

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

BROOKHAVEN MEMORIAL HOSPITAL
MEDICAL CENTER

Employer¹

and

LOCAL 342, UNITED FOOD AND
COMMERCIAL WORKERS UNION

Petitioner²

Case No. 29-RC-084828

and

LOCAL UNION NO. 111, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Intervenor³

DECISION AND DIRECTION OF ELECTION

Brookhaven Memorial Hospital Medical Center (“Brookhaven” or “the Employer”) is a hospital providing acute care and other health care services in Patchogue, New York. On July 10, 2012, Local 342, United Food and Commercial Workers Union (“Local 342” or “the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act (“the Act”), seeking to represent a unit of approximately 680 service and maintenance employees in the main hospital building, located at 101 Hospital Road in

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ Local 111’s motion to intervene was granted, based on a showing of interest.

Patchogue. However, the Employer contends that the only appropriate unit must include service and maintenance employees employed at five other facilities. Those facilities are: (1) a building across from the hospital known as “100 Hospital Road,” (2) the Women’s Imaging Center, (3) the Swezey Pavilion, (4) Health Center West, and (5) Health Center East. The Employer contends that the approximately 70 – 80 service and maintenance employees employed at those five locations share an “overwhelming” community of interest with the petitioned-for employees, such that it would be inappropriate to exclude them. The Petitioner disagrees, contending that its petitioned-for unit limited to the main hospital building is appropriate. The Intervenor did not take a position on the single-site versus multi-site issue.

A hearing on the unit scope issue was held before Colleen Breslin, a Hearing Officer of the National Labor Relations Board (“the Board”). Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the single-site unit sought by the Petitioner is appropriate for purposes of collective bargaining. Accordingly, I will direct an election among service and maintenance employees employed in the hospital building at 101 Hospital Road.

Background – the unit sought

The Board’s rules and regulations delineate eight appropriate units for purposes of collective bargaining in acute-care hospitals. (Section 103.30, also known as the Health Care Rule, or hereinafter “the Rule.”) Specifically, the Rule provides that the following eight units are the only appropriate units 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
- (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

Section 103.30(a). The eighth unit, essentially a “catch-all” consisting of all the nonprofessional employees not already included in units 4 through 7, is commonly known as the “service and maintenance” unit.

In the instant case, the parties stipulated that Brookhaven is an acute-care hospital as defined in the Board’s Health Care Rule. *See* Section 103.30(f)(2). Thus, there is no dispute that the Rule applies to this Employer, and that the petitioned-for service and maintenance unit falls under the Rule’s eighth unit. Accordingly, during the hearing, the parties stipulated to the following unit description, specifying some additional exclusions:

All full-time, regular part-time and per diem nonprofessional employees other than technical employees, skilled maintenance employees, business office clerical employees, guards and supervisors as defined by the Act,

but excluding: all other employees; technical employees; business office clerical employees; MIS/IT personnel; quality control personnel; confidential employees; employees of, or working at or with subsidiaries, subcontractors, physician practices, or affiliated locations or organizations; any employees currently represented by Brookhaven Memorial Federation of Nurses and Health Professionals or by Local 111, International Brotherhood of Teamsters; members of the Board of Directors; owners; guards; and supervisors as defined by the Act.

Thus, the only issue in dispute is the geographic scope of the unit, i.e., whether an appropriate unit must also include the multiple facilities proposed by the Employer.

Background – bargaining history

The Petitioner herein does not currently represent any employees at Brookhaven. However, two other labor organizations represent certain employees, as follows.

The parties stipulated that the Brookhaven Memorial Federation of Nurses and Health Professionals, NYSUT, AFT, AFL-CIO (herein called “FNHP/AFT”), represents a unit of professional employees, including registered nurses, case managers, physicians’ assistants, psychologists, pharmacists, social workers and other professional classifications.⁴ As described in more detail below, the professional unit encompasses multiple facilities, including the hospital, certain programs at the Swezey Pavilion, and the Health Centers.

Local Union No. 111, International Brotherhood of Teamsters (“Local 111” or “the Intervenor”) represents a unit of clerical employees. Excerpts of the 2010 – 2012 contract between the Employer and Local 111 describes the unit as follows:

all full-time and regular part-time clerical employees employed by the Hospital in the following Departments effective January 1, 2004: Accounts Payable, Business Office, Communications, Home Care Billing, Information Services, Mail and Duplicating, and Patient Access, excluding all other employees, professional employees, technical employees, service and maintenance employees, guards and supervisors as defined in the National Labor Relations Act of 1947, as amended.

The Employer characterizes the unit represented by Local 111 as a unit of business office clerical employees, which is the sixth unit delineated in the Health Care Rule. As

⁴ The three professional units delineated in Section 103.30(a) of the Board’s Rules include: (1) all registered nurses, (2) all physicians, and (3) all professionals except for registered nurses and physicians. The FNHP/AFT unit does not include physicians. Thus, the FNHP/AFT unit appears to be a combination of units (1) and (3), that is, all registered nurses and all other (non-physician) professionals. A bargaining unit may conform to the Board’s rules if it consists of “a combination” of the eight specified units. Section 103.30(f)(5).

described below, this unit also encompasses multiple locations, including the hospital, certain offices at the Swezey Pavilion, and the payroll office at 100 Hospital Road.

The Employer's facilities – general description

Main hospital building, 101 Hospital Road: As stated above, Brookhaven is a hospital located at 101 Hospital Road in Patchogue. The hospital has 306 beds for admitted patients, and employs more than 1,800 employees. Of the Employer's facilities, it is the only one providing acute-care services 24 hours per day, 7 days per week.

Departments and services in the hospital building include the emergency room, nursing, cardiology, hemodialysis, surgery and peri-operative services, psychiatric/behavioral health, laboratory services, radiology, a pharmacy, nutritional services, environmental services, security, human resources, health information management, and plant maintenance and repair. The Petitioner seeks to represent approximately 680 service and maintenance employees there in a wide range of classifications, including nurses' aides, various clerical employees, assistants, environmental service employees and nutritional service employees.

100 Hospital Road: This building is a multi-use commercial building, located directly across the street from the hospital. It houses the following services and departments: outpatient radiology/imaging, cardiac rehabilitation, cardiac outreach, the payroll office, employee health, corporate compliance, medical library services, medical education, residency office, community relations, marketing, and planning/development. It also houses other commercial tenants, not related to the hospital. The Employer employs approximately 50 to 55 employees in the 100 Hospital Road building. As described in more detail below, the Employer specifically contends that about 4 or 5

clerical employees in outpatient radiology/imaging, employee health and the payroll office belong in the service and maintenance unit.

Women's Imaging Center: This building is located at 285 Sills Road, East Patchogue, less than one mile away from the main hospital building. It provides radiology and imaging services specifically geared towards women's health, such as mammograms, ultrasounds and bone density tests. It is part of the department of radiology. It employs a total of approximately 12 technical and clerical employees. The Employer specifically contends that the 4 or 5 clerical employees there belong in the service and maintenance unit.

Swezey Pavilion: This building is located at 103 West Main Street in Patchogue, about four miles away from the main hospital building. It includes an outpatient hemodialysis center; the homecare and hospice programs; and offices for engineering, security, finance, billing and accounts payable. The Employer employs a total of about 160 employees at the Swezey Pavilion, including business office clerical employees represented by Intervenor Local 111. The Employer contends that 10 to 15 service and maintenance employees employed at Swezey belong in the petitioned-for unit.

Health Center West: Under a contract with the Suffolk County Department of Health, the Employer provides ambulatory care to local residents who do not have health insurance. Health Center West is located at 365 East Main Street in Patchogue, about three miles from the hospital. Services there also include "behavioral" health, such as programs dealing with alcoholism and chemical dependency. It employs about 70 people, including about 25 to 30 service and maintenance employees.

Health Center East: This is another community health center, located at 550 Montauk Highway, Shirley, New York, about eight miles from the hospital. Similar to the Health Center West, it employs about 70 employees, including 25 to 30 service and maintenance employees who the Employer claims belong in the petitioned-for unit.

There is no dispute that employees at all six locations are employed by the same corporate entity, the Brookhaven Memorial Hospital Medical Center. In total, the Employer employs between 2,200 and 2,300 employees at those six locations. This total does not include individuals employed by subcontractors at those locations, nor does it include other facilities operated by the Employer, such as the Wound Care Center at 33 Medford Avenue in Patchogue.

In terms of the service and maintenance employees, the Employer's proposed multi-site unit would increase the petitioned-for unit from 680 employees to about 750 – 775 employees.

The Employer's evidence in general

The Employer's principal witness was human resources manager Kelly Foster. She testified for six days concerning the Employer's operations at the multiple facilities involved herein. Foster's seven years of employment with the Employer have all been in the human resources department, which is located in the main hospital building, although her work has also required her to travel to the "offsite" facilities at times.⁵

During the hearing itself, and in its post-hearing brief, the Petitioner questioned Foster's competence to testify about certain matters about which she did not have

⁵ Witnesses sometimes referred collectively to all the facilities, other than the main hospital building, as "offsite."

personal knowledge. Indeed, in many instances, when Foster was asked the basis of her assertions, she admitted that she heard the information second-hand, or that she “assumed” something to be true based on other facts. For example, Foster testified that clerical employees in the inpatient hemodialysis department (in the main hospital building) and in outpatient hemodialysis (in the Swezey Pavilion) “can” cover for each other if necessary. However, she did not have personal knowledge that this actually occurs or, if so, how often. In response to questions by the Hearing Officer, Foster stated that she believed the inpatient and outpatient hemodialysis clerical employees could cover for each other (1) because their job titles are the same, and (2) because the director of hemodialysis, Gail Steiger, told her that it happens. Steiger herself did not testify.

On the seventh and last day of hearing, the Employer called two additional witnesses to testify. Specifically, the senior director of cardiovascular services Nona Kupfer testified regarding the radiology department’s operations in three facilities (the main hospital building, 100 Hospital Road and Women’s Imaging), and senior administrator Joseph Volavka testified regarding the Health Centers East and West. Neither the Petitioner nor the Intervenor called any witnesses to testify.

Thus, the following factual description, starting with evidence of the Employer’s overall human resource functions, is based primarily on Foster’s unrebutted testimony. Additional testimonial evidence from Kupfer and Volavka will also be noted below, in connection with detailed descriptions of the respective facilities.

The Employer’s human resource functions

Foster testified generally about the Employer’s hiring process. Specifically, she explained that, when a department manager wants to fill a vacancy, he or she must fill out

a “personnel request form” (“PRF”) and get approval from the department vice president, and then from the Employer’s fiscal oversight and planning committee. If the request is approved, the human resources office posts the position internally first. Employees from any of the Employer’s facilities are eligible to apply. If the Employer hires an internal applicant, it is considered a “transfer.” (Specific examples of transfers among the Employer’s facilities are discussed below in connection with the respective facilities.) On the other hand, if the Employer does not select an internal candidate, the position is then posted externally on the Employer’s website, in help wanted advertisements, at job fairs and the like. Individuals who do not already work for the Employer apply as “new hires.”

When a position is posted, the human resources department collects the relevant paperwork (e.g., employee transfer forms, resumes, application forms for new hires), and forwards them to the “hiring manager” for the particular department. The hiring manager decides whom to interview, interviews the candidates and selects a candidate for hire. Foster testified vaguely that “there are times” when the department manager wants human resources to attend a second interview or wants to “consult” with human resources, but she did not specify when or how often this occurs. In any event, the department hiring manager then fills out a “personnel communication report” (PCR) for new hires, and submits it to the department vice president for approval and ultimately to human resources. For certain clinical positions where the Employer has recruited applicants externally (e.g., for department of nursing positions), the “clinical recruiter” may conduct the interviews and fill out the PCR for approval.

All new employees attend the same day-long orientation session at the hospital, in addition to specific orientation/training for their department. All new employees receive

the same employee handbook (Employer Exhibit 5).⁶ Foster testified that the same personnel policies apply to employees at all the facilities. (*See* Er. Ex. 28.) Foster also testified that departments also have their own policies, specific to their department.

The Employer submitted several human resource forms and documents that are used throughout the multiple facilities, including the personnel request form (PRF, Er. Ex. 1), transfer request form (Er. Ex. 24), employment application (Er. Ex. 3), interview form (Er. Ex. 6), reference check form (Er. Ex. 8), personnel communication report (PCR, Er. Ex. 2), new employee forms (Er. Ex. 13), new hire orientation packet and checklist (Er. Ex. 4, 15), employee handbook (Er. Ex. 5), change of address form (Er. Ex. 16), and the annual health assessment form (Er. Ex. 19). All departments, regardless of their location, must also have their own written checklist for their new-employee orientations.

Two of the specific personnel policies that applies to all employees, regardless of location, are the Employer's transfer and probation policies (Er. Exs. 9 and 17). Brand-new employees (i.e., not previously employed by the Employer) are subject to a six-month probationary period. Incumbent full-time employees who transfer into a different position, including a position in a different facility,⁷ are subject to a four-month probationary period in their new position. Part-time transferees are subject to a six-month probationary period. Foster explained that transferees' hospital-wide seniority stays the same for certain purposes (e.g., benefit accruals, and "years of service" under a 401(k)

⁶ All references to the record are hereinafter abbreviated as follows: "Er. Ex. #" and "Pet. Ex. #" refer to Employer exhibits numbers and Petitioner exhibit numbers, respectively.

⁷ The transfer-probationary policy does not apply when an employee merely changes shifts in the same job.

plan), but their seniority within the specific classification “re-sets” for layoff purposes. If transferees fail to complete the probationary period successfully, they are terminated from the new position and from employment with the Employer. They do not have a right or opportunity to transfer back to their prior position.

The record also indicates that all employees must undergo the same annual health assessment, including a “PPD” test for tuberculosis.

Department managers draft their own dual-purpose job description/appraisal forms for classifications in their department, although the human resources department also reviews and approves them. Employees are appraised at the end of their probationary periods, and annually thereafter. Foster testified that each employee’s immediate supervisor and department manager (i.e., those who know the most about the employee’s work) must write and sign the evaluation, and then send it to human resources for review and filing. For example, Joseph Volavka, senior administrator of Health Center West and Health Center East, “signs off” on the appraisals for employees at those facilities.

Foster testified that department managers and supervisors are responsible for disciplining employees in their departments. Although it is “recommended” that they consult with human resources before disciplining or terminating an employee, it is not required. Foster gave examples of her involvement as human resources manager in personnel issues at various facilities. For example, a Health Center West employee once contacted Foster to complain that a co-worker there was abrupt, slammed things down and refused to speak to her. Foster and Volavka met with both employees to discuss the problem. No discipline resulted, but Volavka instructed both employees to work together

“cordially.” Foster also spoke to Health Center East administrator John Goodman about terminating a probationary medical assistant within the past year, and about a custodian/watchman’s problem with lateness in the past one or two years. She and the Employer’s corporate compliance officer investigated a problem at Health Center East two to three years ago, which resulted in the discipline of some clerical employees and the removal of a manager there. Foster also testified generally that she has “spoken to” managers regarding personnel issues at other facilities on a “regular basis,” meaning a “couple of times per month,” although she did not describe those discussions in detail.

Employees are eligible for the same benefits, such as health benefits and tuition assistance, regardless of location. Foster testified that wage increases are applied “across the board” to employees at all the facilities, except to employees governed by collective bargaining agreements with Local 111 and the FNHP/AFT. For example, in 2012, all employees received the same 2.25 percent increase. Employees in all locations are eligible for the same employee recognition awards, such as under the “Star Awards” program. An employee from one of the Health Centers serves on the Star Award committee.

All employees are invited to events such as the Employer’s holiday party, employee appreciation barbeque and service awards dinner. Departments also have their own events, such as a golf fundraiser in 2012 for the Swezey Pavilion’s hospice program.

Outpatient radiology at 100 Hospital Road, and the Women’s Imaging Center

As noted above, 100 Hospital Road is located directly across the street from the main hospital building at 101 Hospital Road in Patchogue. Its departments include outpatient radiology/imaging, cardiac rehabilitation, cardiac outreach, the payroll office,

employee health, corporate compliance, medical library services, medical education, residency office, community relations, marketing, and planning/development. The Employer employs approximately 50 to 55 employees at 100 Hospital Road. The Employer contends that about 4 or 5 clerical employees at 100 Hospital Road -- specifically in outpatient radiology/imaging, employee health and the payroll office there -- belong in the petitioned-for service and maintenance unit.

The Employer's radiology department has three locations:

(1) Inpatient radiology is located in the main hospital building (101 Hospital Road), providing diagnostic radiology (x-rays), CT scans, MRIs and ultrasounds for admitted patients. There are more than 80 radiology employees there, including professional employees (some represented by FNHP/AFT), technical employees, technologists and clerical employees. The clerical employees include such classifications as radiology file clerks, radiology records clerks, medical transcriptionists, RIS/PACS analysts, PACS coordinators, medical assistant/appointment coordinators and others.

(2) The Outpatient Imaging Center, located at 100 Hospital Road in Patchogue, provides x-rays, CT scans and MRIs for ambulatory outpatients. It employs technical employees and one clerical employee (a radiology records clerk).

(3) The Women's Imaging Center at 285 Sills Road in East Patchogue specializes in such women's health services as mammographies, ultrasounds and bone density tests. Like outpatient radiology, it employs both technical and clerical employees. Specifically, there are four or five clerical employees in the classifications of radiology file clerk, radiology records clerk and medical assistant/appointment coordinator.

In the instant case, the Employer contends that the one clerical employee employed at the Outpatient Imaging Center and the four or five clerical employees at the Women's Imaging Center must be included in the service and maintenance unit, along with the hospital's inpatient radiology clerical employees.

Even though the three locations are all part of the radiology department, they are considered separate "cost centers" in the Employer's budget.⁸ They obviously provide many of the same services, although there are some differences, such as routine mammographies being provided only at the Women's Imaging Center. Inpatient radiology operates 24 hours per day, seven days per week, providing services to admitted patients, whereas the other two sites do not.

As for supervision, the whole radiology department is overseen by assistant director Christopher Schneider, who works in the main hospital building. Both the inpatient diagnostic radiology supervisor (Joseph Kopel) and the inpatient CT scan/ultrasound supervisor (Adam Furman) report to Schneider there. The technical employees at the Women's Imaging Center (such as mammographers) have their own supervisor there, Diane Scollo who, in turn, reports to Schneider. By contrast, technical employees at the Outpatient Imaging Center (radiographers) do not have a "local" supervisor but, instead, are supervised directly by Schneider. Foster testified that the 20 to 25 radiology clerical employees at the three locations are supervised by clerical support supervisor Dianne Masino, who reports to Schneider. She has an office in the main hospital building, but also travels to the other radiology locations.

⁸ According to Er. Ex. 26 and Foster's testimony, cost centers 7470 through 7492 encompass the radiology department. The exhibit also shows that the Women's Imaging Center and the Outpatient Imaging Center have their own cost center codes (6017 and 7497, respectively).

Foster testified that the classifications of “radiology records clerk” and “radiology file clerk” are essentially the same. According to the job description for the “records clerks” in the inpatient radiology department (Er. Ex. 31(b)), those employees’ duties include creating, maintaining and retrieving radiology medical records; compiling and distributing the inpatient schedule; performing reception duties in the radiology records room; and copying and releasing records (including films) upon proper authorization from the patients. The job description for the radiology “appointment coordinators” (Er. Ex. 31(a)) indicates that they schedule appointments for all tests within the radiology department, taking into account the type of exams, whether a radiologist is required and other factors; communicate with patients regarding their appointments, insurance referrals, and preparation for the exams; prepare the schedule of exams; and communicate with insurance companies, physicians’ offices, radiology employees, hospital registration and others as needed to coordinate the appointments.

Foster initially testified somewhat vaguely that the radiology clerical employees have been cross-trained to perform each others’ functions, and that they “can” be assigned to work at any one of the three locations. Foster herself was not personally involved in the cross-training, but she attended a radiology department meeting when the 100 Hospital Road facility first opened, wherein someone (unidentified) told employees they could be assigned to work at different facilities on different days. Later, under questioning from the Hearing Officer about her knowledge of the assignment issue, Foster said she had seen a radiology department schedule assigning the clerical employees to work in different locations on different days. The Hearing Officer asked to see such a schedule. On the next day of hearing, the Employer produced a schedule for three weeks

in July 2012 (Er. Ex. 40) which seemed to confirm Foster's testimony. For example, the exhibit showed: (1) that radiology file clerk Eileen Klein worked one day at the hospital building and four days at the Outpatient Center during the first week; (2) that medical assistant/appointment coordinator Debra Topping worked three days at the hospital and one day at the Women's Imaging Center during the first week, and (3) that radiology records clerk Marissa Rice worked three days at the hospital, one day at the Outpatient Radiology Center, and one day at the Women's Imaging Center during the second week. However, Foster herself was not involved in assigning or scheduling those employees, did not have personal knowledge of the scheduling, and did not indicate how often this actually happens.

The Employer also called Nona Kupfer, senior director of cardiovascular services (which includes radiology), to testify. Kupfer likewise testified that clerical employees at all three radiology sites are supervised by Dianne Masino, that they have been cross-trained, and that Masino assigns them to work at multiple locations within the same week. However, like Foster, Kupfer was not involved in preparing the schedule, was not familiar with the schedules, and had never gone onto the computer drive where the schedules are kept. The Employer did not call the person who actually schedules the radiology clerical employees, and who specifically produced Er. Ex. 40 -- supervisor Dianne Masino -- to testify.

Aside from Er. Ex. 40, the Employer did not provide departmental schedules for radiology or any other departments, despite the fact that the Petitioner had subpoenaed such schedules and the Hearing Officer directed the Employer to provide them.

Kupfer did have some first-hand knowledge of the radiology clerical employees covering for each other when necessary. For example, she testified that, a week before her testimony, a technologist and a clerical employee were sent from the hospital building across the street to the Outpatient Imaging Center when the latter was unexpectedly busy. Kupfer knew this because Masino called to say she was sending a clerical employee over to Outpatient, and asked if Kupfer could send a technologist too. Kupfer estimated that this kind of coverage occurs about once per week. Kupfer also explained that patients may be sent between the sites. For example, an obese or claustrophobic patient at the hospital could be sent to Outpatient for an MRI because the latter has a larger MRI machine. Kupfer did not estimate how often this occurs but she noted that, in such situations, clerical employees in different facilities may need to communicate with each other to set up the appointment or to discuss a billing or insurance issue.

As for permanent “transfers,” Foster testified that a radiology clerical employee named Selvana Gattuso, who used to work primarily at the Women’s Imaging Center, began working primarily at the hospital in early 2012.

Finally, Kupfer testified that the radiology department holds monthly staff meetings. Separate meetings are held at each of the three locations.

In terms of whether service and maintenance employees from the various radiology locations have contact or interaction with each other, Foster testified that the radiology records/insurance coordinator who works primarily in the hospital (Karen Wilkinson, job description Er. Ex. 31(e)) “can” verify patients’ insurance at all three radiology sites; and that she “may” need to physically travel to the two radiology offsites to do so, or to talk to the offsite clerical employees via telephone. However, Foster did

not know often Wilkinson actually calls or goes to the radiology offsites. Similarly, Foster testified that environmental service employees who clean the hospital also clean the Outpatient Imaging Center, although she did not state how often. Environmental service employees from the hospital also clean the curtains at the Women's Imaging Center on a quarterly basis. The record does not indicate whether the environmental service employees from the hospital clean those offsites during the offsites' normal business hours, nor whether they interact with other service and maintenance employees when they go there. Furthermore, Foster testified that nutritional service employees from the hospital perform "catering" at the radiology offsites on certain occasions, such as bringing sandwiches and cookies to an annual "radiology week" celebration. However, she did not know how often such offsite catering occurs.

Finally, Foster testified that the "pay structure" for offsite radiology clerks is the same as for those at the hospital.

Employee Health Service at 100 Hospital Road

The employee health service consists of three people: a physician's assistant, a licensed practical nurse (LPN) and a clerical employee. They handle health clearances for new hires and the annual health assessments required for all employees, including the PPD test for tuberculosis. They also deal with "exposures" (testing and treating employees who were exposed to a patient's bodily fluids) and administer flu shots to employees.

The Employer contends that the clerical employee in this program, called the “employee health coordinator,” must be included in the service and maintenance unit.⁹ (See job description, Er. Ex. 37.) Foster testified that this employee answers the phone, sends out the annual health assessment forms (Er. Ex. 19) to employees at all locations, coordinates their appointments for PPD tests, sends email reminders to employees who have not completed their PPD test, types correspondence, and maintains the employees’ health records. This program is supervised by the manager of infection control, whose location is not noted in the record.

The employee health coordinator has contact with employees from various facilities, for example, when they call to schedule their PPD test. She also accompanies the LPN to the main hospital building and other sites where the LPN administers the test, in order to maintain the files indicating who received it.

The payroll office at 100 Hospital Road

Most of the Employer’s finance department is located at the Swezey Pavilion, including the business office and accounts payable. Clerical employees in those offices are represented by Intervenor Local 111. However, part of the finance department dealing with the Employer’s payroll is located at 100 Hospital Road. The payroll office there is open on weekdays, 8:30 a.m. to 4:30 p.m. The payroll office employs two nursing payroll

⁹ In its post-hearing brief, the Petitioner also argues that the employee health coordinator at 100 Hospital Road must be excluded as a “confidential” employee. However, inasmuch as I have decided to exclude employees at the offsite facilities, I need not reach that issue.

coordinators, who the Employer contends belong in the service and maintenance unit.¹⁰

The office also has a senior payroll coordinator position, which is currently vacant. They are supervised by the payroll supervisor/specialist Margot Natale-Cercone who, in turn, reports to the comptroller at the Swezey Pavilion.

The Employer uses time-keeping/payroll software called Kronos. Each department has a time and attendance clerk who verifies employees' time for the pay period and makes corrections if necessary, before sending the information to the payroll office. According to their job description (Er. Ex. 38), the nursing payroll coordinators' job is to maintain time and attendance records for Nursing Department employees, complete their time sheets, manually process checks for adjustments, handle employee inquiries, resolve problems and distribute paychecks. In response to a leading question regarding whether departmental timekeepers at the hospital have a "direct interface" with employees in the payroll office, Foster answered affirmatively.

Finally, Foster testified that the nursing payroll coordinators' pay grade falls into one of the same clerical pay grades as hospital clerical employees, although she did not remember the details.

Swezey Pavilion

As noted above, the Swezey Pavilion is located at 103 West Main Street in Patchogue, about four miles away from the main hospital building. It includes an outpatient hemodialysis center; the homecare and hospice programs; and offices for engineering, security, finance, billing and accounts payable. The Employer employs

¹⁰ The Petitioner also argues that the nursing payroll coordinators must be excluded as business office clerical employees and/or confidential employees. Inasmuch as I have decided to exclude employees at 100 Hospital Road from the unit, I need not address those alternative arguments.

about 160 employees at the Swezey Pavilion, including many business office clerical employees represented by Local 111. The Employer contends that certain service and maintenance employees employed at Swezey belong in the petitioned-for unit, as specified below.

Outpatient hemodialysis at Swezey

The Employer provides hemodialysis for both inpatients and outpatients. The hemodialysis department is considered one department, although it has separate “cost centers” for inpatient and outpatient (7360 and 7362, respectively) in the Employer’s budget.

Inpatient hemodialysis at the hospital is for admitted patients who have serious kidney problems or kidney failure. It operates 24 hours per day, seven days per week. The hospital’s hemodialysis staff includes approximately 23 professional employees, technical employees and a unit secretary. It is supervised by a nurse manager (Denise Youst), who reports to the administrative director for hemodialysis (Gail Steiger), who, in turn, reports to the vice president of continuing care (Karen O’Kane).

The Employer also provides outpatient hemodialysis treatment for less-serious kidney problems at the Hemodialysis Center in the Swezey Pavilion. It employs approximately 42 professional employees (many of whom are represented by FNHP/AFT), technical employees and service and maintenance employees. Outpatient hemodialysis is supervised by nurse manager Doreen Loudon, who reports to Gail Steiger at the hospital.

The Employer contends that the following outpatient hemodialysis employees in the Swezey Pavilion belong in the petitioned-for service and maintenance unit: an insurance coordinator, a unit secretary, and some patient service assistants (“PSAs”)¹¹

According to the job descriptions (*See generally*, Er. Ex. 33(a)-(c)), the unit secretary performs receptionist work and clerical work, such as printing labels for blood samples and maintaining records. The insurance coordinator maintains updated insurance files on all patients; assists the department’s social worker in arranging transportation for patients; and assisting the unit secretary when necessary. The patient service assistants’ primary duty is to clean the outpatient hemodialysis area at Swezey Pavilion. However, PSAs also transport items such as blood samples, paperwork and medications by car between the hospital and the Swezey building. Thus, although their job consists mainly of cleaning (akin to environmental service employees’ job at the hospital), it also includes some transport work (somewhat akin to the transporters who work within the hospital). Foster testified that the PSAs’ pay structure is similar to the environmental service employees’ pay structure.¹²

The record indicates that the two service and maintenance employees have permanently transferred from the hospital to the Hemodialysis Center at Swezey. Specifically, in November 2011, a transporter in the hospital’s environmental services department, Timothy Koppas, became a patient service assistant at the Hemodialysis

¹¹ The number of PSAs is not clear from the record. Foster stated that there are three or four, whereas Pet. Ex. 1(c) indicates only two.

¹² Specifically, Foster explained that environmental service employees at the hospital have three pay grades, known as 101, 102 and 103. The wage rate of hemodialysis PSAs at Swezey fall in within grade 101.

Center. Then in July 2012, transporter Daniel Corrigan also transferred from the hospital to a PSA job at the Hemodialysis Center. In terms of non-service and maintenance employees, there was also evidence that, pursuant to a 2010 restructuring at the hospital that would have caused layoffs, three LPNs transferred from the hospital to LPN or technician positions at the Hemodialysis Center.

Although there was initially some confusion on the record, Foster clarified that there are two unit secretaries in the hemodialysis department – one in each location. She testified that those unit secretaries “can” cover for each other when necessary. However, Foster did not have personal knowledge that this actually occurs and, if so, how often. In response to questions by the Hearing Officer, Foster stated that she believed the inpatient and outpatient hemodialysis clerical employees could cover for each other (1) because their job titles are the same, and (2) because the director of hemodialysis, Gail Steiger, told her that it happens. Steiger did not testify, and therefore the record does not contain evidence as to this issue. Foster did not know any specific examples of the unit secretaries working at each other’s facilities. Similarly, although Foster stated that the hemodialysis technicians at the hospital and the outpatient center work “back and forth” between the two locations as needed, she did not know any specific examples to support that statement. Furthermore, as noted above, the Employer did not produce any written schedules showing that inpatient and outpatient technicians regularly work between the two hemodialysis locations, even though the Petitioner sought departmental schedules via

subpoena.¹³ Finally, although Foster asserted that the outpatient hemodialysis insurance coordinator at Swezey “interfaces” with hospital employees in billing and patient access departments on a “regular” basis, she did not give any specific examples to support the assertion, or even to show that she had first-hand knowledge of it.

Home care and hospice programs at Swezey Pavilion

The Employer provides two types of “continuing care” for patients outside the hospital: home care and hospice. The home care program provides health care and other services to patients in their home; it employs about 46 employees. The hospice program provides services in the homes of patients who are dying there; it employs about 16 employees. It is not clear from the record whether each program has its own office in the Swezey building, or whether the two programs share an office. They have separate “cost center” codes. The professional employees in these programs, such as nurses and social workers, are represented by the FNHP/AFT.

The Employer contends that approximately 8 to 10 clerical employees in the hospice and home care programs belong in the petitioned-for service and maintenance unit. Specifically, the hospice program has one team assistant. The home care program employs three team assistants, two home care intake clerks, a clerk/typist, a department secretary, a home care aide clerk, and a health information management clerk (“HIM clerk,” formerly known as “medical records clerk”). The home care receptionist position

¹³ The Employer’s post-hearing brief (at p. 37) states that there is “regular and consistent interchange, as well as temporary transfers, between the Inpatient and Outpatient units. The Hemodialysis Technicians transfer back and forth between the locations as needed on a day-to-day basis. In addition, the service and maintenance employees regularly provide coverage and transfer from the Outpatient to the Inpatient Hemodialysis Unit as needed.” However, these assertions were not supported by probative evidence in the record.

was vacant at the time of the hearing. Their job descriptions were admitted as Er. Ex. 34(a)-(f). None of the clerical employees in these programs are “business office clericals” represented by Local 111.

The home care and hospice programs have their own supervisors at the Swezey building. Specifically, the home care employees are supervised by nurse managers, who report to the director of home care and hospice, Deborah Peterson who, in turn, reports to vice president of continuing care, Karen O’Kane. Foster testified that the hospice supervisor position was vacant at the time of the hearing. Thus, hospice employees were reporting directly to Deborah Peterson at that time.

The record contained examples of permanent transfers between the hospital and these programs at Swezey. Specifically, in October 2008, a service and maintenance employee named Carol Bell in the hospital’s maternal-child unit became a team assistant in the home care program at Swezey. Bell opted to take that position rather than being laid off when the maternal-child unit closed. More recently, in June 2012, a clerical employee in the home care program at Swezey became a department secretary in the hospital’s cardiology department. The record also indicates two non-service and maintenance transfers: specifically, two registered nurses at the hospital started working as home care nurses in 2010 and 2011. Those were also permanent transfers. There is no evidence that home care or hospice nurses work in the hospital, or vice versa, in the normal course of their jobs.

Foster testified that the home care and hospice clerical classifications are analogous to clerical positions at the hospital. For example, the home care department secretary is in the same pay grade as department secretaries in the hospital.

Finally, Foster testified that home care and hospice employees “interface” with hospital employees when hospital patients are being discharged for care at home. If a patient choose to receive home care from Brookhaven, for example, the home care HIM clerk may need to contact a clerk at the hospital, to get the patient’s medical records. Foster did not estimate how often this occurs. She also said that, conversely, that when patients receiving home care need to be admitted to the hospital, the home care or hospice employees “may” need to follow up with the hospital. Foster did not give any other examples of interaction between the two locations.

Finance office at Swezey Pavilion

The Employer contends that a department secretary in the finance office belongs in the service and maintenance unit.¹⁴ Foster testified briefly that the secretary works with the comptroller and accountants who work in that office, and that she “may” also provide “some support” for the Employer’s business office. There is no other record evidence regarding this position.

Health Center East and Health Center West

As noted above, the Employer provides ambulatory, non-emergency care to local residents who do not have health insurance, under a contract with the Suffolk County Department of Health. Health Center West is located at 365 East Main Street in Patchogue, about three miles from the hospital. Health Center East is located at 550 Montauk Highway in Shirley, New York, about eight miles from the hospital. Each Center is open six days per week. Each Center employs about 70 people, including about

¹⁴ The Petitioner contends, alternatively, that the finance department secretary at Swezey is a business office clerical employee. However, given the exclusion of offsite employees from the unit, I need not address the argument.

25 to 30 service and maintenance employees who, the Employer contends, belong in the petitioned-for unit. RNs and other professional employees at the Health Centers are represented by FNHP/AFT. The Health Centers also provide “behavioral” health services, such as programs that deal with alcoholism and chemical dependency. Those programs are discussed separately below.

The Employer specifically contends that the following clerical positions¹⁵ at the Health Centers must be included in any service and maintenance employee unit:

- Health Center clerical support,
- Clerical support 2,
- Clerical support superuser,
- Health Center accounts receivable clerk,
- Health Center correspondence clerk,
- Health Center medical records intake clerk,
- Health Center medical records coder,
- Health Center schedule coordinator,
- Clerk/typist,
- Health Center mental health intake clerk, and
- Health Center receptionist.

Foster testified that the Health Centers have no business office clerical employees represented by Local 111, thus all the clerical employees there would be service and maintenance clericals. Their job descriptions (Er. Ex. 36(a)-(h)) show a variety of clerical tasks associated with maintaining intake, medical, billing and payment records; determining Medicaid eligibility; scheduling appointments; receptionist duties; using the

¹⁵ Foster explained that the Employer was in the process of cross-training the Health Center clerical employees to perform a range of clerical duties, and consolidating some of their job titles and descriptions. For example, the Health Centers’ medical records intake clerks, clerk/typists, mental health intake clerks and receptionists would all be known as “clerical support” employees, with the same job description. Since this consolidation was in process at the time of the hearing, the Employer included the job titles that were still in use at that time.

computerized Health Center Information System (HCIS); and complying with patient privacy rules and release of medical records.

The Employer also contends that the Health Centers' custodians/watchmen belong in the service and maintenance unit along with hospital employees. According to Foster, the custodian/watchman job consists primarily of cleaning the Health Center facilities, but also includes transporting various items (documents, medications, instruments to be sterilized) between the Health Centers and the hospital. Foster said that she personally sees a custodian/watchman bring inter-office mail to her human resources office at least once per week. Joseph Volavka testified that the custodians/watchmen do a "messenger" route on a daily basis. Volavka also testified that, although each Health Center has its own security guard, the custodians/watchmen also provide "backup support" in the event of a security issue.¹⁶ *See also* Er. Ex. 36(i), job description.

The record indicates that the Health Centers have multiple layers of local supervision before reaching a layer of common supervision with the hospital. Specifically, at Health Center East, the lower-level supervisors include a nurse manager (Sharon Smith-Daley), a medical records manager (Laura Pullar) who supervises the clerical employees, and a facilities manager (Jesus Colon) who supervises the custodians/watchmen. The administrator of Health Center East is John Goodwin, who reports to the senior administrator for both Health Centers, Joseph Volavka. At Health Center West, facilities manager Bill Casey supervises the custodians/watchmen. However, other supervisor positions were vacant at the time of the hearing. Thus, a non-

¹⁶ In its post-hearing brief, the Petitioner also argued that custodians/watchmen must be excluded from the (non-guard) unit as "guards" under Section 9(b)(3) of the Act. However, since Health Center employees will be excluded from the unit in any event, the 9(b)(3) issue needs not be decided herein.

supervisory charge nurse was filling the nurse manager's position at that time; Laura Pullar (medical records manager from Health Center East) and senior administrator Volavka were supervising the clerical employees at Health Center East; and Volavka was also serving as administrator for Health Center East. Volavka reports to the Employer's chief operating officer and executive vice president, Richard Margulis.

The record indicates that, since 2008, three service and maintenance employees have made permanent transfers between the hospital and the Health Centers. Specifically, in July 2008, a unit secretary at the hospital, Denise Williams, became a clerical support employee at Health Center East. In April 2011, an environmental service employee from the hospital, Adrian Quinones, became a custodian/watchman at Health Center West. And in July 2011, a clerical support employee from Health Center East, Dawn Gray, became a unit secretary at the hospital. Foster testified that these three transfers were "voluntary," that is, that the employees chose to apply for open positions for their own reasons, not due to possible layoffs.

As for non-service and maintenance employees, the record also indicates that four technical or professional employees transferred from the Health Centers to other locations in July 2011.¹⁷ Foster testified that those four employees transferred during a "restructuring" at the Health Centers, to avoid being laid off. And in April 2012, a laboratory technician from Health Center East, Andrew Komosinski, became a phlebotomist at the hospital.

¹⁷ Specifically: (1) Health Center West LPN Migdalia Ortiz became a nurse "float" at the hospital; (2) Health Center West nurse practitioner Miriam Pennise became an RN at the hospice program at Swezey Pavilion; (3) Health Center West social worker Phebe Ogunleye transferred to the home care program at Swezey; and (4) Health Center East radiology supervisor Alice Whidden-Rautfle became a radiology technician at the hospital.

The only example of temporary “transfers” or interchange among service and maintenance employees at the Health Centers and the main hospital involved Adrian Quinones, who (as noted above) used to work in the hospital’s environmental services and who became a custodian/watchman at Health Center West in April 2011. After his transfer, he chose to work some overtime hours back at the hospital, in addition to his regular hours at the Health Center. Specifically, on two occasions in February and May 2012, Quinones worked in the environmental services department, for a total of about 15 hours. Both Foster and Volavka explained that the cost of his overtime work was applied to the hospital’s relevant “cost center,” not the Health Center’s. As for non-service and maintenance employees, both Foster and Volavka testified that registered nurses who work at the Health Centers sometimes work overtime hours in the hospital’s emergency room. They did not indicate how often those nurses do so. There is no evidence that service and maintenance employees from the hospital ever perform work (such as cleaning) at the Health Centers.

Volavka testified that Health Center employees have contact with hospital employees when patients go between those facilities. For example, if a patient requires emergency treatment, a Health Center doctor may notify the hospital’s emergency room that the patient is arriving by ambulance, and send the relevant documentation. Conversely, hospital employees notify the Health Centers when certain patients are discharged from the hospital, so that a Health Center clerical can “reach out” and offer the patient an appointment for follow-up care.

As noted above in connection with the Employer’s personnel practices (pp. 11-12 *supra*), human resources manager Foster testified that she was involved in some

personnel issues at the Health Centers. For example, she and Volavka met with two employees at Health Center West to discuss a problem they had getting along. No discipline resulted, but Volavka instructed both employees to work together “cordially.” Foster also spoke to Health Center East administrator John Goodman about terminating a probationary medical assistant within the past year, and about the custodian/watchman’s problem with lateness in the past one or two years. Finally, she and the Employer’s corporate compliance officer investigated a problem at Health Center East two to three years ago, which resulted in the discipline of some clerical employees and the removal of a manager there.

Foster testified that the Employer provides the same infection-control training and patient-privacy training at the Health Centers that it provides to other employees at other locations. Volavka also testified that, at monthly Health Center staff meetings, management discusses news about the hospital. For example, after Brookhaven obtained a new type of coronary intervention, Health Center patients with a heart attack or blockage could be sent to the hospital. (Previously, the Health Centers would have to send such a patient to another hospital.)

Finally, Foster testified that most Health Center clerical employees are on a similar pay grade (203) to unit secretaries and HIM clerks at the hospital. She was not sure about the medical records coder, who may earn more. The Health Center custodians/watchmen are in the same pay grade (102) as environmental service employees at the hospital.

Behavioral health programs at the Health Centers

As noted above, the Health Center facilities also house outpatient “behavioral health” programs, i.e., mental health counseling, and alcohol/chemical dependency counseling. These programs seem to be administratively separate from the Health Center medical programs described above, which are managed by Joseph Volavka. Instead, they are part of the Employer’s behavioral health department, which provides both inpatient and outpatient treatment, and is managed ultimately by director Karen Shaughness.

Each Health Center behavioral program employs six or seven professional employees (psychiatrists, social workers and counselors), some of whom are represented by FNHP/AFT.

Each program also employs two or three clerical employees, in the classifications of “clerical support” and “lead clerical,”¹⁸ who the Employer contends belong in the service and maintenance unit. Foster testified that the clerical employees’ duties include taking insurance and other information from patients, creating patient files, scheduling and reception. *See also* job descriptions, Er. Ex. 41(a)-(b). Foster also testified that these employees perform similar functions to the functions of unit secretaries, medical records clerks and clerical support employees in the hospital. The Health Centers’ clerical support classification is in the same pay grade (203) as those hospital clericals, although Foster was not sure about the lead clerical.

The hospital’s inpatient behavioral programs are supervised by nurse manager Christine Adomeit and assistant director Linda Milleisen. They both report to the director

¹⁸ The Petitioner also argues, alternatively, that the lead clerical must be excluded as a supervisor as defined in Section 2(11) of the Act. However, given the exclusion of Health Center employees from the hospital unit, the lead clerical’s supervisory status does not need to be resolved.

of behavioral health, Karen Shaughness, whose office is at the hospital. The Health Centers have their own on-site supervisors, outpatient behavioral health manager Matt McCluskey and chemical dependency manager Joan Miller, who also report to Shaughness.

There was no evidence of transfers or interchange among the inpatient and outpatient behavioral health programs.

Extent of common access to the Employer's computer records/programs

The record contains a great deal of testimony regarding the Employer's computer systems, including its intranet, email, Kronos time-keeping system, Sorian medical records program, the SCI appointment scheduling system, a human resources program called HRIS, the MedNetra education modules and others. The testimony on this topic, which will not be described in detail here, generally shows some common access among the Employer's facilities, but less than a complete integration. On one hand, Foster testified that all employees who need computer access for their jobs have it. This includes most or all of the clerical employees proposed for the service and maintenance unit, at the multiple facilities. For example, Foster testified that the clerical employees in outpatient hemodialysis (at Swezey Pavilion) have access to the same electronic medical records and billing/insurance records as the hospital's inpatient hemodialysis employees do. On the other hand, Foster admitted that other service and maintenance employees, such as groundskeepers and other environmental service employees, do not need or have access to the Employer's computer programs. Foster was not sure whether the hospital's nutritional service employees have computer access. To the extent that the radiology department's insurance documents are electronic, the radiology insurance coordinator

(Karen Wilkinson) has access to them from different locations. However, Foster also conceded that some insurance documents are still on paper, and this can be seen only at one location at a time. Foster was not sure whether Health Center employees have electronic access to patients' records from the hospital. She guessed that they could "probably" get the relevant information by fax or phone if necessary. Health Center administrator Volavka testified that Health Center clerical employees do have such access. By contrast, Kupfer testified that inpatient radiology employees cannot make appointments for follow-up care at the Health Centers via their computers at the hospital.

DISCUSSION

As stated above, the parties in this case do not dispute that so-called service and maintenance employees constitute an appropriate unit under the Board's Health Care Rule for acute-care hospitals. *See* Section 103.30(a), unit number (8). Thus, the only issue to be decided is whether the Employer has shown that the petitioned-for unit, limited to the main hospital building, inappropriately excludes service and maintenance employees employed at five of the Employer's other facilities.

Initially, it bears repeating that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc.; 295 NLRB 109 (1989). Whenever a labor organization seeks to represent employees at a single location of a multi-location employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer who asserts that the single-location

unit is *inappropriate* must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Cargill, Inc., 336 NLRB 1114 (2001); Kendall Co., 184 NLRB 847 (1970). The burden is on the employer to prove by affirmative evidence a lack of autonomy at the local level. J & L Plate, Inc., 310 NLRB 429 (1993). The relevant factors include the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); geographical distance between the facilities; and the history of collective bargaining.

The Board has applied the presumptive appropriateness of a single-facility unit to health care institutions as well. In Manor Healthcare Corp., 285 NLRB 224 (1987), decided before the Health Care Rule went into effect, the Board noted that Congress' concern over the undue "proliferation" of bargaining units in health care institutions was directed at the fragmentation of employee groups *within* a single facility, and did not preclude the application of the single-site presumption in cases where the health care employer operates more than one facility. *Id.* at 225. Nevertheless, the Board stated that, in determining whether an employer has rebutted the presumption, it would consider specific evidence that a single-site unit might cause the type of disruption underlying Congress' concern. When the Board subsequently proposed the Health Care rule, it left the single-site presumption intact.¹⁹ Since then the Board has applied the presumption in

¹⁹ The Board specifically stated that "the proposed rule does not purport to address the issue of the appropriateness of the single facility when an employer owns a number of facilities, which the Board will continue to address through adjudication." See the proposed rule-making and the final rule, published in Board volumes at 284 NLRB 1515, 1532, expressly citing Manor Healthcare, *supra*.

numerous cases such as Staten Island University Hospital v. NLRB, 308 NLRB 58 (1993), *enfd.* 24 F.3d 450 (2nd Cir. 1994); Gerry Homes, d/b/a Heritage Park Health Care Center, 324 NLRB 447 (1997), *enfd.* 159 F.3d 1346 (2nd Cir. 1998); and Catholic Healthcare West, d/b/a Mercy Sacramento Hospital et al., 344 NLRB 790 (2005), to name a few. *Cf.* West Jersey Health System, 293 NLRB 749 (1989) (presumptive appropriateness of a petitioned-for, single-site unit was rebutted).

Thus, when a labor organization petitions to represent a presumptively appropriate bargaining unit in an acute-care hospital, a multi-site employer opposing such a unit bears a “heavy burden” of overcoming the presumption. Catholic Healthcare West, d/b/a Mercy Sacramento, *supra*, 344 NLRB at 790.²⁰ Specifically, the employer must demonstrate “integration so substantial as to negate the separate identity of the single facility.” *Id.* In such cases, the Board considers the degree of interchange and separate supervision to be particularly important in determining whether the single-facility presumption has been rebutted. *Id.*, citing Heritage Park Health Care Center, *supra*, 324 NLRB at 451.

In the instant case, the Employer has submitted some evidence to support that a multi-site service and maintenance unit might also be appropriate. For example, employees at the multiple sites are employed by the same employer, engaged in providing similar health care services. In many classifications, such as the clerical classifications described above, employees at the Employer’s facilities perform the same types of

²⁰ In its post-hearing brief, the Employer contends that the Petitioner “failed” to establish the appropriateness of the single-site unit (and failed to “refute” the Employer’s evidence). However, the Employer seems to misunderstand or misplace the evidentiary burden in this type of case. As the cases cited *supra* clearly indicate, it is the opposing party’s burden to rebut the presumptive appropriateness of a single-site unit.

functions using the same types of skills. The record also indicates that employees transfer among those facilities without losing their employer-wide seniority for certain purposes such as benefit accrual. Furthermore, the Employer has shown that the petitioned-for employees share the same compensation structure, benefits and personnel policies as service and maintenance employees at other facilities. Nevertheless, I find that this evidence does not show integration “so substantial” as to negate the separate identity of the petitioned-for unit in the main hospital building.

The record indicates, with only one exception, that offsite employees are supervised by at least one “layer” of local supervision, separate from the upper levels of common employer-wide management. In fact, employees at the Health Centers have *three* levels of local supervision (the medical records managers and facilities managers, then each Center’s administrator, then senior administrator Volavka) before reaching the hospital-wide layer of management (chief operating officer Richard Margulis). The record further indicates that local supervisors are primarily responsible for hiring and training employees in their department, for disciplining employees, and for writing their annual appraisals. Although the Employer’s human resources office may sometimes assist the local managers in performing these duties, the record does not show highly centralized control of employment matters. For example, even though offsite managers use common personnel forms and may ask human resources for “support,” they clearly have independent authority to interview, select and hire employees in their own departments. Thus, the separate supervision at Brookhaven’s offsite facilities, which the Board has found to be “of particular importance,” Catholic Healthcare, d/b/a Mercy Sacramento, *supra*, 344 NLRB at 790, supports the appropriateness of the single-site unit.

The only exception involves the clerical employees at the three radiology facilities (inpatient, outpatient and Women’s Imaging), who are supervised by clerical support supervisor Dianne Masino. Nevertheless, the common supervision of those two dozen employees does not outweigh or negate the separate supervision for the vast majority of employees in the Employer’s the proposed six-facility unit. The record clearly shows that, despite some common personnel policies and administration, offsite facilities maintain substantial local autonomy. *Id.*, at 791.

Similarly, the Employer’s evidence fails to show significant employee interchange among the facilities. The record shows approximately seven permanent transfers among service and maintenance employees since 2008. But the Board considers permanent transfers to be a less significant indication of interchange than temporary transfers. Catholic Healthcare, d/b/a Mercy Sacramento, *id.* at 791, citing Red Lobster, 300 NLRB 908, 911 (1990). Furthermore, the limitations which the Employer places on such transfers (e.g., a new probationary period, new classification seniority for layoff purposes) tend to undermine its claim of full “integration” among the facilities.

Evidence regarding temporary transfers or reassignments among the facilities is similarly lacking. The record showed that Health Center West custodian Adrian Quinones worked two overtime shifts in the environmental services department at the hospital in 2012. These were over and above his normal hours at Health Center West, and were paid for by the hospital’s separate “cost center.” The record also showed that radiology clerical employees worked among three locations during three weeks in July 2012 (Er. Ex. 40). However, aside from some hearsay testimony, the Employer failed to provide evidence that this kind of inter-facility interchange occurs on a regular basis. In

fact, the Employer failed to provide any other scheduling documents showing such interchange, despite the Petitioner's subpoena. Furthermore, although Foster gave some other examples – e.g., that environmental service employees from the hospital clean the outpatient imaging areas at 100 Hospital Road, and that nutritional service employees from the hospital provide “catering” at the radiology offsites – she did not state how often they occur. Thus, the assertions in the Employer's post hearing brief of “regular and consistent interchange” are simply not supported by record evidence. I find that the limited examples based on probative evidence herein are insufficient to show substantial interchange, as required in the cases cited above, particularly among a proposed six-facility unit of 750 – 775 employees.

Other factors supporting the appropriateness of the single-site unit include the following. As for geographic distance, the record shows that the offsite facilities are up to eight miles away from the main hospital building. Furthermore, the record does not demonstrate an overwhelming amount of contact among employees in the various facilities. As for bargaining history, although there has been multi-site bargaining in other units (the professional unit and business office clericals), the record shows no bargaining for service and maintenance employees on a multi-facility basis. The history of those other units does not mandate a multi-facility unit herein. Catholic Healthcare, d/b/a Mercy Sacramento, 344 NLRB at 792 (multi-facility nurses' unit has less relevance for petitioned-for skilled maintenance unit). Finally, the record indicates that the offsite facilities hold trainings and other meetings in their own facilities.

The Employer argues that limiting the unit to the main hospital building would cause an undue unit “proliferation” and risk of labor disruption. However, as noted

above, concern over the unit proliferation in health care institutions was directed at the fragmentation of employee groups *within* a single facility. Manor Healthcare, 285 NLRB at 225; Catholic Healthcare, d/b/a Mercy Sacramento, 344 NLRB at 792. Although the Board will consider specific evidence that a single-site unit might cause undue disruption under the employer's particular circumstances, the Employer herein has not presented any such evidence. Furthermore, as the Board has noted, allowing a broader, multi-facility unit may actually *increase* the risk that a work stoppage would adversely impact health care services in the relevant geographic area. Id.

Finally, it should be noted that cases cited by the Employer, where the presumptive appropriateness of a single-site unit was rebutted, are distinguishable. In St. Luke's Health System, Inc., 340 NLRB 1171 (2003), the evidence of regular interchange among the employer's clinics was much more specific and substantial than the instant case, and the onsite clinic managers' autonomy was more limited. In Stormont-Vail Healthcare, Inc., 340 NLRB 1205 (2003), the employer's operations were more highly centralized. For example, the Board found that hiring, suspensions and discharges were effectively controlled on an employer-wide basis by the human resources department in that case. Id. at 1206. Such centralized control has not been demonstrated here.

In sum, based on all the foregoing, I find that the Employer's evidence falls short of rebutting the presumptive appropriateness of the petitioned-for, single site unit.

Accordingly, I find that the service and maintenance employees employed at the Employer's hospital building at 101 Hospital Road, Patchogue, New York, constitute an appropriate unit for collective bargaining under the Board's Health Care Rule. I will therefore direct an election in the petitioned-for unit, limited to that facility.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.
2. The record indicates that Brookhaven Memorial Hospital Medical Center is a domestic corporation, with its principal office and place of business located at 101 Hospital Road, Patchogue, New York. The parties stipulated that the Employer is engaged in operating an acute-care hospital, and that it is a healthcare institution within the meaning of Section 2(14) of the Act. During the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of \$250,000, and purchased and received at its Patchogue, New York facility, goods and supplies valued in excess of \$5,000 directly from points located outside the State of New York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that both Local 342 and Local 111 are labor organizations as defined in Section 2(5) of the Act. They claim to represent certain employees of the Employer.
4. A question concerning commerce exists concerning the representation of those employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As discussed above, I find that the following unit of Brookhaven's employees is an appropriate unit for purposes of collective bargaining. I have paraphrased the unit description somewhat to avoid redundant exclusions:

All full-time, regular part-time and per diem²¹ service and maintenance employees employed at the Employer's acute-care facility located at 101 Hospital Road, Patchogue, New York, but excluding: all other employees; professional employees, technical employees; skilled maintenance employees, business office clerical employees; MIS/IT personnel; quality control personnel; confidential employees; employees of, or working at or with subsidiaries, subcontractors, physician practices, or affiliated locations or organizations; any employees currently represented by Brookhaven Memorial Federation of Nurses and Health Professionals or by Local 111, International Brotherhood of Teamsters; members of the Board of Directors; owners; guards; and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 348, United Food and Commercial Workers Union, CTW, by Local Union No. 111, International Brotherhood of Teamsters, or by neither labor organization. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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

²¹ "Per diem" employees who have worked an average of four (4) hours per week or more during the 13 week period preceding the eligibility date will be eligible to vote.

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 a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by

me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **December 5, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nrlb.gov,²² by mail, or by facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

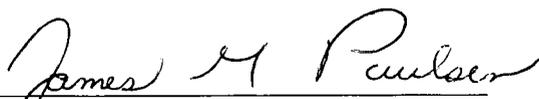
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not

received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 12, 2012**. The request may be filed electronically through the Agency's website, www.nlr.gov,²³ but may **not** be filed by facsimile.

Dated: November 28, 2012.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

²² To file the eligibility list electronically, go to www.nrlb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

²³ To file the request for review electronically, go to www.nrlb.gov, select **File Case Documents**, click on the NLRB Case Number, and follow the detailed instructions.