UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

BROOKHAVEN MEMORIAL HOSPITAL MEDICAL CENTER **Employer** **-and-** **LOCAL 342, UNITED FOOD AND COMMERCIAL WORKERS UNION** **Petitioner** **-and-** **LOCAL UNION NO. 111, INTERNATIONAL BROTHERHOOD OF TEAMSTERS** **Intervenor**	**Case No. 29-RC-084828**

EMPLOYER'S BRIEF IN SUPPORT OF REQUEST FOR REVIEW

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PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT

Putney, Twombly, Hall & Hirson LLP, on behalf of the Employer, Brookhaven Memorial Hospital Medical Center ("Brookhaven" or the "Hospital"), hereby requests review of the Decision and Direction of Election ("Decision"), issued by the Regional Director of Region 29 on November 28, 2012, pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board ("Board"). In accordance with Section 102.67(c) of the Board's Rules and Regulations, Brookhaven seeks review on the following grounds:

(1) The Decision is clearly erroneous on the record on a substantial factual issue, and such error prejudicially affects the rights of the Hospital, in that the Regional Director improperly concluded that the single-site bargaining unit sought by Local 342 was appropriate for purposes of collective bargaining. Through Brookhaven's offer of proof, the documentary evidence and uncontested testimonial evidence, Brookhaven demonstrated that the service and maintenance employees working at each of the five off-site locations share an overwhelming community of interest with the service and maintenance employees at the Main Hospital. In reaching the Decision, the Regional Director ignored substantial evidence submitted by Brookhaven, establishing that, among other things, (i) all of the employees at both the offsite facilities and the Hospital are employed by Brookhaven, have electronic access to the Hospital's intranet and email systems, are hired or promoted through the Hospital, subject to the same policies and procedures, receiving identical benefits, and are within the same compensation system, processed through the same payroll, and working under the same terms and conditions of employment; (ii) numerous employees travel between the Hospital and the off-site locations to perform their job functions or interact ***on a regular basis*** with co-workers from the various facilities to obtain the patient information necessary to perform their duties; (iii) the Hospital utilizes a centralized control of

management and supervision, whereby each manager and supervisor at the Hospital and at each off-site location are direct Hospital employees reporting to the Senior Administrative Personnel team of the Hospital and employees are all subject to evaluation, promotion or discipline by common Hospital management; and (iv) the Hospital has long-standing collective bargaining relationships with two other existing unions (Local 202 and the AFT) and each union represents employees working at both the Hospital and each of the other off-site locations that the Regional Director's Decision now excludes from the unit.

(2) That a substantial question of law or policy is raised because of: (i) the absence of, or (ii) departure from, officially reported Board precedent. The Decision inappropriately limits the bargaining unit to those service and maintenance employees working at the Hospital and precludes those service and maintenance employees working at each of the Hospital's five (5) off-site locations, thereby impermissibly fragmenting Brookhaven employees and leading to a proliferation of bargaining units, in direct contravention of stated Congressional intent and established Board law. As Brookhaven demonstrated at the Hearing, the ***only*** appropriate unit for purposes of the election is one that permits all Brookhaven service and maintenance employees the opportunity to vote, not merely the limited portion of employees at the Hospital. The Regional Director's Decision leads to unit proliferation that both Congress and the Board seek to control in the healthcare industry. To achieve industrial stability and avoidance of fragmentation, the Board must not permit piecemeal organizing to result in a proliferation of site-specific units. Administrative efficiency and industrial stability further require the Board to review the Decision.

As will be discussed in more detail herein, the record is replete with evidence demonstrating that the Regional Director, in issuing his Decision, ignored clear documentary and testimonial evidence submitted by Brookhaven. Significantly, the Region's Decision ignores the

functional integration of the entire operations at Brookhaven, the long bargaining history and recognition of multi-facility bargaining units with both Local 202 and the AFT, and the overwhelming community of interest of the employees at all Brookhaven locations. Accordingly, Brookhaven's Request to Review must be granted and the Decision overturned to afford all appropriate employees the statutory right to vote in the election. Anything less would leave these employees orphaned from the bargaining unit, thereby impermissibly causing a proliferation of the service and maintenance bargaining unit at the Hospital.

STATEMENT OF FACTS

A. Brookhaven's Facilities

Brookhaven is a 306 bed, not-for-profit, acute health care facility with the main hospital facility located at 101 Hospital Road, Patchogue, New York (referred to herein as the "Main Hospital")(Tr. 73).[1] The Hospital employs approximately 2,300 employees (Tr. 618). Brookhaven is comprised of the Main Hospital and six off-site facilities. (Tr. 616-17). Each individual employed at the Main Hospital and the off-site locations is a Brookhaven employee. (Tr. 78).

The Brookhaven off-site facilities at issue before the Board include 100 Hospital Road ("100 Hospital Road"), located across the street from the Main Hospital; Health Center West ("Health Center West"), located at 365 E. Main Street in Patchogue (3 miles from the Main Hospital); Health Center East ("Health Center East") located at 550 Montauk Highway in Shirley, New York (less than 8 miles from the Main Hospital) (collectively the "Health Centers"); the Women's Imaging Center ("Women's Imaging Center"), located at 285 Sills Road East (less

1 Herein, "Tr. __" refers to the relevant pages of the hearing transcripts. "Er. Ex. __" refers to the relevant exhibit submitted by Employer during the proceedings. "Pt. Ex. __" refers to the relevant exhibit submitted by Petitioner, Local 342 during the proceedings. "Dec. _" refers to the relevant pages of the Regional Director's November 28, 2012, Decision and Direction of Election.

than one mile from the Main Hospital); and the Swezey Pavilion ("Swezey Pavilion"), located at 103 W. Main Street in Patchogue (less than 4 miles from the Main Hospital) (collectively the "off-site locations"). (Tr. 73-74)

The Women's Imaging Center and Outpatient Imaging is a division of the Department of Radiology providing health services for all facets of a woman's health care. These services include mammograms, ultrasounds, and bone density examinations. (Tr. 375). The Health Centers provide ambulatory care services for individuals who would otherwise be without those services. (Tr. 512). 100 Hospital Road is comprised of several Brookhaven departments including, Outpatient Imaging (part of the Radiology Department), the Employee Health Department, Payroll Department, Cardiac Rehabilitation, Cardiac Outreach, Residency Program, Medical Library Service, Medical Education, Patient Access, Marketing Outreach, Planning, Internal Audit and Development Office. (Er. Ex. 30; Tr. 359-370, 555). Swezey Pavilion is comprised of the following departments: (1) Home Care Department, (2) the Hospice Department, (3) Outpatient Hemodialysis, (4) Engineering, (5) Security, (6) Finance, (7) Accounts Payable and Billing, (7) Customer Service/Insurance Verification, and (8) Risk Management. (Tr. 428).

B. <u>Local 342's Representation Petition</u>

On or about July 10, 2012, Local 342 filed the representation petition with the Board requesting certification of a bargaining unit including:

> *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... employed at the Employer's facility located at 101 Hospital Road, Patchogue, New York."*

Local 342's petitioned-for unit excluded all service and maintenance employees from each of Brookhaven's off-site locations, including those employees located at Health Center East, Health

Center West, Women's Imaging Center, 100 Hospital Road and the Swezey Pavilion. Accordingly, Brookhaven disputed the Union's petitioned-for unit, as these employees share an overwhelming community of interest with the employees working at the Main Hospital.

C. Hearings

On Thursday, July 26, 2012, the parties appeared before the Board to determine the appropriateness of Local 342's petitioned-for unit. The hearings continued on July 30, 2012 through August 3, August 6 and August 7, 2012. During the eight days of hearing, Brookhaven made an offer of proof and provided to the Board thousands of pages of documentary evidence demonstrating that the Hospital employees who are staffed at each of the off-site locations share an overwhelming community of interest with those employees working at the Main Hospital. Brookhaven introduced forty-one (41) exhibits and presented the testimony of three witnesses: (1) Ms. Kelly Foster, Brookhaven's Human Resources Manager; (2) Ms. Nona Kupfer, Senior Administrator for Cardiology; and (3) Joseph T. Volavka, Senior Administrator of the Heath Centers. Neither Local 342 nor Local 202 produced any witnesses to refute the Hospital's testimony. The parties submitted post-hearing briefs to the Region on August 31, 2012.

D. Decision Below

On November 28, 2012, almost three (3) months after the parties submitted post-hearing briefs in this matter, the Regional Director issued a Decision and Direction of Election finding that Local 342's petitioned-for unit, consisting only of the service and maintenance employees employed at the Main Hospital, was appropriate and directed an election in the petitioned-for unit, limited to that facility. (Dec. 40). Since the Regional Director's Decision is incorrect, the Hospital hereby requests review.

E. Witnesses

1. Ms. Kelly Foster

Ms. Foster, the Hospital's main witness, testified for five (5) days during the Hearing. As Human Resources Manager, Ms. Foster has immense knowledge regarding Brookhaven's employees, both at the Main Hospital and at each offsite facility, including the employees' job requirements, conditions of employment, and daily interactions with co-workers, managers and patients. Ms. Foster's knowledge and insight was obtained during her seven (7) years at Brookhaven in the Human Resources Department. In her position as Human Resource Manager, Ms. Foster is responsible for labor relations and provides advice on Human Resources Policies and Procedures, as well as on the progressive discipline process. (Tr. 73).

As Ms. Foster testified, the Hospital's Human Resources office is located within the Main Hospital. Employees working at the Main Hospital and at the off-site locations have unfettered access to the resources provided by the Hospital's Human Resources Department. (Tr. 89-90) Similarly, Ms. Foster confirmed that her job responsibilities routinely require her to visit off-site locations and other departments within the Main Hospital to respond to employee concerns and discuss labor relations and human resources issues with managers and supervisors.

In his Decision, the Regional Director dismisses Ms. Foster's unrefuted testimony and failed to properly consider such evidence in making his determination. The Decision often refers to Ms. Foster's testimony as "vague" and lacking personal knowledge. The Regional Director blatantly ignores Ms. Foster's well-established, direct knowledge of Brookhaven's entire operations, including the Main Facility and each off-site facility, knowledge which was personally obtained during Ms. Foster's seven years with Brookhaven in the Human Resources Department. (Tr. 73). The Region further ignores substantial portions of the documentary evidence submitted

by the Hospital, providing additional support for Ms. Foster's testimony throughout the proceedings. In addition to the forty-one (41) exhibits introduced, exhibits subject to voir dire by union counsel and ultimately accepted into evidence, Brookhaven also produced to Local 342 and the Board thousands of pages of documents in response to a subpoena served by Local 342 merely days before the Hearing.

2. Ms. Nona Kupfer

Ms. Kupfer is responsible for Cardiac Rehabilitation, Cardiac Outreach, Cardiology, the Cath Lab, EKG, EEG, Respiratory, Radiology and all Radiology modalities (Tr. 820). These departments are located throughout Brookhaven at the Main Hospital, 100 Hospital Road, Women's Imaging Center and Outpatient Imaging. As the Senior Administrator, Ms. Kupfer directs and oversees all of these departments and facilities to ensure service throughout all of the locations and not only personally visits each location on a regular basis, but supervises managers responsible for each of the facilities. (Tr. 381, 825-828).

In the Decision, the Regional Director also disregards Ms. Kupfer's unrefuted direct testimony. Ms. Kupfer's testimony was based upon her personal knowledge as the Director of the Department and provided further support for Ms. Foster's testimony, specifically concerning employees in the Radiology Department and the Cardiology Department. Like Ms. Foster, Ms. Kupfer provided direct and specific evidence of regular and consistent interchange among Brookhaven employees at the Main Hospital and off-site facilities, common supervision and management, functional integration and common terms and conditions of employment.

3. Mr. Joseph Volavka

Mr. Volavka is responsible for Health Center West, Health Center East, the Wound Care Center, the Diabetes Wellness Program (outpatient program for the education of patients

diagnosed with diabetes), and the Physical Therapy Services and Speech Language Pathology Services, both located at the Main Hospital. (Tr. 543, 924-925). Mr. Volavka reports directly to the Vice President and Chief Operating Officer, Mr. Richard Margulis, who formerly held Mr. Volavka's position as the Senior Administrator of the Health Centers.

Testimony from each of these witnesses demonstrated that the service and maintenance employees working at the off-site locations share an overwhelming community of interest with those employees working at the Main Hospital, performing the same or similar duties throughout the various locations. Specifically, the testimony and exhibits demonstrated that Brookhaven controls and determines all of the terms and conditions of employment for these off-site facilities and has ultimate control over who is employed. (Tr. 176-77, 187-88, 534). Similarly, each of the off-site location employees share the same conditions of employment with the employees at the Main Hospital; work under the same organizational structure with common control of labor relations; work under the same management service; have consistent wage and benefits policies; share common working conditions, such as common work hours, rules, and policies; and their work duties are functionally integrated into the Hospital's overall provision of care to its patients. (Tr. 97-98, 102, 107-108, Er. Exs. 1-9).

While the Regional Director acknowledges that the testimony of each of these witnesses was uncontested at the Hearing, he nonetheless failed to afford such testimony appropriate weight in his Decision. The Region's failure to consider such direct and explicit testimony merits review of these proceedings.

F. <u>Brookhaven's Off-Site Facilities</u>

(1) <u>Department's System Wide</u>

During the Hearing, the testimony established that a number of Hospital Departments have

a presence at both the Main Hospital and at least one other off-site location. For example: (1) the Radiology Department has employees located at the Main Hospital, The Women's Imaging Center and Outpatient Imaging (Tr. 359-361, 372); (2) the Hemodialysis Department has employees located in Inpatient Hemodialysis at the Main Hospital as well as in Outpatient Hemodialysis located at Swezey Pavilion (Tr. 364, 430); (3) the Security Department has employees - located at the Main Hospital and at the Swezey Pavilion (Tr. 368); (4) the Behavioral Health Department has employees located at the Main Hospital, as well as the Health Centers East and West (Tr. 362); (5) the Cardiology Department has employees located at the Main Hospital and 100 Hospital Road (Tr. 366); (6) the Engineering Department has employees located at the Main Hospital and Swezey Pavilion (Tr. 367); (7) the Patient Access Department has employees located at the Main Hospital in the Emergency Room, as well as Inpatient Radiology, Women's Imaging, 100 Hospital Road and Wound Care (Tr. 368-369); (8) the Risk Management Department has employees located at both the Main Hospital and Swezey Pavilion; (9) and the Executive Payroll department has employees located at the Main Hospital, 100 Hospital Road and Swezey Pavilion. (Tr. 369). Despite the Regional Director's failure to acknowledge same, the record shows the employees at the various locations share an overwhelming community of interest.

(2) Common Job Duties and Functions

The evidence at the Hearing established that the clerical support roles at Health Center East and West, the Radiology Records and File Clerks in the Radiology Department at the Hospital, at Women's Imaging Center and at the Outpatient Imaging Center, the Unit Secretary Position, the Health Information Management Clerk, and Patient Registration Positions, all perform the same functions and have the same job responsibilities. (Tr. 376, 555). Additionally, the Unit Secretaries in Inpatient Hemodialysis (located in the Main Hospital) and Outpatient Hemodialysis perform the

exact same job function and have the same responsibilities. (Tr. 448, 456-457; Er. Ex. 33(a)). The Unit Secretaries are regularly and frequently required to fill in for one another. (Tr. 459). Each of these positions provide general clerical support for the Departments, and include the responsibility to greet patients, obtain information to create a patient file/records, verify patient's information, review billing information and make appointments for patients. (Tr. 376-377, 601). Each of these positions also falls within the same pay grade. (Tr. 472, 481-483; Er. Ex. 35).

An Insurance Coordinator in the Outpatient Hemodialysis Department at Swezey Pavilion performs the same functions as the Insurance Coordinator at the Main Hospital Radiology Department. (Tr. 460; Er. Ex. 33(c)). Both Insurance Coordinators are required to interact with the Hospital's Billing Department, Admitting Department and Patient Access Department. (Tr. 460)

Similarly, Patient Service Assistants in Outpatient Hemodialysis, Environment Service Workers at the Main Hospital and 100 Hospital Road, Transporters at the Main Hospital and the Custodian/Watchman position at Health Center East and West, all perform similar functions. (Tr. 125-26; 461-62; Er. Ex. 33(b)). The Patient Service Assistant and the Transporters both have cleaning responsibilities in addition to transport functions. Both positions deliver materials, such as blood or medications, between the off-site locations and the Hospital. (Tr. 788-789). The pay structures between each of these positions are the same and all positions fall within the same pay grades. (Tr. 463, 551; Er. Ex. 29).

(3) <u>Cross-Training</u>

Additionally, as the testimony provided, a number of Brookhaven employees receive cross-training within job functions and within different locations. Testimony during the Hearing demonstrated that both the Radiology Department, including Inpatient Radiology, the Women's Imaging Center and the Outpatient Imaging Center as well as both of the Health Centers, have

cross-trained employees within their respective Departments. (Tr. 835, 983; Er. Ex. 32).

As Ms. Kupfer testified, in terms of the clerical staff in Radiology, the clerical staff is completely cross-trained to cover the reception area, make appointments, perform insurance verification and scheduling so that the employees can rotate between the three areas – the Main Hospital, the Outpatient Imaging Center and the Women's Imaging Center. (Tr. 416, 836).

(4) Common Titles/Job Descriptions

In addition to a commonality in skill set and functions, there is also a commonality amongst the job titles at the various locations. For example, there exist Radiology Clerks, Insurance Verification and Clerical Support at the Main Hospital, at Women's Imaging Center and at the Outpatient Imaging Center. (Tr. 845). All of these employees perform the exact same functions, as their job descriptions demonstrate. These employees frequently and consistently - on a daily basis - contact each other for support, information, assistance, and any inquiries or questions to help them in their job. (Tr. 845). The record shows that most of the work of the employees in the petitioned-for classifications is similar at all locations.

(5) Radiology Department, Women's Imaging Center and Outpatient Imaging Center

The Radiology Department is located at three different Brookhaven facilities: (1) the Women's Imaging Center (less than one mile from the Main Hospital); (2) the Main Hospital; and (3) the Outpatient Imaging Center (100 Hospital Road – directly across the street from the Main Hospital) (Tr. 358, 499, 824). The record established that all three locations provide the same or similar Radiological services to Hospital patients, including MRI Scans, CT Scans, Diagnostic Radiology and Ultrasound. (Tr. 372-373). The Radiology Department at the Main Hospital

employs professional employees, technical employees and service and maintenance employees.2 (Id.). Ms. Foster and Ms. Kupfer testified that the staff of the Radiology Department has been cross-trained to enable the employees to work at any of the three Radiology locations, which they do. (Tr. 834-835) Moreover, the Radiology Department has common supervision. (Tr. 820, 833).

The service and maintenance employees include the Appointment Coordinator, Records Clerk, Radiology Records/Insurance Coordinator; Department Secretary, and the Business Practice Coordinator. (Tr. 396; Er. Exs. 31(a)-(h)). The Appointment Coordinator/Medical Assistant position is at each of the three locations. The Appointment Coordinator is responsible for scheduling and coordinating appointments for all of the Radiology Department and provides general clerical support services. The Radiology Records Clerk similarly performs services at the Main Hospital, Women's Imaging Center, and Outpatient Imaging Center. (Tr. 397-398; Er. Exs. 31 (a), (b)). The Radiology Records Clerk is responsible for maintaining the radiology medical records and providing clerical support services. The testimony established that Appointment Coordinators and Radiology Records Clerk employees are regularly scheduled to work in any of the three locations during the week. (Tr. 398). In addition, Ms. Kupfer testified that these employees temporarily transfer from various locations to cover for absences, vacations and patient volume coverage. (Tr. 861-865)

There is one Radiology Records/Insurance Coordinator in the Radiology Department. This employee is primarily located at the Main Hospital, but her position requires her to verify the insurance information for all three Radiology locations and she frequently travels to other sites as needed to perform her responsibilities. (Tr. 406-407; Er. Ex. 31(e)). To perform her job functions,

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2 Local 202 represents employees in the Radiology Department located at both the Main Hospital and at the Women's Imaging Center, as well as the Outpatient Radiology Center. (Tr. 75).

the Radiology Records/Insurance Coordinator is also required to regularly interact with individuals from the other locations. (Tr. 409-410). For example, the Insurance Coordinator speaks to the Patient Access Associates and Radiology Records Clerk located at the off-site facilities to obtain relevant medical record and patient information. (Tr. 410)

The Business Practice Coordinator is responsible for coordinating and maintaining data, performing secretarial duties and support and assisting the radiologists by acting as a liaison between Radiology employees. (Er. Ex. 31(c)). The PACS Coordinator is responsible for the day-to-day operation and management of the PACS communication system. (Er. Ex. 31(d)). The Radiology Information/PACS analyst coordinates all activities related to the implementation, support and project management of the Radiology Information System and PACS. (Er. Ex. 31(g)).

The Department Secretary is responsible for performing secretarial and support services, and assisting radiologists in providing total medical care by assuming the role of liaison between the technical and professional employees in the Department. (Er. Ex. 31(h)). The Department Secretaries travel between the Radiology locations to provide coverage as needed. (Tr. 901)

(6) <u>100 Hospital Road</u>

100 Hospital Road is located directly across the street from the Main Hospital. (Tr. 74). 100 Hospital Road is comprised of the Outpatient Imaging Center (part of the Radiology Department and described above), the Employee Health Department, Payroll Department, Cardiac Rehabilitation, Cardiac Outreach, Residency Program, Medical Library Service, Medical Education, Patient Access, Marketing Outreach, Planning, Internal Audit and Development Office. (Er. Ex. 30; Tr. 359-370, 555-556). The Outpatient Imaging Department, the Payroll Department and the Employee Health Department all have employees who appropriately belong in the petitioned-for unit. These employees include the Radiology Records Clerk in Outpatient

Radiology, the Employee Health Coordinator in Employee Health and the Nursing Payroll Coordinator in the Payroll Department.

a. Cardiology

The Cardiology Department is located in two different Brookhaven locations. Non-evasive cardiology and the Cath Lab are located in the Main Hospital and Cardiac Rehab and Outreach is located across the street at 100 Hospital Road. (Tr. 822).

b. Employee Health

The Employee Health Department is located at 100 Hospital Road and is responsible for maintaining the employee health records for all Brookhaven employees, including those employed at the Main Hospital, as well as at each off-site location. (Tr. 236). The Employee Health Department is responsible for clearing all new hires, maintaining annual health assessments on employees, and issuing PPD tests to employees. The Employee Health Department is also responsible for addressing "Exposures" (*i.e.* incidents where an employee is stuck with a needle and/or splashed with a bodily fluid) and coordinating the services provided to that individual to prevent an infection as well as providing ongoing care and treatment. (Tr. 556). There are only three employees in the Employee Health Department: (1) Employee Health Coordinator, (2) Licensed Practical Nurse and (3) Physician's Assistant. (Id.)

(7) Health Center East and Health Center West

The Health Centers provide ambulatory care services for individuals who would otherwise be without those services. (Tr. 141, 512). The record establishes that the services provided are similar to those services provided at the Main Hospital's Department of Emergency for walk-in patients. (Id.). Health Center West is located at 365 E. Main Street in Patchogue, approximately 3 miles from the Main Hospital. (Tr. 512). Health Center East is located at 550 Montauk Highway

in Shirley, less than 8 miles from the Main Hospital. (Tr. 511).

As the testimony established, similar to corresponding functions throughout the Main Hospital, the Clerical Support Staff at the Health Centers provide clerical support services in the areas of medical records, intake, reception and billing, duties that traditionally fall within a maintenance and service unit.[3] The Accounts Receivable Clerk provides billing functions, including response to inquiries from patients regarding billing issues and verifying accuracy of patient billing statements and third party insurance forms. The Clerical Correspondence Clerk provides clerical support services in all areas of medical records including intake and reception. The Clerical Support Coder provides clerical support services in all areas of medical records, intake, reception and billing, and reviews the coding of providers for accuracy, as well as prepares the appropriate forms for billing services. The Schedule Coordinator provides clerical support services in all areas of medical records, intake, reception and billing. (Er. Ex. 36(a)-(h)).

The evidence established that all of the above referenced clerical support positions are on the same pay grade consistent with the uniform Hospital pay scale. Other positions in this pay grade include the Unit Secretary position in the Main Hospital, and all of the Health Information Management Clerk Positions. (Tr. 531). Additionally, all of the clerical support positions perform similar functions and utilize an almost identical job description. (Id.) Further, every individual employed in a clerical support position is cross-trained in all areas. (Tr. 521).

Testimony from Mr. Volavka established that the Custodian Watchman provides custodial and watchman duties, the same functions as the Environmental Services classification at the Hospital. (Er. Ex. 36(i)). This position is also responsible for traveling to the Main Hospital daily,

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[3] Medical professionals represented by the AFT are located at the Main Hospital, Swezey Pavilion, Health Center East, Health Center West, Wound Care, Home Care and Hospice. (Tr. 77; Board Ex. 2).

to deliver any necessary paperwork or information and, therefore, routinely travels between Health Center East, Health Center West and the Main Hospital to perform his duties. (Tr. 522-524)

(8) Behavioral Health Services

Brookhaven's Behavioral Health Services are located at the Main Hospital and at Health Center East and West. (Tr. 362). Behavioral Services includes an Inpatient Behavioral Health unit for admitted patients and Outpatient Alcohol and Counseling Services and Mental Health Services located at both Health Centers. (Tr. 362, 592). There also is an Access Center located in the Emergency Department of the Main Hospital for any emergency patients that present with behavioral health needs. As the Hospital maintains behavioral health services at multiple locations, there exists a large degree of patient overlap between the Inpatient and Outpatient Behavioral Health Services. (Tr. 602-603).

Job classifications in the Behavioral Health Department which are appropriately included in the petitioned-for unit include the Health Center Lead Clerical, Health Center Clerical Support (both located at Health Center East and West) (Er. Ex. 32), and the Psychiatric Technician, Unit Secretary and Department Secretary all located at the Main Hospital. (Er. Ex. 41(c)-(e)).

The position of Lead Clerical is responsible for the overall clerical functions (including staffing, reception, intake, medical records and billing), of the Outpatient Behavioral Health Services at the Health Centers. The Clerical Support staff are responsible for: (1) reception, intake and answering of telephones for Outpatient Behavioral Health; (2) providing scheduling of appointments for patients; (3) maintenance of staff schedule; and (4) medical records organization, computer entries, filing and billing procedures. (Er. Exs. 36 (f), 41(a) and 41(b)).

The Unit Secretary is located at the Main Hospital and is responsible for providing clerical and administrative support, including medical records maintenance, telephone and electronic

communication management, organizing, ordering and filing supplies for the department, and assisting with the development and maintenance of staff schedules. The Department Secretary is also located at the Main Hospital and is responsible for providing secretarial support to the Director of Behavioral Health Services, the Chairman of Psychiatry and other Behavioral Health management staff at various locations as assigned. The Psychiatric Technician is also located at the Main Hospital, and is responsible for providing a safe environment for Behavioral Health patients through one-on-one observation. (Em. Exs. 41(c) and (d); Tr. 599-600)

(9) Swezey Pavilion

Swezey Pavilion is located at 105 West Main Street in Patchogue. (Tr. 428). Swezey Pavilion is comprised of the following departments: (1) Home Care Department, (2) Hospice Department, (3) Outpatient Hemodialysis, (4) Engineering, (5) Security, (6) Finance, (7) Accounts Payable and Billing, (7) Customer Service/Insurance Verification, and (8) Risk Management. (Id.)

(a) Home Care and Hospice

The Home Care Department of the Hospital provides medical care (both treatment and rehabilitation) to patients in their homes. (Tr. 465). The Hospice Department of the Hospital is a service that provides medical care to terminally ill patients in their homes. The patients in the Home Care and Hospice Departments frequently overlap with the Main Hospital patients (*e.g.* patients discharged from the Main Hospital can receive Home Care or Hospice services and vice versa.) Medical Professionals provide Home Care and Hospice services to these Hospital patients, while service and maintenance employees provide support to the Medical Professionals.4 (Tr. 465-466). The Service and Maintenance employees working in Home Care and Hospice Departments include Team Assistant, Clerk/Typist, Department Secretary, Home Care Intake

4 The Medical Professional employees are represented by the AFT. (Tr. 77; Board Ex. 2).

Clerk, Home Care Clerk, and Health Information Management Clerk. (Tr. 685; Er. Ex. 32).

Each of the service and maintenance employees of Home Care and Hospice perform duties traditionally performed by employees falling into a service and maintenance bargaining unit. For example, the Team Assistant, like the Clerk/Typists, Department Secretaries and Unit Secretaries in other departments, performs clerical duties for the Home Care and Hospice Departments, including scheduling, visit verification, ordering of medical supplies, transportation, and collection and entering of patient data. (Tr. 472; Er. Ex. 34(a)).

Similarly, the Clerk Typist performs general clerical duties, including preparation of general correspondence, memoranda, forms, charts, as well as data entry and copying, filing, posting information to records and answering telephones. The Department Secretary position performs secretarial functions to assist in supporting the administrative operations of the Home Care and Hospice Departments. The Home Care Intake Clerk position is responsible for entering patient referral information into the Home Care computer system and identifying and verifying all insurance coverage and patient information upon each patient's admission to Home Care. The Home Care Clerk position is responsible for clerical functions, providing support to the professional staff. The Health Information Management /Medical Records Clerk is responsible for providing clerical support to professional staff and maintaining integrity of medical records. All of the clerical positions in both departments are cross-trained in all clerical functions so that the employees can work in any of the positions. (Er. Exs. 34(a) - (f)).

(b) <u>Hemodialysis</u>

The Hospital provides its patients with hemodialysis services through its Inpatient Hemodialysis unit located in the Main Hospital and its Outpatient Hemodialysis unit located in the Swezey Pavilion. (Tr. 364, 430). The services provided in both the Inpatient and Outpatient

Hemodialysis units are identical. The services provided in the Inpatient Hemodialysis Unit include acute care hemodialysis for those patients that are admitted into the Hospital. (Id.) The services provided at the Outpatient Hemodialysis Center include hemodialysis for patients that are not admitted to the Hospital. (Tr. 430). The record established that Hemodialysis patients at Brookhaven frequently overlap between the two locations. (Tr. 446-447).

Both the Inpatient and Outpatient Hemodialysis Units employ professional employees, technical employees and service employees, including the Unit Secretary and Department Secretary. (Tr. 446-447). Both units are comprised of employees with similar job titles and functions, resulting in regular and consistent interchange, as well as temporary transfers, between the Inpatient and Outpatient units. (Id.) The testimony established that the Hemodialysis Technicians transfer back and forth between the locations as needed on a day-to-day basis. (Tr. 450). In addition, the service and maintenance employees regularly provide coverage and transfer from the Outpatient to the Inpatient Hemodialysis Unit as needed. (Tr. 447-450).

G. Brookhaven's Common Policy and Practices

Brookhaven utilizes central common practices with respect to all employees, most if not all of this testimony was ignored by the Regional Director. As was established at the Hearing, the Hospital maintains a single Human Resources Department that handles all personnel functions at each facility from hiring to creating and implementing policies and procedures, and to providing support and guidance to management and staff alike. (Tr. 79-80, 89-90, 97, 102, 107-109, 187-188, 211-214, 221-223, 534; Er. Exs. 4, 5) From the moment an applicant seeks employment to the day an employee retires, irrespective of site location, all aspects of the employee's employment are process through the Human Resources Department. In addition to utilizing a single employment application, uniform performance reviews and discipline forms, and one

employee Handbook, the Hospital also utilizes a single electronic time-keeping system at each location utilized not only for time record keeping, but also for processing each employee's payroll – a process that is done exclusively internally at the Hospital by its Payroll Department (Tr. 286). The Hospital also maintains Hospital-wide e-mail for its employees (Tr. 82-83, 87, 265, 603) and utilizes a Global data drive for storage of uniform documents utilized by Departments in the Main Hospital as well as the off-site locations. (Tr. 79-81). Moreover, the Hospital maintains a Hospital-wide intranet, accessible by all employees irrespective of location, as well as computerized medical record systems available to provide remote access to patient information at the various locations. (Tr. 225-230).

Brookhaven's Human Resources Department is located at the Main Hospital. All employees at both the Main Hospital and the off-site locations have access to the Human Resources Department and frequently contact employees in the Department with employment related questions. (Tr. 187, 534). Employees at all Brookhaven's facilities are covered by the same personnel policies, receive the same benefits, are within the same compensation system and work under the same terms and conditions of employment. (Tr. 90). There are **no** site specific policies for Human Resources and no site specific Human Resource representatives. (Tr. 188). The Decision fails to address this important factor in determining common interest among Hospital employees.

The facts as presented by Brookhaven indisputably establish that Brookhaven met its burden of demonstrating an overwhelming community of interest between the petitioned-for unit and all other service and maintenance employees at each of the five (5) off-site locations. The Region's Decision finding Local 342's petitioned-for unit appropriate was thus, improper.

ARGUMENT AND ANALYSIS

POINT I

THE REGIONAL DIRECTOR'S DECISION ON SUBSTANTIAL FACTUAL ISSUES IS CLEARLY ERRONEOUS ON THE RECORD

The Regional Director's Decision holding that Local 342's petitioned-for unit constitutes a separate, homogenous grouping of employees who are sufficiently distinct from Brookhaven's other service and maintenance employees is clearly erroneous on the record. Significantly, even though the Regional Director took almost three months to issue the Decision, he failed to afford appropriate weight to both the documentary evidence and undisputed testimony presented by Brookhaven at the Hearing. For example, the Decision erroneously states that "aside from Er. Ex. 40, the employer did not provide departmental schedules for radiology or any other departments." (Dec. 16). This assertion is without merit. In response to the subpoena, on August 5, 2012, Brookhaven provided to representatives for both Local 342 and Local 202 (an Intervenor in this action – and formerly known as Local 111), and to Colleen Breslin, as Hearing Officer for the Board, ***one thousand three hundred and forty-three (1,343) pages*** evidencing times employees worked in various Brookhaven departments. On August 7, 2012, Brookhaven provided another ***two hundred and nineteen (219) pages*** of departmental schedules to both Unions and to the Board. The Regional Director's erroneous assertion suggests that the Regional Director did not review all of the relevant information in this proceeding. Moreover, in reaching the Decision, the Regional Director ignored each of the uniform policies governing employees throughout the Main Hospital and the various off-sites as well as the common job descriptions utilized for service and maintenance employees. This undisputed documentary and testimonial evidence demonstrates the strong community of interest shared by <u>all</u> Brookhaven employees and was a necessary

component in the analysis. Accordingly, the Decision is erroneous and must be reviewed.

A. The Legal Standard

In order to ascertain the appropriate unit for an election, the Region is required to base its findings upon the degree to which petitioned-for employees share a community of interest with other employees in the institution. In determining an appropriate unit, the Board looks to the integration of operations and the degree of shared interests. The factors relevant to such determination include: (1) interchangeability of employees, (2) collective bargaining history; (3) common supervision and control over labor relations, (3) geographic/physical proximity, (4) consistent terms and conditions of employment; (5) functional integration; (6) similarity of working conditions and functions, and (7) similarity of the employees' skills. In re Stormont-Vail Healthcare, Inc., 340 NLRB 1205, 1207 (2003); J.C. Penny Company, Inc., 328 NLRB 766 (1999); Seaboard Marine, Ltd., 327 NLRB 556 (1999); Transerv Systems, Inc., 311 NLRB 766 (1993). Additionally, in the healthcare industry, the Board also examines whether a unit limited to only some of the employees creates an increased risk of work disruption or other adverse impact upon patient care should a labor dispute arise. In re Catholic Healthcare West, 344 NLRB 790, 790 (2005) (citing Manor Healthcare Corp., 285 NLRB 224, 226 (1987)). Brookhaven has provided overwhelming evidence of community of interest between the petitioned-for unit and all other Brookhaven service and maintenance employees at each of the five (5) off-site locations.

Brookhaven's Main Facility and all of Brookhaven's off-site locations operate on an integrated basis. None of the off-sites operate independent of the Main Hospital. (Tr. 384-389, 378-389, 413-414, 543, 557, 564-565, 593-595, 820, 825-826, 924-25, 935-37). The undisputed evidence presented at the Hearing demonstrates that there is centralized administration and management at the Hospital. The directors and officers who oversee employees at each location

are Hospital employees. (Tr. 384-389, 378-89, 413-414, 543, 557, 564-565, 593-95, 820, 825-26, 924-25, 935-37). The employees at all locations share common supervision and similar skills and duties. (Tr. 397-398, 446-450, 465, 522-524, 531, 602-603, 861-865). The Hospital routinely transfers employees between facilities based upon operational needs. (Tr. 120-125, 137-144, 168-71, 297-302, 315, 584-585, 837, 857-858, 861, 865-866; Er. Exs. 10-12, 24-27, 31, 40). As a result of these transfers, there is a significant amount of interchange between workers at each of the locations. (Tr. 602-603, 842-849, 940-45). The service and maintenance employees at the Main Hospital perform the same work as the employees at the off-site facilities. Further, both the employees at the Main Hospital and at the various off-site facilities are employed in the same job classifications and enjoy the same pay, benefits and other terms and conditions of employment. (Tr. 286-287). Further, the employees at the Main Hospital and the off-site facilities are subject to the same personnel and labor relations policies. All facilities utilize a common electronic system for medical records, payroll, e-mail and continuing education. (Tr. 79-80, 89-90, 97, 178-188, 210, 224-230, 238-239, 267, 285, 421-422, 526; Er. Exs. 1-9, 13-19, 21-23). Despite the Regional Director's findings, this undisputed evidence demonstrates an overwhelming community of interest between the petitioned-for unit and all other Brookhaven service and maintenance employees at each off-site location.

(1) <u>Brookhaven's Collective Bargaining History</u>

Brookhaven's collective bargaining history demonstrates that there is a community of interest between the Main Hospital and the off-site facilities. Brookhaven has a long bargaining history with the Brookhaven Memorial Federation of Nurses and Health Professionals ("AFT"). and Local 202, both of which have members located both in the Main Hospital and the off-site facilities. The Regional Director's assertion that this bargaining history does not mandate a

multi-facility unit is without merit. The consideration of whether collective bargaining history should be considered in a community of interest analysis is not based upon a bargaining history that applies only to the employees in dispute. Rather, pursuant to applicable caselaw, it is the bargaining history of the employer in general that is significant and important to the community of interest analysis. See, e.g., Florida Steel Corp., 222 NLRB 546 (1976).

The Regional Director relies upon Catholic Healthcare West, 344 NLRB No. 93 (2005) to support his Decision, a case which is easily distinguishable from the facts at issue in this matter. Significantly, in Catholic Healthcare, the employer had a history of both single and multi-facility bargaining units. The Regional Director had found that multi-facility units were more relevant than the certification issued in the single-location unit. The Board disagreed with the Regional Director's finding, holding that "although we agree with the Regional Director that this single-facility bargaining history is not controlling, we do not agree that reliance should be placed on the multi-facility bargaining history under the facts here." Id. at 791-92. Therefore, the Board did not afford the employer's collective bargaining history any substantial weight. The instant facts are clearly distinguishable.

Unlike the employer in Catholic Healthcare, Brookhaven does have a determinative bargaining history. As established during the Hearing, the bargaining history at the Hospital demonstrates that the bargaining units for the AFT and Local 202 have included ***all employees, inclusive of all facilities***. Brookhaven has engaged in collective bargaining with Local 202 since 1978 and with the AFT since 1988. Local 202 and the AFT represent employees both at the Main Hospital and in each of the off-site facilities. (Tr. 75, Bd. Ex. 2). It defies logic for the Regional Director to reject the Hospital's significant collective bargaining history in determining whether an overwhelming community of interest exists between employees located in the Main Hospital

and in its off-site facilities. The Regional Director's analysis of the Hospital's collective bargaining History is erroneous and must be reviewed.

(2) Geographic Proximity of All Brookhaven Locations

All of the Hospital's off-site facilities are within close geographic proximity to the Hospital. The record establishes that 100 Hospital Road is directly across the street from the Main Hospital and within walking distance. The Swezey Pavilion is approximately four miles from the Main Hospital. The Women's Imaging Center is directly behind the Main Hospital and less than one mile from the Main Hospital. Health Center West is about three miles from the Hospital and Health Center East is about eight miles from the Hospital. (Tr. 73-74). The close proximity of the Hospital's off-site facilities clearly weighs in favor of a community of interest.

It is well established under applicable Board that all Brookhaven facilities should be included in the bargaining unit due to their close geographic proximity to the Main Hospital. See Presbyterian/St. Luke's Medical Ctr., 289 NLRB 249 (1988) (finding facilities, ***up to 12 miles apart, were located in "close proximity" and that all employees in each facility were part of the appropriate unit***); see also Stormont-Vail Healthcare, 340 NLRB at 1280 (finding clinics as far away as 30 miles and located in a city other than the health care facility's main campus were still appropriately part of the bargaining unit). While the Regional Director acknowledges the close proximity of the off-sites to the Main Hospital, he dismissed the relevance, holding that the off-sites are "up to eight miles away." The Regional Director's determination that the geographic distance of the off-site facilities supports the appropriateness of the single-site unit is contrary to accepted Board law.

(3) Brookhaven's Functional Integration And Centralized Operations

The evidence presented during the Hearing demonstrates that employees in the Main

Hospital and at each of the Hospital's off-site locations work in tandem on a daily basis to provide medical care to the Town of Patchogue and the surrounding communities. Despite such evidence, the Regional Director erroneously concluded that Brookhaven failed to establish an overall functional integration between the Main Hospital and the off-site locations.

a) Cost Centers

In support of his finding, the Regional Director ignores the vast testimony regarding the functional integration and centralized operations of the Hospital, instead frequently referring to the cost center numbers provided by Brookhaven during the Hearing. (See Er. Ex. 26). These cost center numbers are used by administrative personnel at the Hospital solely to assist in identifying employees and the work location of the employees (i.e., department, unit, and even floor). Moreover, each cost center is part of the Hospital's overall budget. Although the Regional Director seems to place significant weight on the Hospital's assignment of different cost center numbers to the Outpatient Imaging Center, Women's Imaging Center and Inpatient Radiology at the Main Facility in his finding, such reliance is misplaced. The Hospital utilizes cost center numbers solely for budgetary purposes, utilizing different cost center numbers to distinguish between separate floors and/or units within Departments of the Main Hospital. For example, the Nursing Department has over ten (10) separate cost center numbers, all of which are located within the Main Hospital. (Er. Ex. 26; Tr. 136). The Regional Director's reliance upon cost center numbers to dispute functional integration and centralized operations is erroneous.

b) Centralized Computer Systems

The Regional Director further noted that Brookhaven's computer systems/program "generally shows some common access, but less than a complete integration," based upon his finding that "groundskeepers and other ES employees, do not have or need access to 'computer

programs.'" (Decision at 33). Once again, the Regional Director appears to have deliberately disregarded the evidence presented at the Hearing. As the record establishes, all employees, regardless of location, have access to Hospital computers and internet services. (Tr. 225-227) However, although all employees have access to a Hospital computer, not all employees require daily intranet access to perform their job functions. (Tr. 228). The Regional Director misinterpreted the evidence presented at the Hearing, which clearly established that all Brookhaven employees, including those at the off-site locations, have common access to Hospital computers and internet services.

Further, the Hospital maintains a global computer drive, which is a shared network that all Brookhaven managers and supervisors can access from any location. (Tr. 79-80, 88-89, 104). Employees at the Main Hospital and at each of the off-site locations utilize the Sorian Medical System, which provides employees with electronic access to information maintained by the Main Hospital and off-site locations (Tr. 848). Employees at the Main Hospital and the Hospital's off-site facilities can obtain access to the patient's medical records, regardless of the facility visited by the patient. All Brookhaven departments maintain a shared electronic communication system which can be used to schedule and register patients for appointments and medical examinations. (Tr. 464, 603, 848-52, 944). Every Brookhaven employee is required to receive annual competency and annual health assessments. (Tr. 231-234; Er. Ex. 19). Finally, all employees can complete their mandatory requirement for continuing education through computer based modules called MedNetra (a computerized learning program), which is located on the Hospital's Intranet and accessible to employees at the Main Hospital and employees at each of the off-site locations. (Tr. 225-226, 465, 532, 604-605, 665). Any Brookhaven employee, whether at the Main Facility or an off-site location, can access Brookhaven's Intranet on designated computers located throughout

the facilities. (Tr. 227-230). All of this evidence presented at the Hearing, establishes the overall functional integration between the Main Hospital and each off-site location.

Brookhaven's Intranet also contains a Directory of Employees and includes all employees working at the Main Hospital and at each off-site location. (Tr. 266). Brookhaven's Intranet also maintains Brookhaven's Human Resources Policies and Procedures accessible to all employees electronically at all facilities. (Tr. 339-340). For those employees who positions require computers, the employees have a Hospital e-mail address and e-mail access to correspond with one another. (Tr. 82-83, 87, 265, 603). Brookhaven also maintains an interoffice mail system whereby mail is distributed from the Main Hospital to off-site locations. (Tr. 87). The record established an overall functional integration of the Hospital between the Main Hospital and the off-site locations that was simply ignored by the Regional Director.

c) Centralized Control of Human Resources

It is well established that "the Board may not, without substantial justification, fractionate a multi-unit operation whose labor policy is centrally directed and administered." Continental Ins. Co. v. NLRB, 409 F.2d 727 (2d Cir. 1969), cert. denied, 396 U.S. 902 (1969). This is particularly true where a central Human Resources department served all locations by issuing one set of personnel policies, performing initial screening interviews, making final hiring decisions and offers of employment, as well as approving suspensions and discharges. Stormont Vail Healthcare, 340 NLRB 1205 (2003); see, e.g., The Children's Hospital, 307 NLRB 90, 91-92 (1992) (centralized control of human resources and labor relations among three facilities supported the determination that they were sufficiently operationally integrated). The centralized administration system demonstrated by Brookhaven during the Hearing, demonstrates that a multi-facility unit is appropriate. The Regional Director's decision is simply inconsistent with

well-established Second Circuit and Board caselaw.

(4) Common Terms and Conditions of Employment

The Hospital's service and maintenance employees all share common terms and conditions of employment. The Board has recognized that identical terms and conditions of employment, including job descriptions, are a factor weighing in favor of a unit including employees at all locations. See, e.g., P.S. Elliott Servs., Inc., 300 NLRB 1161 (1990); West Jersey Health System, 293 NLRB 749 (1989). The record contains significant evidence of central control and direction of labor policy, and common employment terms applicable to all Hospital employees. Despite the substantial evidence produced, the Regional Director failed to consider the employees' common terms and conditions of employment in reaching the Decision.

The terms and conditions of employment of the employees at the Main Hospital are the same as at all other locations. As the Hospital established at the Hearing, all employees at the Main Hospital and the off-site locations are subject to the Hospital's personnel policies and compensation system and work under the same terms and conditions of employment. (Tr. 17-18, 102, 195, 206, 238, 286-287, 336-338; Er. Exs. 2, 4-5, 13, 14(a)(b), 28). All Hospital employees, regardless of location, are required to attend orientation at the Hospital. All Hospital employees are offered training programs and continuing education. Annual Hospital functions, including the Hospital Holiday Party, the Employee Appreciation BBQ, the Service Awards Dinners and fund raising events are open to all employees, regardless of the location at which they work. (Tr. 224, 266-282, 285; Er. Exs 21(a)(b), 22, 23). All Hospital employees are provided with a standard identification tag, which permits employees access to entries of the Hospitals and off-site locations. Such identification tag is also used for purposes of swiping in and out for payroll and recordkeeping. (Tr. p. 77, 81, 239). All employees are eligible to sit on committees for and

nominate co-workers for various awards programs maintained by the Hospital. The Hospital maintains common patient information systems, centralized purchasing and billing, employee education and payroll administration for all its employees. (Tr. 224-226; 421-422, 464-465, 526, 532, 564-570, 603-605, 664, 848-851, 944). Brookhaven's exercise of effective control over the essential terms and conditions of employment of employees at the Main Hospital and its off-site facilities mandates the inclusion of these employees in any bargaining unit. See, e.g., P.S. Elliott Servs., Inc., supra; West Jersey Health System, supra. The Regional Director's failure to even consider this evidence in the Decision mandates review of the Decision.

(5) Centralized Control of Management and Supervision

Contrary to the Regional Director's Decision, the Hospital does maintain centralized control of management. In the Decision, the Regional Director inexplicably states that employees at the offsite locations are supervised by at least one "layer" of local supervision and that the local supervisors are primarily responsible for hiring and training employees, disciplining employees and writing annual appraisals, and that while the HR Department, may "sometimes assist the local managers in performing these duties, the record does not show highly centralized control of employment matters." (Dec. 37). However, as the record establishes, the supervisors and directors of the Hospital manage both employees at the Main Hospital, as well as at the off-sites. Further, the evidence conclusively established that each member of management, whether at the Main Hospital or at an offsite location, reports ultimately to either Mr. Margulis, Vice President and Chief Operating Officer, or Mr. Ockers, President and Chief Executive Officer, both of whom are located at the Main Hospital. Although employees in each Department are generally supervised by different individuals, the employees in each facility have common supervision by members of management reporting to Hospital Administration.

Although apparently dismissed by the Regional Director, during the Hearing Ms. Foster testified regarding her role in assisting and directing managers and supervisors with respect to personnel decisions. Ms. Foster "frequently" fields inquiries regarding completion of employee evaluations and is an integral part of the employee disciplinary process. (Tr. 221-223, 536-39). Further, Ms. Foster testified that it was the practice of supervisors and/or department heads to "regularly reach out" to her for issues related to employees, both at the Main Hospital and at off-site facilities. (Tr. 536-539). In short, the testimony at the Hearing clearly established that each manager is bound by Hospital policies and procedures and is not permitted to set any individual labor policies or procedures. Instead, such labor policies and procedures are established by the Human Resources Department. While the local supervisor can discipline employees and prepare evaluations, those actions must comply with Human Resources policies and procedures. Testimony during the Hearing confirmed that employees in each facility have common supervision by members of management reporting to Hospital Administration.

(a) <u>Radiology Department</u>

There is common supervisions within the Radiology Department. Ms. Kupfer reports directly to Mr. Margulis. (Tr. 384). Ms. Kupfer is responsible for Cardiac Rehabilitation, Cardiac Outreach, Cardiology, Catherization Lab, EKG, EEG, Respiratory, Radiology, and all Radiology modalities. (Tr. 820) As the Senior Administrator, Ms. Kupfer directs and oversees all three Radiology locations and regularly and consistently travels throughout each location. (Tr. 833).

Ms. Kupfer is assisted by Chris Scheider, Assistant Director of the Radiology Department, in the management of the Radiology Department. Ms. Schneider is also responsible for all three of the Radiology locations. (Tr. 384-389). Diane Messino, Clerical Support Supervisor, supervises the clerical support staff at all Radiology locations and reports directly to Mr. Schneider. (Tr.

378-389, 828). Ms. Messino is responsible for overseeing the work of the clerical support staff, as well as hiring, evaluation and discipline of employees. (Tr. 413-414). Ms. Messino does not have one assigned office, but rather visits all locations daily in order to appropriately supervise the employees. (Tr. 828). As the evidence established, Ms. Messino will commence her workday at one location, then travel to a second location, ending her day at the third Radiology location. As the sites are in close proximity to each other, Ms. Messino easily travels from one location to another throughout her workday (Id.). Despite the Regional Director's findings, all employees in the Radiology Department are ultimately supervised by Ms. Kupfer who reports directly to Mr. Margulis.

(b) Cardiology Department

The Cardiology supervisors have supervisory responsibilities at the Main Hospital location, as well as at the Cardiac Rehabilitation Center and the Cardiac Outreach Center, located at 100 Hospital Road. Ms. Kupfer, as the Senior Administrator for Cardiology, has overall supervisory responsibility for Cardiac Rehabilitation, Cardiac Outreach, Cardiology, and the Catherization Lab. (Tr. 820). Mary Maliszewski, Clinical Director of the Catherization Lab, and Kathy Didio, Manager of Cardiology, report directly to Ms. Kupfer. Ms. Maliszewski and Ms. Didio travel between facilities to supervise employees at both the Main Hospital and at 100 Hospital Road. (Tr. 825-826). Again, all employees in the Cardiology Department are ultimately supervised by Ms. Kupfer who reports directly to Mr. Margulis.

(c) Health Center East and West

Mr. Volavka, Senior Administrator, is responsible for Health Center West, Health Center East, and oversees the Wound Care Center (33 Medford Avenue), the Diabetes Wellness Program, physical therapy and speech language pathology services, both located at the Main Hospital. Mr.

Volavka reports directly to Mr. Margulis. (Tr. 517, 543, 924-925, 929). Health Center East employees are also supervised by John Goodwin, Administrator, Laura Pullar, Medical Records Manager, and Facilities Mangers Jesus Colon. (Tr. 515, 525, 934). Mr. Goodwin reports directly to Mr. Volavka. Ms. Pullar and Mr. Colon are both Hospital employees and report directly to Mr. Goodwin and Mr. Volvka. (Id.). Ms. Pullar is also currently supervising clerical employees. (Tr. 525-28, 932.) Mr. Volavka also supervises Facilities Manager Bill Casey at Health Center West. (Tr. 930). All employees at the Health Center are ultimately supervised by Mr. Volavka who reports directly to Mr. Margulis.

(d) Behavioral Health

Karen Shaughness, Director of Behavioral Health Services, is responsible for both Inpatient and Outpatient Behavioral Health located at the Health Centers. (Tr. 593) Ms. Shaughness reports directly to Mr. Margulis. Lisa Milleisen, Assistant Director of Inpatient Behavioral Health, reports to Ms. Shaughness. Ms. Milleisen supervises the Recreational Therapist in the Department. (Tr. 595). Chris Adomeit is the Nurse Manager for the Inpatient Behavioral Health Department. Ms. Adomeit reports directly to Ms. Shaughness and supervises the Registered Nurses, the Mental Health Counselors and the Unit Secretary. (Tr. 595). All employees in Inpatient Behavioral Health are supervised by Ms. Shaughness who reports directly to Mr. Margulis.

Matt McClusky, Outpatient Behavioral Health Manager, supervises the clerical staff and psychiatric social workers. Joan Miller is the Manager for Alcohol and Chemical Dependency. Ms. Miller supervises Alcohol Counselors and clerical staff. Both supervise staff at Health Center East and Health Center West and report directly to Ms. Shaughness (Tr. 595-96). All employees in Outpatient Behavioral Health are supervised by Ms. Shaughness who reports

directly to Mr. Margulis.

(e) Home Care and Hospice

Both Home Care and Hospice and the Employee Health Department have common supervision by Hospital employees. Doreen Virgil, Manager of Infection Control, directly supervises the Employee Health Department staff. (Tr. 557). Ms. Virgil reports to Phyllis Hartman, Assistant Vice President of Performance Improvement. Ms. Hartman reports directly to Thomas Ockers, the Hospital's Chief Executive Officer. (Id). The Director for Home Care and Hospice is Deborah Peterson, reporting directly to Karen O'Kane, Vice President for Hospice, Home Care and Hemodialysis. (Tr. 467). Ms. O'Kane has direct oversight for Home Care and Hospice and for Inpatient and Outpatient Hemodialysis, located, respectively, in the Main Hospital and Swezey Pavilion. Ms. O'Kane reports directly to Richard Margulis. (Id.)

(f) Hemodialysis

Ms. Gail Steiger, Administrative Director for Hemodialysis, is responsible for both Inpatient and Outpatient Hemodialysis. (Tr. 453). Ms. Steiger directly reports to Ms. O'Kane, who, as referenced above, reports directly to Mr. Margulis. (Tr. 454). The Inpatient Hemodialysis Nurse Manager is Denise Yost and Doreen Louden is the Outpatient Hemodialysis Nurse Manager. Ms. Yost and Ms. Louden assist each other in coverage of the other's area. (Tr. 454). In fact, all of the supervisors in the Hemodialysis department assist with coverage of the other location. (Id.) All employees in both Inpatient and Outpatient Hemodialysis are supervised by Ms. Steiger, who reports directly to Ms. O'Kane.

The employees at the various off-sites are not supervised by management staff separate and apart from the managers of the Main Hospital staff, but instead are supervised by common management. Despite the Regional Director's contentions otherwise, Brookhaven has provided a

significant amount of centralized management and supervision sufficient to support a finding of a community of interest among all Brookhaven service and maintenance employees. See Presbyterian/St. Luke's Medical Ctr., 289 NLRB 249 (1988) (acknowledging each hospital had its own administrator who had no authority to change corporate policies or to deviate from determinations regarding wages, benefits and staffing, supported community of interest).

(6) Similarity of Skills and Functions

The Regional Director acknowledges that Brookhaven has established that "in many classifications [including those at issue in these proceedings], employees at the Employer's facilities perform the same types of functions using the same types of skills." (Dec. 36-37). Yet, despite such acknowledgment, the Regional Director minimizes this factor in the Decision. This factor weighs heavily in favor of a community of interest among Brookhaven's service and maintenance employees. The record proves that the job descriptions, job classifications and job skills are identical or substantially similar at each of the locations. (Er. Exs. 29, 31, 33, 34(a)–(f), 36, 41). As demonstrated by the evidence, the service and maintenance employees at each of Brookhaven's facilities have similar skills and serve the same function.

Employees at each location in similar job classifications wear the same uniforms and are subject to the same training, policies, procedures and terms and conditions of employment. (Tr. 78, 163-164). All employees in a certain pay grade and specialty area have the same skill requirements and receive the same benefits. The employees in the Main Hospital have similar job duties and functions to those employees at each of the off-site locations. These employees work side by side and interact with one another. These employees are all under the same supervision and control. (See Er. Exs. 29, 31(a)-(h), 33(a)-(c), 34 (a) – (f), 36(a)-(i), 41 (a)-(e))

The evidence at the Hearing further established that, in addition to a commonality in skills

set and functions, there is also a commonality amongst the job titles at the various locations. A number of employees perform the exact same functions, as their job descriptions demonstrate. These employees frequently and consistently, even on a daily basis, contact each other for support, information, assistance, and any inquiries or questions to help in the performance of their job. (Tr. 125-126, 376-377, 448, 456-462, 555, 601, 788-789, 845; Er. Ex. 29, 33(a) -(c)). Additionally, a number of Brookhaven employees receive cross-training within job functions and within different locations. (Tr. 416, 835-36, 983; Er. Ex. 32). Each of these factors weighs heavily in favor of a community of interest among Brookhaven's service and maintenance employees.

The record shows that most of the work of the employees in the petitioned-for classifications is similar at all locations. When employees' skills and functions at each location align, this factor supports a finding that the community of interest lies within the group of similarly situated employees. NLRB v. Long Island College Hosp., 20 F.3d 76 (2d Cir. 1994); Rosemount Center, 248 NLRB 1322 (1980); NLRB v. Carson Cable TV, 795 F2d 879 (9th Cir. 1986). As established through the testimony at the Hearing, many of the employees working at off-site locations provide identical services to employees working at the Main Hospital (*e.g.* billing, insurance verification, medical records and clerical support) and employees regularly share common supervision and share similar skills and duties (Tr. 397-398, 446-450, 460, 465, 522-524, 531, 602-603, 861-865; Er. Exs. 31, 33-36, 41). The Regional Director's Decision fails to afford this finding appropriate weight and must be reviewed.

(7) Employee Interchange

The Regional Director erroneously concludes that Brookhaven failed to provide sufficient evidence of employee interchange. In support of his conclusion, the Regional Director refers to the purported lack of permanent and temporary transfers or reassignments among the facilities.

(Dec. p. 38). However, Brookhaven submitted evidence which conclusively established that: (1) employees both permanently and temporarily transfer to different locations; (2) such transfers and interchange occur on a daily basis; and (3) employees regularly work at two or more locations. (Tr. 120-25, 134, 137-144, 168-71, 297-302, 459-461, 584-585, 844-845, 865-866, 946-947, 956-957, 978-979; Er. Exs. 10-12, 24-27, 31, 40). Based upon such documentary evidence, Brookhaven has demonstrated day-to-day interchange and contact among employees. (Dec. 14; Er. Ex. 40).

Ms. Kupfer testified that clerical employees in the Radiology Department, have all been cross-trained, and are consistently and are regularly assigned to multiple locations within the same week. (Tr. 836-837). Ms. Kupfer also testified that the employees, including the Radiology Clerk, Insurance Verification and Clerical Support, interact and speak to the employees in the Outpatient Imaging Center and in the Women's Imaging Center (Tr. 844), on a daily basis in the performance of their job responsibilities. (Tr. 845).

Additionally, Mr. Volavka provided undisputed testimonial evidence that employees at the Health Centers are regularly required to travel between the facilities to perform job functions. For example, the Custodial Watchman position at the Health Center also fulfills the role of a messenger that travels between Health Center East and Health Center West and the Main Hospital to obtain medication and supplies. (Tr. 956-957). These employees also will travel to the Main Hospital to drop off OB/GYN instruments that require sterilization in Central Supply. Mr. Volavka testified that this occurs between 1-3 times ***per week.*** (Tr. 957). These employees also frequently travel to the Main Hospital to go to the Pharmacy to pick up medications to then bring back to the Health Center. Mr. Volavka's testimony established that the service and maintenance employees correspond with and directly deal with the Hospitalists in the Main facility on a daily basis, and also interact directly with employees in the Payroll Department located at 100 Hospital Road. (Tr.

946-947, 978-979).

Further, employees in the Hemodialysis Department frequently travel among the facilities to perform their job duties and interact with employees at the Main Hospital. (See, e.g, Tr. 459-461). Ms. Foster also testified that there are times when the patients in the Behavioral Health Programs overlapped, requiring employees in Inpatient and Outpatient to communicate with one another regarding treatment. (Tr. 603-603). The evidence submitted by Brookhaven conclusively establishes significant employee interchange.

(a) Permanent Transfers

Brookhaven also established that employees have permanently transferred from one location to another and frequently apply for transfers between facilities. (Tr. 84-85, 290). Brookhaven employees working at the Main Hospital have transferred to Brookhaven's off-site locations, have transferred from one off-site location to another off-site location, and have transferred from an off-site location to the Main Hospital. Ms. Foster testified regarding a number of permanent transfers that occurred between each of the offsite facilities and the Main Hospital. (Er. Exs. 10(a)-10(e), 11(a)-11(i), 12(a)-(d); Tr. 120-25, 134, 137-139, 168-171). When employees transfer from one location to another, the employee maintains his or her seniority and hire date, pursuant to the Hospital's transfer policy. (Tr. 118; Er. Ex. 9). The employee also maintains all of his/her medical benefits, accrued benefit time, vacation time, 401(k) contribution and no new hire paperwork is required. (Tr. 798-799). As was demonstrated at the hearing, Brookhaven employees frequently request to transfer from one facility to another to fill open and available positions. The Hospital does not limit the opportunity to transfer in anyway by job classification, title or location. (Tr. 120-124, 315; Er. Exs. 10(a)-10(e), 27). The record conclusively demonstrated significant permanent transfer by Hospital employees to all of

Brookhaven's locations.

(b) Temporary Transfers

Contrary to the findings of the Regional Director, Brookhaven also provided evidence of temporary transfers and interchange. Brookhaven provided substantial testimony and evidence establishing that employees are available to travel between locations to provide coverage for employees at the various facilities on an as-needed basis. (Tr. 837, 840, 861; Er. Ex. 40). Temporary transfers of employees among the facilities regularly and consistently occur on a scheduled basis, as well as on an as-needed basis. (Tr. 120-125, 137-144, 168-71, 297-302, 315, 584-585, 837, 857-858, 861-866; Er. Exs. 10-12, 24-27, 31, 40). Brookhaven provided a multitude of examples of regular interchange during the Hearing including, for example: (1) the Environmental Services Department at the Hospital is responsible for cleaning the Outpatient Imaging Center located at 100 Hospital Road and for cleaning the curtains at Women's Imaging Center (Tr. 424-425, 497-499); (2) the Nutritional Services Department regularly travels to various departments throughout Brookhaven to deliver catered food (Tr. 425-426); (3) Unit Secretaries in Inpatient and Outpatient Hemodialysis perform the same job functions and frequently transfer between the two locations to provide coverage for one another (Tr. 448-449); (4) hemodialysis Technicians travel back and forth from Inpatient to Outpatient Hemodialysis as needed to satisfy patient needs and provide coverage. (Tr. 451); and (5) the scheduling system between all three of the divisions are linked together and employees at each location can access the scheduling at every other location. (Tr. 851). The evidence submitted by Brookhaven conclusively establishes significant employee interchange through temporary transfers.

(c) Daily Interchange and Interaction Among Employees

There is also frequent interaction among the employees at the various locations as part of

their day-to-day job functions. It remains necessary for Hospital employees to regularly interact with employees at various locations in order to perform their job duties. (Tr. 842-849). The use of electronic remote access to information, including e-mail, has made the physical travel between locations unnecessary at times. As a result, Hospital employees regularly interact via Hospital telephone, e-mail and on-line systems.

In addition, Brookhaven employees frequently interact with employees at the Main Hospital and/or each off-site location to discuss patients and treatment plans. (Tr. 846). Brookhaven's patients overlap between the off-site facilities and the Main Hospital. (Tr. 446, 518). Patients at the Main Hospital are frequently transferred between the various facilities to obtain treatment, necessitating employees to interact and coordinate a seamless overall provision of care. (Tr. 518, 602-603, 852, 943-944). The Hospital has demonstrated that employees interact with respect to gathering patient information, gathering advice and discussing patient issues, as well as resolving problems or concerns. (Tr. 843).

As the record demonstrates, such interchange occurs with regularity between employees at the Health Centers and the Main Hospital. For example, Health Center patients are routinely admitted to the Hospital to obtain medical treatment. When these patients are discharged, the employees at the Hospital will discuss the patient's discharge and subsequent care with those individuals at the Health Center. The information regarding the admissions and discharges are communicated between the employees using various communication devices, including electronic mail, facsimile, and telephone. (Tr. 947).

The testimony also established that the Pharmacy at the Main Hospital stocks the pharmaceutical supplies at both Health Centers. The Pharmacy employees at the Hospital travel to both of the Health Centers on a monthly basis and conduct an audit of the Health Centers'

medication supply. This audit includes a review the Health Centers' medication stocks to determine what medications are required. The Pharmacy employees from the Main Hospital then bring supplies to the Health Centers to stock the Health Centers and ensure that the Health Centers have an adequate supply of medication and do not have any expired medication. (Tr. 957-958).

Through the evidence submitted at the Hearing, the Hospital has also demonstrated a sufficient showing of interchange of employees. Clarian Health Partners, Inc., 344 NLRB 332, 335 (2005). The Regional Director improperly fails to assign any weight to these clear examples of interchange and employee contact between the off-site locations and the Main Hospital.

POINT II

THE DECISION AND ORDER OF THE REGIONAL DIRECTOR IS A DEPARTURE FROM OFFICIALLY REPORTED BOARD PRECEDENT

The Region's finding that Local 342's petitioned-for unit is an appropriate unit for bargaining stands in stark contrast to officially reported Board precedent and policy. The fact that Brookhaven is a health care institution renders the unit directed by the Region all the more inappropriate. The Regional Director improperly failed to give consideration to the unique nature of health care facilities or the potential for unit proliferation, and has done so without any persuasive reason. Brookhaven has demonstrated that not only is a multi-facility bargaining unit in line with the Board's caselaw, but such a unit is also appropriate to prevent the potential for labor disputes and inappropriate proliferation of the bargaining unit.

A. The Decision Will Result in Undue Proliferation and Potential for Labor Dispute

The Regional Director mistakenly concludes that there is no reason for concern over undue proliferation or danger of undue disruption under the current circumstances. The Region's assertion is entirely disingenuous and in direct contradiction to Board policy and caselaw. The

Board has long recognized and respected Congress' admonition against the undue proliferation of bargaining units in the healthcare industry. In fact, the Board has consistently expressed the view that health care facilities involve unique considerations and that the Board's consideration of all unit issues in the health care industry "must necessarily take place against this background of avoidance of undue proliferation." Mercy Hospitals of Sacramento, Inc., 217 NLRB 765, 766 (1975). "[W]e are aware of the seriousness of Congress' concern that in making unit determinations we seek to avoid a unit structure that poses a real threat of disruptions to the continuity of patient care through the spread of work stoppages and other adverse effects of labor disputes." Manor Healthcare Corp., 285 NLRB 224, 226 (1987). More recently, the Board has noted that the "basis for the admonition was Congress' concern that multiple bargaining units in healthcare could lead to increased strikes, jurisdictional disputes, and wage whipsawing that might disrupt the provision of health care." Catholic Healthcare West, 344 NLRB 790, 792 (2005). In light of all of the evidence of centralized control and bargaining history covering all Brookhaven locations, the Board must not "proliferate" the units by separating out the Main Hospital location in direct contradiction to this Congressional admonition.

Brookhaven has argued throughout these proceedings that Local 342's proposed limitation of the bargaining unit will lead to the potential for labor disputes and will inappropriately proliferate the bargaining unit. The Board consistently recognizes that an undue proliferation of bargaining units causes unnecessary work stoppages and is inconsistent with the long-term goals of collective bargaining. See, e.g., West Jersey Health System, 293 NLRB 749 (1989). "Whether a large number of bargaining units results from decisions as to scope or composition, fragmentation is likely to produce disruption of health care services, inefficient bargaining with labor organizations, whipsawing and resultant increases in health care costs." Long Island

Jewish-Hillside Medical Center v. NLRB, 685 F.2d 29, 33-34 (2d Cir. 1982). The Regional Director's Decision, limiting the bargaining unit to only those employees at the Main Hospital location, creates complications in the event of a labor dispute.

The Regional Director found that the service and maintenance employees at the Main Hospital lack a community of interest with the service and maintenance employees at the off-site facilities located **across the street from the Hospital**. Under the Regional Director's findings, service and maintenance employees at the off-site locations will be denied a right to vote whether they wish to be represented by either Union. Moreover, each off-site could be separately petitioned by multiple unions resulting in service and maintenance employees being represented by upwards of eight (8) different unions. Such an outcome leads to the unit proliferation that both Congress and the Board seek to avoid. This has the potential to lead to serial stoppages, whipsawing and disruption of the functioning of the Hospital by a dispute in only a part of the workforce. See, e.g., Long Island Jewish-Hillside Medical Center, 685 F.2d at 33-34. As repeatedly argued by Brookhaven, to achieve industrial stability and avoidance of fragmentation, the Board must not permit piecemeal organizing to result in a proliferation of site-specific units. Administrative efficiency and industrial stability further require the Board to reverse the Regional Director's single-site finding. A single-site bargaining unit is not appropriate as it will unduly fragment Brookhaven's bargaining structure and will act to restrict the mobility of the employees.

In support of his position, the Regional Director again cites to Catholic Healthcare West, supra. The facts there do not fit the case at bar. In Catholic Healthcare West, the Board found no risk of disruption where the employer ***failed to even argue*** that a single-facility unit would create an increased risk of work disruption or other adverse impact on patient care should a labor dispute arise. In contrast, Brookhaven has repeatedly argued throughout these proceedings, that a single

site has the potential to lead to serial stoppages, whipsawing and disruption of work process by a dispute in only a part of the workforce. The Regional Director's decision to carve out only a fashioned group of employees to participate in the election is against the Board's long standing policy not to fragment an employer's facility unless the petitioned-for unit clearly possesses "a separate community of interest" from the other employees. Brand Precision Services, 313 NLRB 657 (1994); see, also, Seaboard Marine, Ltd., 327 NLRB 556 (1999) ("It is well settled that the Board does not approve fractured units...."); Huckleberry Youth Programs, 326 NLRB 1272, 1274 (1998) ("the Board seeks to avoid" the creation of residual units); Michigan Wisconsin Pipe Line Co., 194 NLRB 469, 470 (1971) (the Board is "reluctant" to fragmentize employees).

Further, a multi-facility bargaining unit will benefit the Hospital's employees. As the Board has recently held:

> Section 9(a), "read in light of the policy of the Act, implies that the initiative in selecting an appropriate unit resides with the employees...."[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The first and central right set forth in Section 7 of the Act is employees' "right to self-organization." As the Board has observed, "Section 9(b) of the Act directs the Board to make appropriate unit determinations which will 'assure to employees the fullest freedom in exercising rights guaranteed by this Act.' i.e., the rights of self-organization and collective bargaining.

In Re Specialty Healthcare & Rehab. Ctr. of Mobile, 357 NLRB No. 83, *12 (Aug. 26, 2011) (citing American Hospital Assn., 499 U.S. 606, 610 (1991) and Federal Electric Corp., 157 NLRB 1130, 1132 (1966)).

In order to uphold the requirements of the Act, the only appropriate unit for purposes of the election is one that permits all Brookhaven service and maintenance employees the opportunity to vote; not merely the limited portion of employees approved by the Regional Director. The Decision leaves Brookhaven with a unit that is too narrow and excludes employees who share an

overwhelming community of interests with the included employees, thereby effectively denying the excluded employees any meaningful opportunity to be represented or to engage in collective bargaining. The Board should not deprive employees who share this community of interest the opportunity to vote.

B. The Region's Finding Is In Stark Contrast to Board Precedent

The Board must grant Brookhaven's Request for Review because the Board's conclusion in this case that a single-site location is an appropriate unit for bargaining stands in stark contrast to officially reported Board precedent. In support of its finding, the Region attempts to distinguish cases cited by Brookhaven, where the single-site facility was found inappropriate, despite facts virtually analogous to this case. Here, the Regional Director does not follow controlling Board precedent and his decision rests on a small number of easily distinguishable cases.

In St. Luke's Health System, Inc., 340 NLRB 1171 (2003), cited by Brookhaven in support of the argument that a multi-facility unit is appropriate, the Board reversed a Regional Director's decision in finding that one clinic out of twenty-one in a system was an appropriate bargaining unit. In holding for the employer, the Board found that all 21 clinics operated as a single network that is functionally integrated with respect to employees and services. The Region attempts to distinguish this case on the facts, asserting in conclusory fashion and without support that the evidence of regular interchange among the employer's clinics in St. Luke's was more substantial and local managers' autonomy more limited than at Brookhaven. The Regional Director's finding lacks support. Importantly, in St. Luke's, the degree of employee interchange was challenged by the dissenting member of the Board. The majority responded to such challenge by holding that no single factor, specifically evidence of regular interchange, is determinative in the community of interest analysis.

The Regional Director also attempts to distinguish St. Luke's from the case at bar, asserting that Brookhaven's local immediate supervisors have too much autonomy. (Dec. 40) In reaching this Decision, the Regional Director fails to address ***any*** of the evidence establishing that all hiring, firing and performance-based decisions must be approved by the Department Head, including for example, performance appraisals. (Tr. 211). Furthermore, the Regional Director failed to acknowledge that the employer in St. Luke's had a similar management structure as Brookhaven, where the directors for each individual clinic reported ultimately to the chief operating officer for operations, and managers made the hiring decisions and could initiate discipline. The Board in St. Luke's found determinative the fact that onsite managers had little authority to modify central decisions, making the clinics a highly centralized operation and that the geographic proximity of the clinics facilitated such centralized operations.

Additionally, like the facts here, the employer in St. Luke's had common corporate services, such as, human resources, patient information systems, centralized purchasing and billing, employee education and payroll administration. In fact, the Board found that since the Human Resources department "exercise[d] significant control" over the hiring process (although the Human Resources department did not exercise complete control) the multi-facility unit was appropriate. Similar to Brookhaven, position openings were posted system-wide, and all employees, transfers or new hires were advertised from and processed in a central human resources office. The Board further commented that the interests of the petitioned for employees were more effectively and functionally merged into a larger, more appropriate comprehensive unit.

The Region also attempts to distinguish Stormont-Vail Healthcare, Inc., 340 NLRB 1205 (2003), from the facts of this case. The Region's attempts to distinguish Stormont are unpersuasive. In Stormont, the employer operated an integrated health care system consisting of

a hospital complex comprised of four connected inpatient acute care hospital buildings and several other facilities, as well as numerous facilities away from the hospital complex including an inpatient acute care psychiatric department and several clinics and community nursing centers, among other facilities. In finding that the employer's operations were centralized, the Board cited to a number of facts, which are also found here, including: (1) one central human resources department which serves all departments and all locations; (2) the human resources department issues one set of personnel policies applicable to all employees, (3) all employees enjoy the same set of fringe benefit; (4) pay scales for classifications are determined centrally; (5) training of employees and orientation attended by all new employees was done centrally on the main campus; and (6) the employer also operated an extensive program of continuing medical education courses open to its employees free of charge. Id. at 1210. Further, in finding a single site facility inappropriate, the Board stated that evidence of the employer's system-wide holiday party, summer picnic, employee newsletter and interoffice mail system evidenced a sufficient community of interest and supported a multi-facility bargaining unit. 340 NLRB at 1206, 1208. Like the employers in both Stormont-Vail and St. Luke's, Brookhaven has successfully rebutted the presumptive appropriateness of the petitioned-for single-facility unit and demonstrated that a multi-facility unit will better serve the interests of the employees.

The Regional Director's decision is also entirely inconsistent with prior cases presenting nearly identical circumstances to the instant facts. In fact, the Regional Director appears to ignore established Board decisions holding that single facility units are inappropriate when, as here, the employer operates a functionally integrated business, with a high degree of interrelationship among its facilities, with little or no local autonomy and with central control over supervision, personnel policies, labor relations and operations. See, e.g., Kaiser Foundations Health Plan of

Oregon, 225 NLRB 409 (1976); The Children's Hospital, Samaritan Service Corp., 307 NLRB 90 (1992); West Jersey Health System, 293 NLRB 749 (1989); St. Luke's Health System, Inc., 340 NLRB 1171, 1172 (2003).

The Board's decision in West Jersey Health System, 293 NLRB 749 (1989), is particularly instructive. In West Jersey, the Board considered the appropriateness of a multi-facility unit in a health care system with four separate facilities located at distances ranging from nine to twenty miles apart. The Board overruled the Regional Director and held that the *only* appropriate unit was a multi-facility unit made up of all four divisions. Like this case, the Board found that the employees had common job classifications, wage scales, and benefits. Even though each facility was, to some extent, independent, the health system presented evidence of integration which included uniform personnel policies, job classifications, wage scales and benefits, and rotation of employees among the facilities. Id. at 750-51.

Moreover, in West Jersey, the Board found that certain equipment was located only in some hospitals, and certain medical testing performed only in some hospitals. Taking into account all of these factors, the Board found that the presumption had been rebutted, noting in particular the "relative closeness" of the facilities; the occurrence of both permanent and temporary staff transfers; functional integration as evidenced by system-wide incorporation, and uniform personnel policies and procedures. Id. Further, the Board also noted the potential for adverse consequences ensuing from a labor dispute at any one unit, because some patient services were available only in certain facilities, and therefore the entire system could be disrupted by a strike at a given facility.

In fact, the Board, in finding a multi-facility bargaining unit appropriate in the healthcare industry, has been clear that the centralized administration and management of an employer's

health care facilities need not be absolute. The Board has found that a "significant" amount of centralized management is sufficient to support rebutting the single-facility presumption. For example, the Board in Clarian Health Partners, Inc., found a multi-facility bargaining unit appropriate despite concluding that each hospital had its own "local administrative hierarchy" and functioned in an "independent and autonomous fashion." 344 NLRB at 334. Notably, the finding that this local hierarchy was responsible for daily supervision of employees, labor relations and work assignments at its specific hospital did not preclude the inclusion of employees from these hospitals. Id. Brookhaven undoubtedly has demonstrated through the record evidence a significant amount of centralized management.

Brookhaven has established all relevant factors during the Hearing and such evidence deserves to be afforded proper weight in determining whether a single-facility unit is appropriate. Brookhaven maintains a highly centralized personnel system, with one human resources department for the entire Hospital and all employees are subject to the same policies, procedures, wage scales and benefits. The unit directed by the Regional Director is unsupported by substantial evidence and inappropriate on the ground that it would create several distinct units of service and maintenance employees at Brookhaven. This situation would be fraught with danger of jurisdictional disputes and of whip-saw negotiation tactics between the unions. The situation would be untenable and, indeed, would jeopardize the ability of Brookhaven, a provider of healthcare services, to operate in a stable atmosphere free of labor strife. The evidence in this matter conclusively demonstrates that a multi-facility bargaining unit is appropriate. We ask the Board to use its reconsideration power to prevent undue fragmentation. Accordingly, the Hospital's request for review should be granted.

CONCLUSION

For the reasons stated herein and during the administrative investigation of this matter, the Region improperly found that Local 342's petitioned-for unit of only those service and maintenance employees working at Brookhaven's Main Hospital facility located at 101 Hospital Road in Patchogue, New York was appropriate. As the multiple facilities of Brookhaven make up the integral parts of one local Hospital, the Region's determination must be overturned to uphold the requirements of the Act. The service and maintenance employees working at Brookhaven's off-site locations share an overwhelming community of interest with those working at the Main Hospital facility, and would not appropriately be placed in any other unit. The only appropriate unit for purposes of the Local 342 election is one that permits all Brookhaven service and maintenance employees the opportunity to vote; not merely the limited portion of employees approved by the Region. Accordingly, the Hospital requests that its Request for Review be granted and the Order of the Regional Director be overturned in its entirety.

Dated: New York, New York
December 12, 2012

Respectfully submitted,

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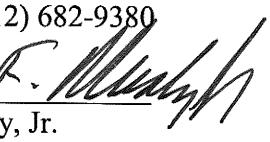
By 
Daniel F. Murphy, Jr.

AFFIRMATION OF SERVICE

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

Randi Feldheim Morris, an attorney duly admitted to the Court of the State of New York, being duly sworn, hereby deposes and says:

On December 12, 2012, I served via electronic filing and Federal Express a copy of the foregoing Brief in Support of Employer's Request for Review upon:

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Sworn to before me this
12th day of December, 2012

Adriana Kosovych
Notary Public

Randi Feldheim

ADRIANA STEFANIE KOSOVYCH
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No. 02K06216875
Qualified in New York County
Commission Expires January 25, 2014