CARMODY: It's not my decision to make, sir.
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> HEARING OFFICER IRVING: May I have an answer for the record?
>
> MR. CARMODY: That's my answer. It's not my decision, sir. It is defined by Board rule and regulation as the only appropriate unit. (Transcript, at pp. 83-84)

Thus, it is unclear from the record whether the Employer has taken a position as to whether not the Category (5) unit, with the Employer's modifications, is an appropriate unit. However, for the reasons set forth below, it is unnecessary for me to determine whether the PBX operators are appropriately skilled maintenance employees or whether they would more appropriately be included in a different category.

Category (6) All business office clerical employees

The parties agreed that the following classifications of employees should be included in this category: admitting clerk; billing clerk; accounts payable clerk; payroll clerk; mail clerk; network specialists; financial counselors; log analysts; and therapy office managers. About 23 employees fall under this category.

Category (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees.

The parties agreed that the following classifications of employees should be included in this category: cooks; housekeepers; floor technicians; housekeepers; lab aides; linen aides; transcriptionists; monitor technicians; phlebotomists; physical therapy aides; physical therapy assistants; telemetry technicians; transporters; X-ray aides; and X-ray aides/film; CS technicians; surgical technicians and certified surgical technicians; pharmacy technicians; certified pharmacy technicians; ward clerks; coders; radiology secretary; rehabilitation secretary; chart analysts/discharge analysts; Health Information Management (HIM) technicians; certified nursing assistants (CNAs); central supply technician; receiving clerk; coordinator/buyer; and nutritional services aide II. About 82 employees fall under this category. The Petitioner

maintained that Radiology Aides should be included under this category but the Employer stated that it did not employ persons with that title. The issue was not resolved the record.

As to exclusions from the units, the parties, in summary, agreed that the following classifications should be excluded from any units found appropriate herein: house supervisors; human resource assistants; executive assistants; medical staff coordinator; and staffing coordinator.

D. Positions on Alternative Units

The Petitioner stated on the record that it would agree, if so ordered by the Regional Director, to proceed to an election with respect to all professionals without a *Sonotone* election. It also stated that it would proceed to an election of all nonprofessional employees, if the Regional Director so ordered. The Employer, in response to the Petitioner stating its willingness to accept alternative units, stated that the Employer would move to dismiss the petition unless anything other than units contained in the amended petition were found to be appropriate. The Employer argued that if any unit other than the final unit set forth in the amended petition was found appropriate, the Employer would have been denied an opportunity to litigate the alternative units.

III. The Employer's Permanent and Rotating Team Leaders

A. Permanent Team Leaders

The parties dispute the status of team leaders with the Employer claiming they are all supervisors and the Petitioner denying the supervisory status of all team leaders except Janet Lackey. The parties stipulated that Lackey, who works the day shift and is the only permanent team leader in the Operating Room (OR), is a supervisor and should be excluded from the professional bargaining unit. I adopt the parties' stipulation which is consistent with the record evidence adduced and will exclude Lackey from the units.

The Employer claims that the following six permanent (full-time) team leaders are supervisors and must be excluded from the professional unit:

Registered Nurse	Work area	Shift
Nicole Roybal	Medical-Surgical unit	day
Margaret Fernandez	Medical-Surgical unit	night
Dana Konno	ICU	night
Elaine Lucero-Rowin	ICU	day
Edwina Lucero	Emergency Room	night
Louella Read	Obstetrics unit	day

The Employer claims that the following 13 registered nurses who serve at times as rotating team leaders are supervisors and must be excluded from the professional unit:

Clara Archibeque (Romero)	Medical-Surgical unit	day
Germaine Valdez	Medical-Surgical unit	night

Jennifer Lucero	Medical-Surgical unit	day
Angela Barela	Medical-Surgical unit	day
Amanda Romero	Medical-Surgical unit	night
Michelle Montoya	ICU	day
Brenda Miller	ICU	night
Jennie Nation	ICU	day
Guadalupe Mata	ICU	day
Luis Rael	ICU	day
Shirley Hollis	ICU	night
Sharon Deal[3]	ICU	night
Diane Reddan	Emergency Room	day

The Petitioner maintains that none of the disputed registered nurses are supervisors and all should be included in the professional bargaining unit.

About 64 staff registered nurses provide direct care to patients in patient care units at the hospital. Registered nurses (RNs) are assigned to work in the medical-surgical unit, the intensive-care unit, Nursing Administration, the ER, OR/PACU, the cardiovascular laboratory, the obstetrics unit, and in risk management, education, and case management. The registered nurses report to the Chief Nursing Officer, to registered nurse house supervisors, to various Directors or Interim Directors of units and departments, and, to the extent described below, to the team leaders. In providing patient care, registered nurses follow the doctors' orders and perform tasks such as administering medications, running blood tests, taking vital signs, observing patients, and processing admissions and discharges. Registered nurses may direct less-skilled employees to perform tasks such as feeding, bathing, and walking patients. Registered nurses may also direct employees to perform tests that are ordered by doctors for their patients.

Rates of pay for nurses vary according to qualifications and tenure. A registered nurse employed three years or less receives an hourly rate of $19.50. From four to seven years, the hourly rate is $22.45. From 8 to 12 years, the hourly rate is $25.50. From 13 to 20 years, the hourly rate is $28.65. After 20 years, the hourly rate is $31.40. The maximum registered nurse hourly rate is $33.76.

A licensed practical Nurse I employed three years or less receives an hourly rate of $13.80. From four to seven years, the hourly rate is $14.84. The maximum licensed practical nurse I hourly rate is $14.84.

A licensed practical Nurse II employed for three years or less receives an hourly rate of $14.10. From four to seven years, the hourly rate is $15.86. From 8 to 12 years, the hourly rate is $16.37. From 13 to 20 years, the hourly rate is $17.68. After 20 years, the hourly rate is $19.01. The maximum licensed practical nurse II hourly rate is $20.53.

A certified nursing assistant employed for three years or less receives an hourly rate of $7.80. From four to seven years, the hourly rate is $8.39. From 8 to 12 years, the hourly rate is

[3] Interim Director Maestas described Deal as a full time Team leader. The Employer said it would look into the issue of whether she was a permanent or rotating Team leader but this was never clarified on the record.

$9.06. From 13 to 20 years, the hourly rate is $9.78. After 20 years, the hourly rate is $10.51. The maximum certified nursing assistant hourly rate is $11.35 per hour.

Seven registered nurses at the hospital serve as permanent team leaders and fourteen serve as rotating team leaders. Team leaders may monitor the patients in the unit, meet with doctors and the patients' family members, and follow up on unusual incidents. Team leaders usually assume their own patient load, taking a full complement of patients. The record evidence is contradictory as to how much of a premium registered nurses receive for serving in the team leader capacity. One receives 50 cents per hour added to her hourly rate while others received an additional $1.50 per hour. The reason for the differing premiums was not explained in the record.

The Employer's job description for a team leader describes the position purpose as "…under the direction of the Unit Director, Team Lead shall be responsible for assessing, planning, supervising and evaluating the nursing care of patients and for correlating the nursing process, the medical plan of care and policies, coordinate nursing activities of the shift, make assignments, supervisor (sic) the delivery of care, monitor flow of work, and coordinate overall patient care activities." Maxine Flora, the Chief Nursing Officer (sometimes called the Director of Nursing in the record) was called by the Employer to testify and stated that the job description for house supervisors specifically requires them to be responsible for guaranteeing the quality of the work of nurses on their shift, but the job description for team leaders does not mention this. She could not say if team leaders were actually involved in filling out job evaluation forms for nurses. Flora noted that team leaders lack the authority to requisition or procure education for certified nursing assistants.

The record is unclear as to how team leaders are selected for their positions. It appears that the more senior registered nurses are asked to serve in this position. The witnesses agreed that team leaders have never been given any sort of formalized training for their positions, other than the training all registered nurses receive.

The Employer and the Petitioner called various witnesses to testify about their and other nurses' experiences serving in the team leader position. Much of the specific testimony and documentary evidence relating to the duties and responsibilities of team leaders centered around Louella Read. Nancy Chaffee, the Director of surgical services, the catheterization laboratory, and the obstetrics unit was called as a witness. The parties stipulated that Chafee is a supervisor within the meaning of the Act. I adopt the parties' stipulation which is consistent with the record evidence adduced. Chaffee testified that on September 1, 2006 the Employer promoted Louella Read to the position of team leader. The Employer submitted into evidence that showed that Read was granted a wage increase from $29.09/hour to 29.88/hour at the time of her promotion. Chaffee testified that Read is currently the only permanent team leader in the obstetrics unit. Chaffee testified that Read is authorized to make personnel decisions with respect to employees in obstetrics unit.

The Employer submitted nine forms entitled "Employee Checking Correction." These forms relate to time and attendance issues with respect to various nurses. One, signed by registered nurse Lucero dated March 22, 2007, stated that Lucero had failed to punch in because of her attendance at a meeting. Two other forms were signed by registered nurse Fernandez. One, dated March 21, 2007, stated that Fernandez had been called back into work but had been

too busy to clock in; another stated that Fernandez had failed to clock in and out because she had forgotten her badge. The other forms introduced into evidence documented similar discrepancies. Each Employee Checking Correction was signed by Read in the space designated for a supervisor's signature. Chaffee testified that in the Operating Room unit, only Chaffee and team leader Janet Lackey were authorized to sign such forms and, in the obstetrics unit, only Chaffee and team leader Read were authorized to sign these forms. The Employer did not produce any "Employee Checking Correction" forms signed by any team leader other than Read.

The Employer also submitted seven "Employee Activity Request Forms." These forms document approval of leave for various nursing employees. One submitted by registered nurse Gutierrez on January 31, 2007, sought 36 hours of vacation time for a planned family vacation. Another submitted by Georgia Rybal and dated March 28, 2007, sought 40 hours of sick leave. All seven documents were signed by Read in the space designated for a supervisor, and on each of the documents, Read checked the box indicating that, in each case, she was granting the leave requests. No other approving signature appears on these documents. A further document, dated March 19, 2007, shows Read herself submitted a request for 12 hours of vacation time and Read signed as both the requestor and reviewing supervisor. The Employer did not produce any "Employee Activity Request Forms" forms signed by any team leader other than Read.

Finally, the Employer submitted into evidence 12 "On Call/Call Back Hours" forms signed by Read for the two-week pay period ending March 31, 2007, in the space designated for a supervisor's signature. These forms do not contain the signature of any other supervisor. For that same period Read signed a computer-generated report dated April 1, 2007, entitled "Punch Detail Report" and stamped "Pre-Final." The report details the time and attendance of 13 employees. Again, the Employer sought to produce, but stated that it could not locate, any "On Call/Call Back Hours" or "Punch Detail Reports" signed by any team leaders other than Read.

Chaffee testified that team leaders have the authority to assign personnel and direct personnel by use of the team leader's own independent judgment without having to consult in advance with Chaffee or some other person of authority at the hospital. She stated that team leader Read in the obstetrics unit was the only permanent team leader in that unit and possessed that authority. Chaffee noted that the obstetrics unit, unlike the operating room, utilized the classifications of Nurse I and Nurse II. Chaffee testified that Read determines who will serve as Nurse I or Nurse II and sometimes that decision is made on the basis of which nurse is capable of handling patients in labor. Some registered nurses in the obstetrics unit are relatively new hires (called orientees) and are considered lacking experience to handle patients in labor, so these nurses must serve in the obstetrics unit for a year before being considered qualified to handle patients in labor.

Chaffee testified that licensed practical nurses are not permitted to serve as a senior nurse in the obstetrics but can only be scheduled when there is a registered nurse in the unit as some obstetrics patients require one-on-one registered nurse care. One registered nurse works in obstetrics each day with a second registered nurse "on call." Chaffee testified that Read completes the obstetrics unit schedule as well as the "on-call" schedule and takes into consideration matters such as employee requests for time off.

When the obstetrics unit becomes busy, as many as three or four registered nurses may be present in the unit. In addition to her team leader duties, Read serves the unit as a full time staff registered nurse. Read's shift is usually Wednesday, Thursday, Friday, and then sometimes she works her fourth shift as an on-call nurse. Read elects to work Tuesdays at the hospital doing mainly administrative work. (No testimony was adduced of any other team leaders reporting for a day to do primarily administrative work.) Chaffee estimated that Read spends her Tuesdays making new work schedules, revising work schedules, accumulating requests for vacation leave, educational leave, or requests by employees to take courses. Read reviews logs completed by employees. Read reviews the Employer's daily revenue reports. She serves as the Employer's direct liaison with the Department of Health. She ascertains that employees have completed necessary competencies for their positions. On occasions, Chaffee asks Read to review charts for her.

According to Chaffee, Read assigns employees in the obstetrics unit to complete logs such as critical care logs dealing with the checking and maintenance of critical care equipment, resuscitation equipment, and infant warming equipment. Read assigns employees to maintain point-of-care testing logs such as one that checks for amniotic fluid leaks. The obstetrics unit maintains an on-call log so that extra staff will be available to be called in if there is a spike in volume in the unit.

Read evaluates registered nurses as to how they are progressing and whether or not they are ready to become a Nurse I. She informs Chaffee on the progress of new employees. Read is involved in the educational training of employees. When the unit is not busy, Read may mentor an orientee.

Chaffee testified that Janet Lackey is the team leader in the Operating Room (OR) and has the same authority as Read. A minimum of 12 employees work in the OR including surgical technicians, environmental service employees, sterile supply technicians, a certified nursing assistant and six to seven registered nurses.

Chaffee noted that in the same manner as she oversees Read, she oversees the work of Lackey. Chaffee stated that Lackey completes a daily revenue report which is an auditing report that has to be reconciled with operating room charges. She is involved in time and attendance logs referred to as punch detail logs. Lackey completes a work schedule and is involved in quality control and is the head of education for the operating room. Chaffee noted that team leader Lackey was never given any written materials to train her to be a team leader nor detail her team leader duties.

When Chaffee evaluated Lackey she used the standard registered nurse job description as opposed to the team leader job description. She stated that she used the registered nurse job description form because it is not much different from the team leader job description form.

Chaffee testified that employees in the OR are assigned to critical testing and the maintenance of specific temperatures and humidity. Logs are maintained to assure that specifications are adhered to. Lackey reviews the logs and prepares a report on a monthly and quarterly basis that she forwards to Chaffee.

Lackey, like Read, is charged with signing off, as supervisor, on "low census forms." These are documents that are completed by employees who might not receive all of their fully scheduled hours because of low number of patients in their unit during a particular time period. By completing the form and having it authorized by a supervisor, the employee avoids the negative impact of not receiving a fully credited 36-hour work week. The record does not clarify specifically what the negative impact of a low census would be.

Chaffee was unsure as to how much time Lackey and Read spent on their team leader duties but estimated roughly that Lackey worked 12 to 15 hours of her work week on those duties, and Read worked 10 to 12 hours per week on those duties.

Chaffee claims that if Read or Lackey failed to perform their duties, she would take action but failed to specify the exact type of action. She conceded that she had never disciplined them. Rather, she indicated that she prefers just to counsel people rather than issue discipline.

Chaffee defined the use of "call teams." In the operating room, the Employer provides coverage 24 hours per day and seven days per week. Accordingly, if the day shift is absent and an emergency arises, the Employer will notify the "call team" to report for duty.

For additional testimony regarding team leaders, the Employer proffered the testimony of Darren Maestas, a registered nurse who served as a house supervisor for about 18 months and, about one week before the representation hearing had been promoted to Interim Director for both the medical-surgical unit and the intensive-care unit. Maestas described his duties as supervising the employees in both units, overseeing them and assuring that units are operating properly and the employees are performing their work.

Maestas stated that team leaders, who were under his supervision, had the authority to adjust staffing ratios if their unit had a disproportionate number of nurses to patients. That is to say, they could call in an extra nurse if the nurse-to-patient ratio was too low or they could send a nurse home if the ratio was too high. Though Maestas asserted that team leaders could exercise this authority on their own initiative, he stated that they always came to him for prior approval before making any staffing adjustment. He stated that team leaders had the same authority with respect to transferring registered nurses from one unit to another. In doing so, they would take into account the strengths and weaknesses of the employees for the task to be assigned, such as, whether a nurse worked well with infants or with geriatric patients.

Maestas testified that registered nurses report to the team leaders before leaving their work area to run errands like taking specimens to the laboratory or going on breaks. Maestas did not clarify whether this reporting is required or merely habitual. Maestas testified that team leaders are held accountable for mistakes made by registered nurses under their charge, but none had ever been issued discipline. In fact, during his tenure as a house supervisor, Maestas had never issued a disciplinary action. Rather, Maestas recalled occasions when team leaders made errors, and he spoke to them about the incident.

Maestas testified that team leaders usually carry cell phones and that tardy employees call team leaders to notify them they will be late. There is no evidence as to the frequency that this occurs, nor is there any evidence as to whether a call to a team leader, as opposed to a call to someone else in the hospital, is required.

In testimony that contradicts evidence to the contrary, Maestas testified that team leaders do not have the authority to approve "Employee Activity Request Forms." He stated that that he, himself, only approved one such form during his term as a house supervisor.

Maestas stated that he had never seen a "clock in correction form" signed by a rotating team leader though house supervisors sign them frequently, and Maestas has never informed team leaders that they have the authority to sign those forms. However, Maestas believes that some house supervisors allow their team leaders to have more authority than other house supervisors.

Only two of the permanent team leaders, Nicole Roybal and Dana Konno were called to testify. Roybal, a permanent team leader in the medical-surgical unit on the day shift who was called by the Employer, confirmed much of the testimony of Chaffee. Thus, Roybal testified that during weekdays, she reports to the Director of the medical-surgical unit unless she is absent, in which case she reports to Maxine Flora, the Director of Nursing. On weekends, Roybal would report to the house supervisor.

The medical-surgical unit holds 38 patients that arrive from other areas of the hospital such as the emergency room, the operating room, or the intensive-care unit. When patients are admitted to the unit, a registered nurse is required to sign off on their admission papers. The patient census generally fluctuates in the twenties. The unit employs registered nurses, licensed practical nurses, certified nursing assistants, a ward clerk and a housekeeper.

Roybal testified that she decides which employee will do which task. For instance, if Roybal needs assistance processing a patient for admission, she will generally take a certified nursing assistant with her rather than a registered nurse, as the skill of a registered nurse is not needed. If she needs assistance starting an intravenous drip device (IV), she will take a registered nurse with her rather than a certified nursing assistant, because registered nurses are more adept at starting IVs. Roybal makes sure the certified nursing assistants perform their duties appropriately. In the case of inadequate care, either she or the nurse in charge of the patient will assure that the care is corrected.

Roybal testified that she assigns the night shift nurses. She stated that if she has five licensed practical nurses and one registered nurse scheduled for the night shift, she will give the majority of the patients to the licensed practical nurse so that the registered nurse will not be overwhelmed with matters such as signing off on patient admissions. In making this assignment, she takes into account whether licensed practical nurses are intravenous drip device (IV) certified and the acuity of patients, if possible. Also, she tries to be consistent and assigns nurses to the same patients they had the previous night. If a patient requests a particular nurse, Roybal tries to accommodate the patient's request. She attempts to assign a child patient to a nurse with pediatric experience, if one is available, and she avoids assigning an infected patient to a nurse who has a post-operation patient for fear of passing the infection to the susceptible post-operation patient. If she has a question about assignments, she consults with a more experienced nurse.

Roybal has called in certified nursing assistants to assist, when staffing needs demanded. After doing so, she has informed Flora of her action. Flora has approved of Roybal's decisions,

with Roybal's adequate justification. Roybal testified that her authority varies with the shift she is working. During the day shift, she is quite independent, but when she works evenings or weekends, the house supervisor delegates less authority and makes the decisions instead of Roybal. For instance, during the day shift on weekdays, Roybal can send nurses home, without first seeking permission, if the unit is overstaffed. In doing so, she takes into account the acuity of the patients, the level of experience of the employee, and the nurses' desire to go home. She follows a chart (called staffing guidelines) prepared by higher administration that displays patient numbers and the number of nurses that are required based on those numbers. There have, however, been occasions when Roybal will depart from the staffing guidelines. On the weekends, however, the house supervisor will make these decisions.

During the day shift on weekdays, Roybal has, on occasion, sent employees out of her unit to a different portion of the hospital. Roybal made these determinations on her own, but later informed higher level supervision. Again, on the weekend, when a house supervisor is present, the house supervisor made the determination whether or not to send an employee to a different unit and which employee to send.

Roybal does not have the authority to require employees to stay beyond their assigned shift. She can assign voluntary overtime to employees without seeking prior authorization from higher supervision, but must justify her decision to higher supervision later.

Roybal does not assign employees their break and lunch times. Rather, employees will inform Roybal when they have down time and are able to take their breaks and lunches. Likewise, when they return from their breaks and lunches, they inform Roybal. There have been occasions when Roybal has denied an employee request to take a break at a particular time.

Roybal has never imposed any sort of discipline. If a registered nurse or certified nursing assistant fails to perform her duties adequately, Roybal talks to the nurse. If the discussion is unsuccessful, Roybal writes a report of what happened and gives it to the house supervisor or the Director. She has done that twice during the year before the hearing. This report was not considered to be a disciplinary action. On one occasion, during her tenure as a team leader, Roybal was asked to write an evaluation of an employee. She wrote the evaluation but is unaware as to whether it was approved by the Employer or given to the employee.

According to Roybal, all employees have the obligation to ensure that the Nursing Policy and Procedures manual used by the hospital is adhered to. Her previous house supervisor, Jennifer Townsend, told her that she would be disciplined if the manual was not followed. However, Roybal was not aware of a team leader being disciplined for failing to follow the manual protocol.

Dana Konno, a staff registered nurse and a permanent team leader for about three years in the intensive-care unit, was called by Petitioner to testify. At an unspecified point in time, Konno served as a house supervisor for three shifts during a year's time. She stated that Elaine Rowin (presumably Elaine Lucero-Rowin), Sharon Deal and Konno serve as team leaders in the intensive-care unit. Her testimony, although contradictory to some extent from that of Roybal, generally corroborated Roybal's testimony.

Thus, Konno stated that the team leader makes patient assignments for the next day, and they generally assign nurses to the same patients they were assigned to the previous day, or if there are difficult patients, they try to configure the assignments so that no nurse has more than one difficult patient. Konno, contrary to Roybal, testified she, as a team leader, does not take into account the skill of the nurses, because all registered nurses are supposed to be equally competent.

Konno testified that she attends meetings with the house supervisors, the Director of nursing, the department manager or managers, and the other permanent team leaders. Konno stated that only the permanent, and not substituting or rotating, team leaders attend these meetings.

Konno testified that she does not have the authority to call in nurses when short-staffed but has referred the issue to the house supervisor. She stated that she does not have the authority to transfer a nurse to a different department if the intensive-care unit is over-staffed. She testified that a float log is maintained in the intensive care, and after the house supervisor approves a transfer in or out of the intensive-care unit, the person on the float log is sent in or out.

If a nurse calls in sick and there are not enough nurses for the next day, Konno would turn the matter over to the house supervisor to obtain adequate staffing. If the intensive-care unit is overstaffed, she informs the house supervisor who handles that issue as well. Konno testified, contrary to Roybal and Chaffee that she does not have the authority to permit anyone to go home. Konno testified that in the event a nurse has to leave because of illness of an emergency, Konno informs the house supervisor who passes on the matter. If two nurses want to switch schedules, there is a form they have to fill out and the form is sent to the nursing administration office for approval or disapproval. Konno testified that she has no authority to pass on those requests.

Konno testified that Employees seeking a rest or lunch break report that they are leaving or returning from the break to Konno but Konno has never denied a break request. Konno has no authority to discipline anyone and has never been told she has that authority.

Konno testified that sometimes, but not consistently, she makes recommendations relating to the performance of a nurse based on her assessment of the nurse involved. Konno stated that her recommendations to house supervisors are sometimes followed.

B. Rotating Team Leaders

Aside from the seven permanent team leaders, some of the other registered nurses take turns rotating into the team leader position, essentially to fill in for permanent team leaders when they are on vacation, taking days off, or, working a shift that does not have a permanent team leader assigned to it. In order to qualify to serve as a rotating team leader, a rule has been established that a registered nurse must have one year of experience in the unit in which he or she works. The record is not clear as to how the rotation of the team leader position is worked out for all units and departments, but, depending on the unit, it may be worked out among the registered nurses themselves, or it may be set by the house supervisor or a higher level manager.

The frequency and regularity with which a particular registered nurse will serve as a "rotating" team leader depends on several factors including whether or not the registered nurse desires to serve as a rotating team leader, the size of the patient care unit in which the registered nurse works, the number of other registered nurses who serve as rotating team leaders in that unit, and whether the unit has any permanent team leaders. Some registered nurses do not serve as either rotating or permanent team leaders at the hospital. Most individuals who do not serve as team leader have either less than one year of experience in their work area or work in areas where there are more senior registered nurses. Some registered nurses at the hospital simply choose not to serve as team leaders.

The Employer submitted documentation (Employer Exhibit 21) reflecting nurses who, during the approximately 12 months preceding the representation hearing, have served as a rotating team leader; the number of days in which that nurse has worked during the same period (the first number set forth beside the nurses' names); and the number of days in which the nurse has served as a rotating team leader (the second number set forth). Finally, I have calculated the approximate percentage of time that each registered nurse spent as a rotating team leader.

Luis Rael	144	(92)	64%;
Michelle Montoya	210	(74)	35%
Germaine Valdez	192	(61)	32%
Dianne Reddan	208	(69)	33%
Shirley Hollis	178	(52)	29%
Jenny Nation	127	(33)	26%
Amanda Romero	82	(15)	18%
Jennifer Lucero	147	(27)	18%
Guadalupe Mata	125	(17)	14%
Angela Barela	161	(19)	12%
Brenda Miller	170	(15)	9%
Clara Archibeque	140	(10)	7%.

The Employer, in its post-hearing brief, examined a more limited period of time, January 1, 2007 through March 31, 2007 and determined that the following registered nurses served as rotating team leaders more than 10 to 15% of the time during that more limited period:

Germaine Valdez – 64%
Shirley Hollis – 58%;
Jennifer Lucero – 44%
Michelle Montoya – 39%
Amanda Romero – 33%
Brenda Miller – 33%
Jenny Nation – 31%
Guadalupe Mata – 30%
Louie (sic) Rael – 26%
Clara Archibeque – 1%
Michelle Velasquez – 12%.

The last nurse named, Velasquez, was not mentioned at the hearing and is not found in the Exhibits. It is unclear as to who this individual is. Conversely, there are two names that the

Employer supplied data for in its exhibit that are not mentioned in the attachment to the Employer's brief: Dianne Reddan and Angela Barela.

The Employer has analyzed a more limited period than the period for which it submitted data. The Employer's brief states that the Employer has chosen this time because the Board does not specifically define the period of time that should be analyzed when determining supervisory status. On the record, the Employer took the position that it would argue that Brenda Miller is a supervisor because during the last quarter preceding the representation hearing, she had worked a significant period of time as a team leader. The Petitioner noted that Miller acted as a team leader for about a two-month period when the permanent team leader, Dana Konno, was on extended leave.

Rotating team leaders substitute for permanent team leaders. As set forth above, certain registered nurses may spend a significant amount of time serving as rotating team leaders. The Employer, who contends that rotating team leaders are supervisors with in the meaning of the Act, presented only conclusionary testimony that rotating team leaders are charged with the same duties or authority of permanent team leaders when serving as rotating team leaders. The petitioner offered witnesses Brenda Miller and Luis Rael, both of whom have served as team leaders. Miller testified that although she has performed the function of a rotating team leader on several occasions, she has never been given any training for the job of team leader. When she inquired as to what her responsibilities would be as a team leader, she was told that she was to make assignments for the following shift. Miller, however, stated that all changes in staffing needs are handled by the house supervisor. She stated that she has called the house supervisor if an employee wants to leave early and the house supervisor alone authorizes deviations from the schedule. Any call-in, whether it is for tardiness or absence, is sent to the house supervisor or to the head of the department, depending on whether it is received on the day shift or night shift. Miller stated that team leaders inform a house supervisor if they are short personnel. The house supervisor then decides what action, if any, to take. Miller testified that, as a rotating team leader, she has never been granted authority to grant or deny overtime or issue discipline.

Miller testified that she has never signed Employee Checking Correction forms or Employee Activity Request Forms. She was never been asked to do so by the Employer. She stated that prior to the testimony of management witnesses at the representation hearing, she had never heard that team leaders had the authority to sign these forms. Miller testified that it was her understanding that both of those forms needed to be submitted to Nancy Esquivel, the scheduling coordinator.

Miller stated that she worked 6.2 percent of her time in the last 12 months as a team lead. The Employer took the position that Miller is a supervisor because during the last quarter preceding the representation hearing, she had worked a significant period of time as a team leader. The Petitioner noted that Miller acted as a team leader for about a two-month period when the permanent team leader, Dana Konno, was on extended leave. Before Konno took leave, Miller had not served as a team leader. After Konno returned from leave, Miller ceased serving as a team leader. When performing the team leader function, Miller received 50 cents more per hour than her regular pay.

Luis Rael, a registered nurse, who was also called by the Petitioner to testify, stated. that he has not performed team leader duties since January 27, 2007. Rael testified that while

working as a rotating team leader, if there was an insufficient number of staff on hand to care for the patient load, Rael would inform a house supervisor or the Director of the intensive-care unit, who would decide how to address the shortage. Elaine Lucero-Rowin, a permanent team leader, informed Rael that the two tasks he would perform when serving as a team leader were to check the crash cart (an emergency cart apparently stocked with medications and other necessities required for assisting or resuscitating a patient) and assure that the break room was clean. His workload was the same as when he served as a registered nurse. He never made a decision to send a nurse home for any reason but on occasion may have conveyed a message from a house supervisor releasing a nurse.

As a team leader, Rael never assigned breaks or lunches to employees. Breaks were hardly ever taken and lunches were arranged by someone sending a nurse to the cafeteria to obtain lunch for the nursing faculty. Nurses then stood by the door to the break room eating their lunches as they were required to tend to their patients.

Rael testified that he was never told that, as a team leader, he had authority to discipline employees, and he never understood that he had such authority. He stated that he had never observed a team leader discipline an employee. He testified that he was never informed that he would be held accountable for the actions of team members and was, in fact, never told anything, positive or negative, with respect to team performance. Rather, he was not told anything about being a team leader.

IV. Analysis and Determinations

A. The Appropriate Units

The Board's Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry), 29 CFR § 103.30, 54 Fed. Reg. 16336-16348 (1989), 284 NLRB 1515 (1987), et seq. sets forth eight appropriate bargaining units applicable to acute care hospitals. It provides that these eight units "shall be…the only appropriate units," with just three exceptions: (1) where "extraordinary circumstances" are shown; (2) where there are "existing non-conforming units; and (3) where a labor organization seeks "various combinations" of these eight units. The pertinent portions of 29 CFR § 103.30 are set forth below:

Through rulemaking, the Board sought to avoid proliferation of health care bargaining units and to limit the possible units to a reasonable, finite number of congenial groups that each displayed a community of interest within themselves and a disparity of interests from other groups. See 52 Fed. Reg. 25146, 284 NLRB at 1522; 53 Fed. Reg. 33905, 284 NLRB at 1536. In *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991), the Supreme Court approved of the Board's rulemaking authority when the healthcare rules were challenged as exceeding the Board's authority. The Rule provides that, except in "extraordinary circumstances" or where there are existing non-conforming units, the following units are appropriate in an acute-care hospital: (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; and (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

The Employer notes that the Board has stated in its rulemaking decision that units of "all professionals" or "all nonprofessionals" are obviously appropriate. *Board's Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry)*, 29 CFR § 103.30 54 Fed. Reg. 16336-16348 (1989), 284 NLRB 1515, at 1573 (1987), et seq. The Employer argues that because the connector "or" is disjunctive, the Board was implied that the two units may not be combined, even by means of a *Sonotone* election. The Employer cites no caselaw in support of its argument that if a *Sonotone* option is granted the professionals herein it would invalidate the appropriateness of the units petitioned-for.

If the Board were to adopt the Employer's reasoning, professional employees at an acute care hospital would not be given the choice to decide if they desired to be included in a bargaining unit that included nonprofessional employees. The undersigned believes that the Employer misreads the Board's statement as it is far more reasonable the Board was using the disjunctive connector because it is not necessary for a labor organization to seek a combined professional and nonprofessional unit. Rather, either unit, independent of the other, is appropriate. The language referred to by the Employer, rather than showing that the units petitioned-for are inappropriate, appears to affirm the appropriateness of the units. Because the Petitioner seeks to allow the professionals to decide for themselves if they desire to be included in a larger unit of nonprofessional employees does not invalidate the appropriateness of the units sought.

The parties did not explore the interaction and duties of all classifications of employees sought by the petition. Nevertheless, the petition seeks a wall-to-wall unit of employees, excluding guards, as physicians do not work at the hospital location. Prior to the passage of the healthcare rules, the Board reviewed cases involving stipulated election agreements entered into by parties covering units of professional and nonprofessional employees at acute care hospitals. E.g.: *Hollywood Medical Center*, 275 NLRB 307 (1985); *Greenbrier Valley Hospital*, 265 NLRB 1056 (1982). Since the healthcare rules were implemented, a unit of registered nurses and all nonprofessional employees at a psychiatric hospital has been found by the Board to be appropriate. *Holliswood Hospital*, 312 NLRB 1185 (1993). The Employer has cited no cases indicating Board disapproval of the units petitioned-for.

As noted earlier, the Board notes to the Rules specifically sanction units of "all professionals or all nonprofessionals" as being "obviously appropriate." Proposed Rules, above, 53 Federal Register 33900, at 33932 (1988). Nothing in the finalized Rules contradicts this observation, and there is no known caselaw to support the contention that petitions encompassing these two broad classifications are inappropriate.

Based upon all of the above and the record developed in this matter, I find that the units sought by the Petitioner are appropriate. I now turn to the Petitioner's request that the professional employees be granted the opportunity to decide whether they wish to be included in the larger nonprofessional unit.

Section 9(b)(1) of the Act provides that, "[T]he Board shall not (1) decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." Thus, the Act effectively grants professional employees the right to decide by majority vote whether they wish to be included in a unit with nonprofessional employees. In

Leedom v. Kyne, 358 U.S. 184, 191 (1958), the Supreme Court held that Congress "intended that right to be enforced" by the Board. To safeguard that right, the Board has adopted a special type of self-determination procedure known as a *Sonotone* election, so named after the lead case. *Sonotone Corp.,* 90 NLRB 1236 (1950). In a *Sonotone* election, the ballot for the professionals includes two questions. The first question asks the professional employees if they want to be included in a unit of professional and nonprofessional employees. The second question asks the professional employees if they wish to be represented by the union or unions involved. *American Medical Response, Inc.,* 344 NLRB No. 161 (2005); *Pratt & Whitney, a Division of United Technologies Corp*., 327 NLRB 1213, 1217-1218 (1999).

Based upon all of the above, having found that the petitioned-for units are appropriate, I also find that the professional employees can be included in the nonprofessional unit, if they choose, through a self-determination election.

B. Team Leaders

The parties dispute whether certain permanent registered nurse team leader are supervisors within the meaning of the Act. Supervisors are specifically excluded from the Act's definition of "employee" by Section 2(11) of the Act which defines a "supervisor" as:

> any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under this definition, individuals are statutory supervisors if:

> (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., "assign" and "responsibly to direct") listed in Section 2(11);
>
> (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and
>
> (3) their authority is held "in the interest of the employer." *NLRB v. Kentucky River Community Care,* 532 U.S. 706, 713, (2001).

Supervisory status may be shown if the asserted supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The burden to prove supervisory authority is on the party asserting it. Id. at 711-712

The Board avoids construing supervisory status too broadly as a supervisory finding removes an employee from the Act's protection. *Chevron Shipping Co.,* 317 NLRB 379, 381 (1995). The supervisory definition distinguishes two classes of workers: true supervisors vested with "genuine management prerogatives," and employees such as "straw bosses, lead men, and set-up men" who are protected by the Act even though they perform "minor supervisory duties." N*LRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974) (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)).

Thus, the dividing line between these two classes of workers, for purposes of Section 2(11), is whether the putative supervisor exercises "genuine management prerogatives." Those prerogatives are specifically identified as the 12 supervisory functions listed in Section 2(11) of the Act. If the individual has authority to exercise (or effectively recommend the exercise of) at least one of those functions, 2(11) supervisory status exists, provided that the authority is held in the interest of the employer and is exercised neither routinely nor in a clerical fashion but with independent judgment. *Oakwood Healthcare Inc.*, 348 NLRB No. 37, at 3 (2006); *Croft Metals, Inc.,* 348 NLRB No. 38 (2006); *Golden Crest Healthcare Center,* 348 NLRB No. 39 (2006).

In the *Oakwood, Croft Metal,* and *Golden Crest* decisions, the Board clarified the circumstances in which it will find that individuals exercise sufficient discretion in performing two of the functions listed in Section 2(11) – assignment and responsible direction of work – to justify their classification as statutory supervisors. As recently clarified in *Oakwood*, the term "assign" refers to the "act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee." *Oakwood*, above, slip op. at 4. In the health care setting, the term "assign" encompasses the responsibility to assign other employees to particular patients. Id.

In *Oakwood,* the Board explained "responsible direction," as follows: "If a person on the shop floor has 'men under him,' and if that person decides 'what job shall be undertaken next or who shall do it,' that person is a supervisor, provided that the direction is both 'responsible . . . and carried out with independent judgment."[4] "Responsible direction," in contrast to "assignment," can involve the delegation of discrete tasks as opposed to overall duties. *Oakwood,* above, slip op. at 5-6. But, an individual will be found to have the authority to responsibly direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Oakwood*, above, slip op. at 7.

Assignment or responsible direction will, as noted above, produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood,* above, slip op. at 8. Independent judgment requires that the decision "rise above the merely routine or clerical." Ibid.

I shall examine each of the relevant supervisory criteria as they apply to team leaders.

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[4] In providing this explanation, the Board referred to statements made by Senator Flanders during the 1947 Senate hearings concerning the Act. At those hearings, Senator Flanders offered the amendment adding the phrase "responsibly to direct" to Section 2(11). See NLRB, Legislative History of the Labor Management Relations Act of 1947, 103-104.

Assignment of Staff

Making assignments based upon room location, continuity of care, and equalization of the workload is essentially routine and not indicative of supervisory status. *Loyalhanna Care Center,* 332 NLRB 933, 935 (2000); *Youville Health Care Center*, 326 NLRB 495, 496 (1998*); Crittenton Hospital,* 328 NLRB 879, 882 (1999). However, to the extent the assignments are based on assessments of the employees' relative skills, such assignments require independent judgment and therefore are supervisory. *Franklin Hospital Medical Center,* 337 NLRB 826, 830 (2002). On the other hand, an employee is not deemed a supervisor based on such assignments if he or she assigns tasks based on employees' well-known differing abilities. *Hausner Hard-Chrome of KY, Inc.,* 326 NLRB 426, 427 fn. 7 (1998).

Director Chaffee testified that team leaders are authorized to and in fact exercise considerable independent judgment in making staff assignments. Roybal confirmed that she uses independent judgment when making staff assignments, in that she takes into account such matters as the acuity of a patient and the skills and experience of the nurse, as well as the nurses workload. Konno states that she does not take such matters into account because all nurses are supposed to be competent. So stating, however, Konno does not deny that team leaders have authority and are expected to exercise independent judgment in making assignments. The Board will not normally find supervisory status when the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority. *Kentucky River,* above, 532 U.S. at 711 (2001); *Franklin Hospital Medical Center,* above, 337 NLRB at 829; *Crittenton Hospital,* above. In this case, I do not find the testimonial evidence to be in substantial conflict. I find that notwithstanding the authority and the mandate to exercise considerable independent judgment in making work assignments, some team leaders in fact routinely exercise this judgment, while others, regardless of job expectations, may not. Accordingly, I find that team leaders are expected to, and in fact do, exercise independent judgment in the assignment of work. On the other hand, the testimony with respect to rotating team leader is in substantial conflict. The Employer provided neither testimonial nor documentary evidence that rotating team leaders have ever been informed that they possess any of the authority of permanent team leaders. There is also no evidence that any rotating team has exercised the authority of permanent team leaders. Finally, the Employer did not provide documentary evidence of the criteria to be used by rotating team leaders when assigning patients. Nurse Rael testified that he was simply told that, as a rotating team leader, he would make certain that crash carts were maintained and assure that the break room was kept clean. This is indicative of the minimal responsibility and expectations accorded the Employer to rotating team leaders. Based on the foregoing, I find that the Employer has not met its burden of showing that rotating team leaders possess supervisory authority when assigning staff.

Overstaffing, Understaffing, and Overtime

Permanent team leader Roybal sends nurses home without first seeking permission, sends employees out of her unit on her own initiative, assigns voluntary overtime without obtaining prior authorization from higher-level supervision and can call in a certified nursing assistant if she believes one is needed. Konno, on the other hand, seeks prior permission from a house supervisor before attempting any adjustment of the staff. I find that there is sufficient evidence to establish that permanent team leaders possess the supervisory indicia of being able to make staffing adjustments.

On the other hand, the evidence concerning rotating team leaders being involved in these matters is lacking. Miller and Rael both testified that they had to refer staff adjustment matters to the house supervisor on duty. There is no direct evidence that rotating team leaders have the authority to engage in any staff adjustments. Thus, the Employer has not met its burden of establishing supervisory authority of rotating team leaders based on the correction of staffing problems.

Responsible Direction

The record does not establish that either the permanent or rotating team leaders responsibly direct the units they work in and there is no first-hand evidence of rotating team leaders engaging in such direction. The permanent team leader's assignment of discrete tasks to staff members, such as filling in a log sheet, is better characterized as a routine function than a duty that requires independent judgment. Moreover, there is no more than conclusionary evidence, the statement by Roybal that all nurses are required to follow the Employer's policies, that team leaders are held responsible for directing the work of others. No evidence was introduced by the Employer which shows that the responsibly directing the work of others was made a part of a team leader's appraisal. See, *Franklin Hospital Medical Center,* above, 337 NLRB at 831, where, the Board found that the employer failed to show that staff registered nurses were fully accountable for the performance of their subordinates because the record did not include disciplinary warnings and evaluations to nurses who failed to direct the work of other employees. Also: *Loyalhanna Care Center*, above, 332 NLRB at 935. Cf. *Schurnmacher Nursing Home*, 214 F.3rd 260, 267 (2d Cir. 2000). The direct evidence from permanent team leaders versus rotating team leaders shows that the permanent team leaders may exercise more direction over employees in their units than do rotating team leaders but in either case, the employees are well-trained in their duties and require little oversight. Rather, team leaders care for their own patients and seldom intervene in the work of others absent an unusual need.

Discipline

The team leaders uniformly testified that they do not issue discipline to employees, and no documentary evidence of any discipline having been issued by team leaders was submitted. A few team leaders stated that they would report misconduct to undisputed supervisors such as house supervisors or Directors. The mere reporting of poor conduct does not establish supervisory status, especially here, where the undisputed supervisors may independently investigate the matter. *Williamette Industries,* 336 NLRB 743, 744 (2001). The Employer's counsel, at hearing, asked some of the team leaders what they would do if an employee arrived at work obviously intoxicated. Some indicated that they would report the matter to undisputed supervisors. One permanent team leader stated that she would send the employee home. I find that this testimony does not support a finding of supervisory status, with respect to either permanent or rotating team leaders as the authority to send employees home for flagrant violations such as intoxication does not constitute supervisory authority because it does not require the use of independent judgment. *Michigan Masonic Home*, 332 NLRB 1409, 1411 fn. 5 (2000); *Lincoln Park Nursing Home*, 318 NLRB 1160, 1162 (1995)

Secondary Indicia

I have found that, unlike the permanent team leaders, rotating team leader have no primary indicia of supervisory status. I now turn to secondary indicia with respect to rotating team leaders. Registered nurses who have rotated as team leaders earn from 50 cents per hour to as much as $1.50 per hour additional pay when they serve as team leaders. This factor does not in itself confer supervisory status. *First Western Building Services,* 309 NLRB 591, 603 (1992). In fact, secondary indicia alone do not demonstrate supervisory status in the absence of the primary indicia set forth in Section 2(11). *Ken-Crest Services,* 335 NLRB 777, 779 (2001). Although the Employer failed to specify the precise schedules and availability of undisputed supervisors, there is an implication that at some times, a rotating team leader is the highest-ranking employee physically present in the unit. However, the direct evidence shows that even in those cases, rotating team leaders generally must clear any significant decision with a house supervisor or other undisputed supervisors. The Board has held that even if the highest-ranking employee in an area does not possess supervisory authority, the absence of anyone else with such authority does not confer supervisory status. *Ken-Crest Services,* above at 779 fn. 16 (2001); *Training School at Vineland,* 332 NLRB 1412 (2000).

The evidence shows that the permanent team leaders are invited to management meetings where undisputed supervisors are present. Rotating team leaders do not attend supervisory meetings. This distinction is indicative of a higher level of confidence and responsibility accorded permanent team leaders over rotating team leaders. Unless a registered nurse serves as a permanent team leader, a nurse acting as a rotating team leader does not appear to be considered, even by the Employer, to be an integral part of the management team.

Regular and substantial basis serving as supervisor

An employee who substitutes for a supervisor may be deemed a supervisor if given supervisory authority when substituting and if the substitution is regular and substantial. *Rhode Island Hospital,* 313 NLRB 343, 348 (1993); *Gaines Electric Company,* 309 NLRB 1077, 1078 (1992); *Aladdin Hotel*, 270 NLRB 838 (1984). The sporadic assumption of supervisory duties, e.g., during annual vacation periods or on other unscheduled occasions, is insufficient to establish supervisory authority. *Latas de Aluminio Reynolds*, 276 NLRB 1313 (1985); *Canonsburg General Hospital Association*, 244 NLRB 899 (1979. An individual will be deemed a statutory supervisor only if he or she functions in a supervisory capacity on a regular and substantial basis. Additionally, the Board has found that rotating "supervisors," who at times are in charge of coequal employees, but at other times are subordinate to their coequals, are not supervisors. *General Dynamics Corp.,* 213 NLRB 851, 859 (1974); *Westinghouse Electric Corp. v. NLRB*, 424 F. 2d 1151, 1155-1156 (7th Cir. 1970); Cf. *Wurster, Bernardi & Emmons, Inc.,* 192 NLRB 1049, 1051 (1971).

The Employer as the party advocating supervisory status was obliged to demonstrate that particular registered nurses served in a team leader capacity for substantial periods of time and according to a set pattern and that when so serving possessed and exercised supervisory authority. As set forth above, it failed demonstrate that rotating team leader possess supervisory authority. But even assuming that there was a demonstration that rotating team leaders, were substituting for permanent team leaders, possessed and exercised the same authority and

responsibility of permanent team leaders, it failed to demonstrate that rotating team leaders served as supervisors for substantial periods of time and according to a set pattern. Thus, with respect to the permanent team leaders, Read is the team leader most clearly and regularly involved in primary supervisory functions. She is the only team leader who regularly approves employee requests related to time and attendance. However, Director Chafee estimated that Read spends only 10 to 12 hours per week involved in team leader duties. From the limited tasks accorded the permanent team leaders, it is clear that they spend a fraction of their work week involved in team leader duties, but instead spend most of their time providing patient care. Notwithstanding this, the permanent team leaders serve as team leaders at all times, and I conclude their service is regular and substantial. The rotating team leaders, on the other hand, are accorded far less authority when serving as team leaders, actually exercise that minimal authority far less frequently than the permanent team leaders, and do not do so according to a regular pattern.

In sum, I note that in this 54-bed hospital, a least 20 out of 64 registered nurses have served at some time as team leaders. Of those 21 nurses, 14 have been identified as rotating team leaders. I observe that even being a rotating team leader appears to be voluntary and subject to termination at will. From the record evidence, there are no other criteria for being selected to serve as a team leader other than the requirement that the nurse has worked for one year in the unit. Once chosen, there is no training and the responsibility conferred upon the nurse is as little as being told to keep the break room clean and make sure the crash cart is stocked. Miller and Archibeque, two of the nurses the Employer seeks to exclude from the bargaining unit worked only 9% and 7% of their days, respectively, as rotating team leaders. Even those rotating team leaders who worked a higher percentage of their days as a rotating team leader still spent most of their time performing regular nursing work. I find that these minimal standards, would permit the Employer to designate most of its 64 registered nurses (provided they've worked one year in the unit) to be rotating team leaders and thereby unduly exclude them from the bargaining unit.

Conclusion on supervisory status of team leaders

Based upon the foregoing, I find that the Employer has satisfied the burden of proving that permanent team leaders possess indicia of supervisory authority set forth in Section 2(11) of the Act. Accordingly, I find the permanent team leaders to be supervisors within the meaning of the Act and will exclude them from the professional bargaining unit.

The rotating team leaders do not possess the authority of permanent team leaders. The evidence shows that when rotating team leaders serve in that position, they serve in a lesser role. Assuming that it had been established that rotating team leaders possess some supervisory powers, I would still find the Employer has not established that they spend such a substantial and regular portion of their work time in the team leader role to justify their exclusion from the bargaining unit. *Oakwood,* above, slip op. at 14. Accordingly, the rotating team leaders are not supervisors within the meaning of the Act, and I will include them in the professional bargaining unit.

C. Per Diem employees

The Petitioner seeks to represent per diem employees in both units. The record does not contain discussion with respect to the per diem employees or the formula to be applied in determining their eligibility to vote.

Under the Board's longstanding and widely used test for voter eligibility in these circumstances, a per diem employee is found to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages four (4) or more hours of work per week for the last quarter prior to the eligibility date. *Sisters of Mercy Health Corp.*, 298 NLRB 483, 484 (1990); *Davidson- Paxton Co.*, 185 NLRB 21, 24 (1970); *May Department Stores*, 181 NLRB 710 (1970). Although no single eligibility formula must be used in all cases, the *Davidson-Paxton* formula is the one most frequently used, absent a showing of special circumstances. *Trump Taj Mahal Casino*, 360 NLRB 294, 295 (1992). Neither the Petitioner nor the Employer argued any special circumstances. Thus, I shall include the per diem employees in the respective non-professional and professional units who have averaged four or more hours of work per week for the last quarter prior to the eligibility date set for the election.

D. Conclusion as to Units

Based upon the foregoing, I find the following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP A

INCLUDED: All full-time and regular part-time nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico.

EXCLUDED: All employees employed at clinics, professional employees, physicians, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

VOTING GROUP B

INCLUDED: All full-time, regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheritization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, and speech pathologists, and, per diem employees

averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico.

EXCLUDED: All employees employed at clinics, nonprofessional employees, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

The employees in the nonprofessional Voting Group A will be asked if they desire to be represented for the purposes of collective bargaining by **District 1199NM, National Union of Hospital and Healthcare Employees**.

The employees in voting group (B) will be asked two questions on their ballot:

(1) Do you desire to be included with nonprofessional employees in a unit composed of:

INCLUDED: All full-time and regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheritization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, speech pathologists, and nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico;

EXCLUDED: All employees employed at clinics, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

(2) Do you desire to be represented for the purposes of collective bargaining by **District 1199NM, National Union of Hospital and Healthcare Employees**?

If a majority of the professional employees in voting group (B) vote "yes" to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their vote on the second question will then be counted together with the votes of the nonprofessional voting group (A) to determine whether or not the employees in the whole unit wish to be represented by the union. If, on the other hand, a majority of professional employees in voting group (B) vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented by the Union.

My unit determination is based, in part, then, upon the results of the election among the professional employees. However, I now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **INCLUDED:** All full-time and regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheritization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, speech pathologists, and nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico;
>
> **EXCLUDED:** All employees employed at clinics, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A

> **INCLUDED:** All full-time and regular part-time nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico.
>
> **EXCLUDED:** All employees employed at clinics, professional employees, physicians, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

UNIT B

INCLUDED: All full-time and regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheritization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, and speech pathologists, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico.

EXCLUDED: All employees employed at clinics, nonprofessional employees, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above voting groups at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.[5] The employees who are eligible to vote are those in the voting groups who are 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. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the voting groups are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

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[5] Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be estopped from objecting to non-posting of notices if it is responsible for the non-posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

DISTRICT 1199NM, NATIONAL UNION OF HOSPITAL AND HEALTHCARE EMPLOYEES

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within **seven (7) days** of the date of this Decision, the Employer file with the undersigned, two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters in the voting groups. The undersigned will make these lists available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the lists at the NLRB Regional Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004-3099, on or before June 1, 2007. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

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, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570. This request must be received by the Board in Washington, DC, by the close of business at 5:00 p.m. (EDT) on June 8, 2007**. The request may be filed electronically through E-Gov on the Board's website, www.nlrb.gov,[6] but may **not** be filed by facsimile.

Dated at Phoenix, Arizona, this 25th day of May 2007.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28

[6] Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**. To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, www.nlrb.gov.