

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of:
BROOKHAVEN MEMORIAL HOSPITAL,

Employer,

Case No. 29-RC-084828

and

LOCAL 342 UNITED FOOD AND COMMERCIAL
WORKERS,

Petitioner,

and

LOCAL 111, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Intervenor.

PETITIONER'S BRIEF IN OPPOSITION TO EMPLOYER'S REQUEST TO REVIEW

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I. STATEMENT OF PROCEDURE

On July 10, 2012, United Food and Commercial Workers Local 342 (“Union” and/or “Local 342”) filed a Representation Petition with Region 29 of the National Labor Relations Board (“Region 29”) seeking to represent “all full time and regular part time non professional employees other than technical employees, skilled maintenance employees, business office clerical employees and guards (and supervisors) employed at the Employer’s facility located at 101 Hospital Road, Patchogue, New York.” Excluded were “all other employees, including but not limited to supervisors; office clerical; MIS/IT personnel; quality control personal; confidential employees; employees of, or working at or with subsidiaries, sub-contractors or affiliated locations or organizations; any employees currently represented by another certified labor organization or certified labor union; members of the Board of Directors, owners, and guards, as defined by the Act.”

Following the filing of the Petition seeking to represent the above stated employees of Brookhaven Memorial Hospital (“Brookhaven” and/or “Employer”) Local 111, International Brotherhood of Teamsters (“Intervenor” or “Local 111”) intervened in this matter. Local 111 represents business office clerical employees employed by Brookhaven in specific departments. The hearing in this matter was commenced on July 26, 2012 before hearing Officer Colleen Breslin and continued on July 30, 2012, August 1, 2012, August 2, 2012, August 3, 2012, August 6, 2012 and concluded on August 7, 2012. On the first day of hearing the Parties stipulated to the Unit description (“Unit) which was as follows:

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

Excluded are all other employees including but not limited to technical employees, business office clericals, MIS/IT personnel, quality control personnel, confidential employees, employees that were working at or with the subsidiaries sub-contractors, physician practices or affiliated locations or organizations, any employees currently represented by Brookhaven Memorial Federal Nurses and Health Professionals and Local Union 111, International Brotherhood of Teamsters, members of the Board of Directors, owners, guards and supervisors as defined by the Act.

(Tr. 10-11)¹

Therefore, the sole issue set for Hearing by the Regional Director was “whether an appropriate unit must also include the multiple facilities proposed by the Employer” (Dec. 3), which would include employees who work at other facilities located at 100 Hospital Road, Patchogue, New York; Health Center West located at 365 East Main Street, Patchogue, New York; Health Center East located at 550 Montauk Highway, Shirley, New York; Women’s Imaging Center located at 285 Sills Road East, Patchogue, New York and Swezey Pavillion, located at 103 West Main Street, Patchogue, New York. Therefore the Employer had the burden of overcoming the presumption of a single facility bargaining Unit as opposed to their request for a multi-facility bargaining Unit.

A Decision and Direction of Election (“Decision”) was issued by the Regional Director of Region 29 on November 28, 2012, concluding “that the single-site unit sought by the Petition is appropriate for collective bargaining” and directing “an election among service and maintenance employees employed in the hospital building at 101 Hospital Road” (Dec. 2).

¹ Petitioner’s exhibits are designated “(Pt. Ex. _____)”; Employer exhibits are designated “(E. Ex. _____)”; Transcript citations are designated “(Tr. _____)”. “Dec. ____” refers to the relevant pages of the Regional Directors November 28, 2012, Decision and Direction of Election.

By Order dated December 14, 2012, the Regional Director approved the withdrawal of the Intervenor, Local 202, International Brotherhood of Teamsters (intervened as Local 111 and now merged with Local 202).

II. PRELIMINARY STATEMENT AND SUMMARY OF OPPOSITION TO REQUEST TO REVIEW

The Employer requests review of the Decision issued by the Regional Director pursuant to Section 102.67 of the Rules and Regulation of the National Labor Relations Board (“Board”). The Employer seeks review on two grounds. As will be shown below and more fully explained in the pages to follow, both grounds for review are without merit and appear to be a “pro forma” submission by the Employer without providing any additional facts or arguments both factual and legal and the necessary factual or legal back-up to grant the request.

The first alleged ground for review is that the Decision, on a substantial factual issue, is clearly erroneous on the record and such error prejudicially affects the rights of the Employer. The Employer goes on to claim that the Regional Director “ignored” evidence submitted by the Employer. In fact, when one reviews the Employer’s Request for Review and the Decision of the Regional Director, it is clear that the Decision did address each of the “ignored” evidence. In fact, in the alternative, the Regional Director’s decision does not necessarily disagree with the four items that the Employer claims were “established” by the “ignored” evidence (See paragraphs (a)(i) to (iv) in paragraph 1 of the Employer’s Preliminary Statement and Summary of Argument). Even if one were to view those four “ignored” items as true (although the Petitioner does not agree with that position) that still would not sustain granting a Request for Review. In fact, the Decision does not necessarily disagree with the factors set forth by the Employer, however, what the Employer clearly ignores is the fact that there are other factors,

more substantial and more important in this type of matter, such as lack of interchange and first level supervision within the department, clearly sustains the Decision.

In fact, the request to review on the grounds that the Regional Director ignored evidence is ludicrous. If one were to examine all of the claimed “ignored evidence” set forth by the Employer, one would realize that in fact the Regional Director did not ignore that evidence but rather took it into consideration when determining that there were certain “common factors” between the single facility and the multi facilities. However, the Employer would like the Board to ignore the fact that those factors were not overwhelming or not substantial in comparison to the factors showing no community of interest and that the Employer failed to rebut the presumption of the single facility appropriate unit. The Employer fails to point out to the Board that in fact when it comes to the issue of supervision and whether there is substantial transfer/interchange, the two most important factors to be looked into by the Board, that the Employer clearly did not meet its burden with regards to those two factors.

The second “ground” upon which the Employer seeks a review of the Decision is “that a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.” A review of the cases cited by the Employer clearly indicates that that is not so. The Employer fails to show why any of the cases cited in the Decision do not apply or depart from officially reported Board precedent. The Board is respectfully referred to the legal arguments and citations in the Decision, as well as those cited later on in Petitioner’s Opposition hereto.

III. STATEMENT OF FACTS

The material facts detailed below are uncontested in the record. The Employer produced three (3) witnesses. The first witness Kelly Foster was the Employer’s main witness who

testified about alleged “factors” that generally apply to all facilities and then gave testimony about each facility individually. This was followed by testimony from Nona Kupfer who testified concerning the Women’s Imaging Center (found at 285 Sills Road), Out-patient Radiology (found at 100 Hospital Road) and the In-Patient Radiology Department (found at the Main Hospital). The Employer also produced Joseph Volavka whose testimony centered mostly on the two health centers, Health Center East and Health Center West. For ease of organization I will first address alleged general statements of fact raised at the hearing and the Employer’s arguments concerning general factors amongst all the facilities followed by alleged facts concerning the specific off site facilities which the Employer claims should be part of the Unit and which the Union claims should not.

A. GENERAL STATEMENT OF THE FACTS

Brookhaven Memorial Hospital is an acute care hospital located at 101 Hospital Road, Patchogue, New York (“Main Hospital”) consisting of 306 beds and employing nearly 2,200 – 2,300 employees, (Tr. 73, 617 & 618). The Union seeks to represents only those employees who fall within the Unit description that are employed at the Main Hospital.

The Employer seeks a multi facility Unit to include facilities located at five (5) other locations none of which provide acute care services (Tr. 617-618). One location is Swezey Pavilion, located at 103 West Main Street, Patchogue, New York (“Swezey”). Swezey consists of the following departments, Home Care Department, Hospice, Out-Patient Hemodialysis, Engineering, Finance, Accounts Payable, and the Business Office (Pt. Ex. 1-C). It should be noted that at the Swezey location the Employer is seeking employees working in the Home Care Department, Hospice and Out-Patient Hemodialysis (E. Ex. 32). The remaining departments

Engineering, Finance, Accounts Payable and Business Office are not to be included and clerical employees in the Accounts Payable and Business Office are already represented by Local 111.

The Employer also seeks as part of its multi facility Unit the facility known as 100 Hospital Road, Patchogue, New York (“100 Hospital”). Again, this facility as in Swezey, contains multiple departments, some of which the Employer is seeking to be part of the Unit and some of which they are not. The facility at 100 Hospital consists of the following departments: Out-Patient Radiology, Cardiac Rehabilitation, Medical Library, Residency Program/Medical Education, Payroll, Employee Health, Planning Department and External Relations and Corporate Compliance (Pt. Ex. 1-B). Out of the aforesaid departments the Employer is seeking to include in the Unit those employees working at Out-Patient Radiology, Payroll and Employee Health (E. Ex. 32). At the present time there are only four (4) alleged employees who would be considered for the Unit.

The Employer is also proposing the off site facility known as the Women’s Imaging Center, located at 285 Sills Road, East Patchogue, New York (“WIC”). The only department at the facility is the Women’s Imaging Department (Pt. Ex. 1-D). Based upon the documents produced by the Employer and the evidence produced at the hearing at the present time there 4-5 employees who would be considered for the Unit (E. Ex. 32 and Pt. Ex. 1-D and Tr. 889).

The last two (2) facilities proposed by the Employer for the multi facility Unit are Health Center West, located at 365 East Main Street, Patchogue, New York (“HCW) and Health Center East, located at 550 Montauk Highway, Shirley, New York (“HCE”). Both are community health clinics not acute care facilities, operated through a contractual relationship between Brookhaven Memorial Medical Center and the Suffolk County Department of Health Services. (Tr. 512&923, E. Ex.30A). Both facilities house not only the Health Center but Outpatient

Behavioral Health Department which the Employer seeks as part of the proposed Unit (Pt. Ex. 1-E & 1-F).

There are other offsite facilities that have an association with Brookhaven that have not been proposed as part of the multi facility Unit, including the Wound Care Center and Diabetes Wellness, out-patient practices located at 33 Medford Avenue, Patchogue, New York (Tr. 925). Other than the 100 Hospital Road facility, all of the other facilities are not adjacent to or directly across the street from the Main Hospital but rather are anywhere from one (1) to eight (8) miles from the Main Hospital (Tr. 74).

B. ALL THE EVIDENCE PRODUCED BY THE EMPLOYER CONCERNING FACTORS THAT WERE GENERALLY SIMILAR FOR ALL FACILITIES WAS CONSIDERED AND WAS INSUFFICIENT TO OVERCOME THE REBUTTAL PRESUMPTION OF A SINGLE FACILITY UNIT

The Employer relied upon the testimony of Kelly Foster, Human Resources Manager in order to attempt to convince the Board that, in general, the multi facility sites proposed by the Employer should be combined into one (1) Unit. It should be noted that Ms. Foster testified that her primary responsibility is for labor relations (Tr. 73) and therefore, it was the Union's position, and as found by the Regional Director, that she was not an appropriate witness with regards to most, if not all of the subject matters testified about. In fact, a review of the record reveals that most of her answers were not based upon personal knowledge, were "second-hand" or "assumed" and that most of her answers were prefaced with "I believe" or "perhaps". (Dec.7-8) Ms. Foster testified that she never worked in any other departments other than Human Resources, has never managed another department and that the management of the departments in question herein are left up to the department managers of each department (Tr. 616-617). The Employer never produced those witnesses who could provide detailed and accurate answers on

scheduling, transfers, interchange and job assignments as clearly pointed out in the Decision such as first level supervisors from each department from each facility.

In any event, as will be showed below whatever factors shown by the Employer at the hearing evidencing a “common” or “integrated” procedure which were addressed in the Decision, failed to rise to the level to rebut the strong presumption of the single facility Unit. While the Employer did produce some evidence of the Human Resource Department providing integrated services for the Main Hospital as well as the offsite facilities, a substantial amount of the evidence produced showed that in fact it was the individual departments that controlled how the offsite facilities operated with regards to most of the areas testified to by Ms. Foster.

Of major importance with regards to evidence produced, as well as a major factor to be looked at by the Board in making its determination in this matter was the issue of “transfers”. The term “transfer” as used by the Employer at the hearing referred to an internal candidate selected for a new job position (Tr. 83-85). Therefore, this was not a “temporary transfer” wherein an employee would be transferred back to another department or another facility for a short period of time and then transferred back to their other department. The only evidence concerning transfers were permanent transfers which, in actuality, as will be shown below was actually an internal candidate applying for and being selected for a new job position and becoming a “new hire”.

The entire process actually is initiated by the department manager and not the Human Resource Department. The department manager whether it be at the Main Hospital or at an offsite facility, completes a Position Request Form (PRF) which the department manager submits to the vice president of their department for approval. The only involvement by the Human Resource Department, is to post the available job position (Tr. 79-80). Therefore, it is the

individual department managers, whether at the Main Hospital or at the offsite facility, that initiates the hiring process.

Once the job position is posted an employee can apply by using an employee Transfer Request Form. While the Human Resource Department collects the employee Transfer Request Forms and reviews them to make sure they meet the internal qualifications (more than one year experience and a good work record) following that review the employee Transfer Request Forms are sent to the department manager to decide whether or not the candidate is to be interviewed. It is the department Manger who conducts the interviews and it is the department manager who decides whether or not to hire a candidate, not the Human Resource Department (Tr. 87). Once the department manager selects the candidate to be hired the department manager fills out a Personnel Communication Report (“PCR”). The department manager signs it and it is then signed by the department manager’s vice president. It should be noted that this same process is used if an internal candidate cannot be found and an external candidate is sought for the position (Tr. 91).

While it cannot be disputed that Brookhaven has hospital wide employment policies for all its employees, whether in the Main Hospital or offsite facilities, there are department wide policies that also must be followed. In fact following an employees hire/transfer and a hospital wide orientation being held, that employee must then undergo a department specific orientation with their department manager where they are actually trained for their position by the department, not Human Resources. (Tr. 94 and 648-650).

Therefore, it is the individual department’s, those in the offsite facility and those in the Main Hospital that, for the most part, are responsible for the hiring process. Should any candidate not receive a “transfer” it is the department head or manager, not the Human Resource

Department that sends the letter out to the individual to advise them that they did not receive the “transfer” (Tr. 656). In fact, Ms. Foster set forth that the Human Resource Department provides “support” to any department that “might ask us for a little bit of support with their hiring” (Tr. 106).

In further support of the Union’s position that in fact the Employer failed to show any, or a negligible amount of interchangeability, the Employer cannot rely upon the transfer evidence produced at the hearing to show interchangeability. Again, in actuality the process as described above was someone applying for a new job position and being considered a new hire. Ms. Foster herself testified that when one is “transferred” pursuant to the procedure from one facility to another that person is considered to have obtained a “new job” and if they are not successful in that job during the probationary period they are terminated and do not go back to their prior position (Tr. 638-640).

In further support of that position one need only review Employer Exhibit 9, the Employer’s policy concerning “job or shift transfer”. While describing the qualifications that one must meet in order to apply for “transfer”, one year of continuous service, it also clearly sets forth that it is the department manager who will be interviewing and making the decisions on a job offer. However, Employer’s Exhibit 9 clearly indicates that once one is chosen for the position they must serve a probationary period, four (4) months for full time and six (6) months for a part time employee. The policy goes on to state that if one does not successfully complete the transfer probationary period they will be terminated. There is no option of them returning back to their previous position. Therefore it is obvious that the “transferred employee” is being treated as a new hire. This is certainly not evidence of traditional interchangeability sought by the Board in deciding whether to approve a multi facility Unit.

Even if one were to view the “transfers” as evidence of interchangeability, that “interchangeability” is negligible. As previously stated the Employer claims that the bargaining Unit they have proposed consists of over 675 employees. At the hearing, the Employer produced Employer’s Exhibits 10, 11 and 12 which consisted of PCR transfer forms for eighteen (18) employees who were “transferred” either from the Main Hospital to an offsite facility or from an offsite facility to the Main Hospital or from one offsite facility to another. (Tr. 123-167). These forms were the only evidence presented by the Employer of “transfers” that have taken place at the entire hospital. In fact, a review of the eighteen (18) “transfers” that took place reveals that most were not for employees who would be part of the proposed bargaining Unit. The Employer did not produce a list or names of any other employees who were “transferred”, not only for the past six (6) months but for the past ten (10) years! Given the fact that the only evidence produced were that there were eighteen (18) transfers in the entire hospital, most of which were not part of the bargaining Unit and some of which were done in lieu of a layoff, the Employer has clearly not shown that there is any permanent or temporary transfers of any significance whatsoever, out of a proposed bargaining Unit of 675 employees. Nor, as will be shown below has the Employer shown any significant, if any, interchange between facilities.

Again, the evidence at the hearing concerning employee job descriptions, employee evaluations and probationary period are job functions for department heads and supervisors and not the centralized Human Resource Department. Ms. Foster testified that it is the department head or supervisor that does the evaluation following the probationary period of the “transferred” employees (Tr. 210-211).

With regards to the job description and appraisals for each employee working at the hospital, the job descriptions are prepared again by the department head and not by Human

Resources, and in fact the witness testified that she has no involvement in creating the job descriptions or the performance appraisals (Tr. 216). The witness went on to further state that there is no requirement that the Human Resource Department be involved in the department head's decision regarding the probationary period and job appraisals (Tr. 222). Annual evaluations are done on all employees and again that is performed by the department heads and the only involvement of the Human Resource Department is that they serve as the "file clerks" for the Department Managers since they merely maintain the annual evaluation in their file and do nothing else concerning the evaluations (Tr. 223-224 and 664).

As to several other issues raised by the Employer during the hearing as testified to by Ms. Foster, again her lack of knowledge failed to produce any evidence which would overcome the single Unit facility presumption. Although there was testimony concerning the use of computers hospital wide the witness did not know which employees that are part of the proposed Unit did or did not have access to the computer as part of their daily job functions since only those who need a computer for their job can log on to the computer system (she was able to mention some who did or some who didn't but could do so for all of the employees in the proposed Unit) (Tr. 228-230 and 660-670). Further the witness did not know whether all employees were assigned passwords in order to use the hospital wide computer.

When testifying concerning hospital wide identification cards Ms. Foster testified that not only hospital employees but also sub-contractors have identification cards (Tr. 238). The identification cards are swipe cards for access to locations and systems but the access that any individual employee has is determined by their manager or supervisor at the facility they work at, and not by the Human Resource Department (Tr. 239). In fact, there is no centralized time clock but rather the witness testified that each facility has its own time clock (Tr. 241). Although there

was testimony concerning hospital wide emails, again, the witness was unable to specifically identify who, at the proposed off-sites would use email and whether or not those employees would be part of the proposed Unit (Tr. 265).

Finally, when testifying concerning “interchangeability” out of a proposed Unit of over 675 employees the Employer’s witness can only give a few examples of employees who “interchanged” on a temporary basis. The employee Adrian Quinones is a Custodial/Watchman at Health Center West (Tr. 243). Without discussing the witnesses testimony one must first question whether this example even applies to a potential bargaining Unit employee since part of Mr. Quinones duty is to be a watchman and includes security functions. Your attention is respectfully to the job description given for the Custodial/Watchman contained in the job descriptions in Employer’s Exhibit 29. A review of the job description shows that he clearly has security functions which place him in the guard category and thus excluded from the Unit.

However, if one were to review the testimony concerning the only example of a general interchange again, it is negligible. For the seven (7) months of records reviewed for 2012 the Employer claims there are two (2) days out of the seven (7) months where Mr. Quinones worked at the Main Hospital as opposed to Health Center West (Tr. 247). The first date February 5, 2012, he was working overtime and not as part of a regular shift and in fact the witness could not testify as to whether he was scheduled to work at the other facility (Tr. 248). The second date out of the seven (7) months, May 12, 2012, again, Ms. Foster could not testify how he came about working at a different facility on that date.

Mr. Quinones Supervisor, Joe Volavka, stated Quinones worked his regular shift and then went to the Main Hospital to work overtime, which he can do as long as it did not conflict with his scheduled shifts, and that he was just “picking up extra hours”. (Tr. 950-954).

Therefore, with respect to the evidence, or lack thereof produced concerning Mr. Quinones in fact if one were to agree that it is an example of “interchangeability” the Employer merely provided a vague description of two days out of seven months where Quinones actually worked overtime “picking up extra hours” as opposed to working at another facility or another job in lieu of his regular and customary position. Even if one were to view this as a true example of “interchangeability” one employee doing so for two days in order to pick up extra hours in an overtime shift clearly does not meet the Employer’s burden.

The only other “examples” of “interchangeability” presented by the Employer concerned employees working in In-Patient radiology, Out-Patient radiology and the Women’s Imaging Center. With regards to testimony by Ms. Foster concerning this issue and the Radiology Department in general she clearly was not competent to do so as she stated on the record that she was not sure how things worked in the Radiology Department (Tr. 409-411). In fact, she admitted that the job descriptions in the Radiology Department needed to be updated (Tr. 411). Ms. Foster testified that there were 20-30 clerical employees working at In-Patient Radiology in the Main Hospital, Out- Patient Radiology in the Women’s Imaging Center. The Employer’s other witnesses who testified concerning the Radiology Department, Nona Kupfer testified that although she was not sure she believed there were 14 clerical employees although a review of Employer’s Exhibit 40 reveals that there are 19 clerical employees listed on the schedule for the In-Patient and Out-Patient departments, not including the clerical employees working at the Women’s Imaging Center (Tr. 889).

However, both witnesses, although neither having any responsibility whatsoever for the scheduling of clerical employees in the Radiology Department attempted to testify concerning Employer Exhibit 40 which was the schedule for clerical employees in the In-patient Radiology

Department and Out-Patient Radiology Department for a three week period commencing July 1, 2012 (Tr. 898 and E. Ex. 40). When all is said and done, the only evidence produced by the Employer was that there are potentially three clerical employees out of 20-30 clerical employees who during a three week period were scheduled to work elsewhere other than their normal location either at In-Patient Radiology or Out-Patient Radiology. OTHER THAN FOR THAT THREE WEEK PERIOD, AND FOR THOSE THREE CLERICALS, THE EMPLOYER SHOWED NO OTHER EVIDENCE WHATSOEVER OF ANY INTERCHANGE NOT ONLY IN OUT-PATIENT RADIOLOGY, IN-PATIENT RADIOLOGY OR THE WOMEN'S IMAGING CENTER OR IN ANY OTHER DEPARTMENT FOR THE PROPOSED BARGAINING UNIT EMPLOYEES. In fact, the Employer failed to produce any schedules whatsoever for the Women's Imaging Center which the Employer claims should be part of the In-Patient Radiology and Out-Patient Radiology. One must wonder why the Employer never produced Diane Masino, the person that both witnesses testified does the scheduling for In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center (Tr. 839). In fact, Masino's supervisor, witness Nona Kupfer, testified that Masino doesn't need approval to move around staff, that she is not involved in scheduling employees outside of their schedules and that she had seen the schedule in question Employer's Exhibit 40 for the first time the day she testified (Tr. 902-904). Kupfer stated on the record that she was not familiar with the schedules (Tr. 857). Finally, Kupfer stated that she was not involved in scheduling, was not involved in supervision of the staff for In-Patient Radiology, Out-Patient Radiology or the Women's Imaging Center, only goes to the Out-Patient Radiology one time per week, is at the Women's Imaging Center "infrequently", is not a clinician and could not advise the Hearing Officer how many employees are employed at each of the three locations (Tr. 824, 833, 880 and 898).

The Employer attempts to mislead the Board by stating that the Regional Director failed to afford appropriate weight to documentary evidence, specifically consisting of schedules. The Employer claims that the Decision erroneously stated that “aside from Er. Ex. 40, the Employer did not provide the departmental schedule for Radiology or any other departments” (Dec. 16). In fact, that statement is accurate and it is the Employer who is misleading the Board.

The Petitioner did subpoena schedules for all departments and for all locations from January 1, 2012 to the present. The Employer refused to produce initially, and the Hearing Officer directed compliance on numerous occasions and finally the Employer did produce some schedules off the record. Although produced pursuant to subpoena and readily available for anyone to use, including the Employer, none of the alleged 1,562 pages produced at the directive of the Hearing Officer were admitted into the record. In fact, none of them were referred to on the record. The Regional Director, in his decision cannot refer to documents that are not in the record. The Employer’s claim, now made in their Request for Review that the records allegedly support their position is just that, an allegation and not fact and not on the record.

With regards to discipline at the Main Hospital and offsite facilities Ms. Foster testified that it is the Department Managers and individual supervisors that discipline within their departments, and not the Human Resource Department or any centralized department (Tr. 653).

With regards to medical records at the Main Hospital and the offsite facilities again, Ms. Foster did not know if the patient received services at the Main Hospital and then goes to an offsite facility for the services provided therein whether their medical chart would transferred over to the offsite facility or a new chart started (Tr. 783). However, and as will be more fully discussed later the system maintained by the hospital for medical records is not used for records maintained at the Health Care centers (Tr. 970).

Therefore, other than a set of hospital wide policies and procedures that are provided to all employees, each department is run by its own Department Heads, Managers and Supervisors. In fact, each department provides its own orientation and training, each department does their own hiring, firing, evaluations and discipline. The Employer failed to provide any, or at best a negligible showing, of interchange and produced no evidence whatsoever of temporary transfers. Therefore, the Employer has clearly failed to meet their burden to rebut the presumption of the single facility Unit.

Again, the Employer attempts to mislead the Board by claiming as part of the alleged “substantial factual issue which is clearly erroneous from the record” is that the Regional Director ignored uniform policies concerning employees throughout the main hospital and the various off sites as well as common job descriptions utilized for service and maintenance Employees. One only needs to review the Decision where, from pages 8 through 12 the Regional Director clearly points out the shared community of interest factors that the Employer claims were ignored!

It is the Employer who is erroneous in attempting to convince the Board that the Regional Director did not consider the common factors that were shown by the Employer. What the Employer fails to comprehend is that those common factors alone do not, of and by themselves, warrant a Decision in favor of the Employer for a multi location unit.

Besides the above, as will be shown below, a review of each of the individual facilities clearly supports the Decision.

**C. ALL THE EVIDENCE PRODUCED BY EMPLOYER CONCERNING
THE OFFSITE FACILITY KNOWN AS HEALTH CENTER WEST AND
HEALTH CENTER EAST WAS CONSIDERED AND INSUFFICIENT
TO OVERCOME THE REBUTTAL PRESUMPTION OF A SINGLE FACILITY UNIT**

The Employer alleges that Health Center West (a/k/a “Suffolk County South Brookhaven Health Center West”) located at 365 East Main Street, Patchogue, New York (“H.C.West”) and Health Center East (a/k/a Marilyn Shellabarger South Brookhaven Family Health Center East at Shirley) located at 550 Montauk Highway, Shirley, New York (“H.C. East”) both be part of a proposed multi-facility Unit. Along with the health center at each location each location also contains the Out-Patient Behavioral Health Department which the Employer also claims to be part of the multi facility Unit (Pt. Ex. 1-E & 1-F; E. Ex. 32). It is the Petitioner’s position that none of the aforesaid departments either the Health Care Centers at either location or the Out-Patient Behavioral Health Departments at either location should be part of the proposed Unit as will be discussed individually below.

1. HEALTH CARE CENTERS WEST AND EAST

The Employer produced two witnesses to testify concerning HC West and HC East, Ms. Foster as, previously mentioned and Joe Volavka the senior administrator of the Health Centers (Tr. 921). In fact, Mr. Volavka has an office in each of the Health Centers (Tr. 935). Both Health Centers are run pursuant to a contract with the Suffolk County Department of Health Services, as opposed to the Main Hospital which is run only by and has no contractual relationship with the Suffolk County Department of Health Services (Tr. 512, 707 and E. Ex. 30A). In contrast to the Main Hospital, the Health Centers provide “basic care” and is not an acute care facility (Tr. 706). It is interesting to note that despite the contractual relationship, the Employer never produced a copy of the contract between the two entities.

In fact, the Health Centers provide services that are not found in the hospitals such as family medicine, obstetrics, gynecological and pediatric services (E. Ex. 30A). The Health Centers have no ambulance bay and do not accept traumas, they are not an emergency care facility and there is no emergency room present (Tr. 514, 709). The Health Centers are not open twenty-four hours a day, seven days per week as the Main Hospital is, the Health Centers accept appointments and do not have any in-patient services but rather, appearing at the Health Center is like going to your “family physician” (Tr. 710-712).

H.C. East located in Shirley is eight miles from the Main Hospital and H.C. West in Patchogue is three miles from the Main Hospital (Tr. 511-512, 705, 706). While both Health Centers are directed by the same senior administrator and are practically identical as to how they operate there are a few minor differences as will be pointed below besides the names of each of the facilities as represented by Plaintiff’s Exhibit 7 & 8. As indicated on Plaintiff’s Exhibit 3 and testified to by witnesses, all new hires have their employment files forwarded to the Health Centers where they are maintained (Tr. 645).

A review of Employer’s Exhibit 32 sets forth the job classifications that the Employer would place in the Unit should a multi facility Unit be approved. To further support the Petitioner’s position that the Health Centers should not be part of a multi facility Unit most, if not all of the job classifications at question start with the term “Health Center” at the beginning of their job title. Therefore those job titles are specific to the Health Center’s and not in common with the Main Hospital. If that were the case then there would be no need to denominate them as “Health Center” personnel. In further support, the Health Centers contain all the personnel they need in order to be self sufficient including custodians, security, clerical support, LPNs, medical

assistants, registered nurses, physicians and lab technicians (Tr. 931-932; Pt. Ex. 1-E&1-F). Both Health Centers have the same job titles (Tr. 934-935).

As to supervision, the evidence produced by the Employer clearly revealed that the employees at the Health Center have separate supervision from those employees working at the Main Hospital. Both H.C. East and H.C. West are set up the same way as to supervision with different persons fulfilling the supervisory roles at each of the Health Centers as will be shown below. Both Health Centers are overseen by senior administrator Joe Volavka who has offices at both Health Centers (Tr. 515-516, 930-931, 934). In fact, Mr. Volavka also oversees another offsite facility that the Employer is not requesting be part of the multi facility Unit, the Wound Care Center (Tr. 543). Each Health Center has an administrator. At the present time Health Center East does not have an administrator and therefore Mr. Volavka fulfills that role and John Goodwin is the administrator at Health Center West. Reporting to the administrator of each Health Center is a nurse manager, a facilities manager and a medical records manager all of whom are supervisors. While Health Center West has individuals in each of those positions, Health Center East only has an individual in the facility manager position and the other two positions are presently vacant. Both facilities also have a supervisor for the laboratory, a lead lab tech. All to of the clerical employees who the Employer proposes to be in the Unit as set forth in Employer Exhibit 32 under “classifications at the Health Center West”, job titles 1-8 are all supervised by the medical records manager at Health Center West, Laura Pullar (Tr.525). The last classification listed “H.C. Custodian/Watchman” is supervised by the facilities manager at H.C. West Jesus Colon (Tr. 526). The same supervisory set up also applies at H.C. East.

Therefore, as testified to at the hearing and as can be seen from the above the Health Centers clearly have their own supervision within their facility.

With respect to interchangeability there was no testimony presented whatsoever that there is any interchange. When asked about any classification of employees that work at both the HC West and the Main Hospital the response was the example previously described in this brief with regards to Adrian Quinones, the Custodian/Watchman “picking up hours” working at the Main Hospital (Tr. 532). Therefore, the Employer has made no showing whatsoever of any evidence that there is interchange between the Health Centers and any other facility or the Main Hospital. The physicians working at the Health Center do not work at the Main Hospital (Tr. 519). In fact the physicians working at the Health Centers are actually patient’s primary care doctors (Tr. 519).

There is no requirement that an in-patient at the Main Hospital use the Health Centers for their primary care and there is no requirement that a patient at the Health Centers use the Main Hospital for in-patient or emergency care (Tr.713-715). Any cross-training that is done is only within the Health Centers and not outside the Health Centers such as with the Main Hospital or any other offsite facilities (Tr. 719).

As previously mentioned in this brief, the department head, in this case Joe Volavka does the employee evaluations (Tr. 534). There is minimal to no interaction between the Health Centers and Human Resources (Tr. 533-534). In fact, there is no requirement for any departments to go to the Human Resources before disciplining or terminating an employee. Further, the witness testified that there are no other departments in the Main Hospital that perform services at the Health Centers, for example environmental services does not provide any cleaning services to the Health Centers (Tr. 546, 975).

The Health Centers have their own time clocks (Tr. 532, 552). The Health Centers have their own laboratories/drawing stations (Tr. 968). Each Health Center has their own “payroll

coordinator” also known as administrative secretaries (Tr. 971). In fact, HC East has an “expense coordinator”, Maureen Martinez whose job it is to specifically purchase for the Health Centers do budgeting for the Health Centers and expenses (Tr. 972-973). The Health Centers have their own accounts receivable clerks (Tr. 521). The Health Centers have their own scheduling coordinators in order to do their own scheduling (Tr. 522). The Health Centers have their own medical record clerks, coders and clerks (Tr. 522). The Health Centers are the only offsite facilities to have a Custodian/Watchman a job that is also not in the Main Hospital (Tr. 522).

In summary, as was evident by the evidence presented, the Health Centers have their own separate identity and are not functionally integrated with the Main Hospital. They are not acute care facilities and rather, are Health Clinics where patient’s seek the type of care given by a “family physician” as opposed to an acute care facility. The Health Care Centers run on their own without any interchange of employees with the Main Hospital and have their own supervision on site. They are a good distance away from the Main Hospital and including them as part of multi facility bargaining Unit would increase the potential of work disruption.

2. OUT-PATIENT BEHAVIORAL HEALTH DEPARTMENT

The Out-Patient behavioral Health Department is found at both Health Center East and Health Center West and provides distinctly different services than the In-Patient Behavioral Health Department found at the Main Hospital (Tr. 739-740). The In-Patient Department provides services for admitted patients and through the emergency department for any emergent patients (Tr. 592). However, the Out-Patient Department provides alcoholism counseling, chemical dependency counseling and mental health out-patient services (Tr. 592). There are no

departments in In-Patient Services that provide alcohol counseling and chemical dependency counseling (Tr. 741).

Again, the Out-Patient Department differs from the In-Patient Department in that the Out-Patient Department sees patients on an appointment basis but that is not true in the In-Patient Department (Tr. 741-742). In fact, the Out-Patient Department schedules their own appointments (Tr. 747).

There is no requirement that an In-Patient Behavioral patient at the Main Hospital continue treatment upon release at the Out-Patient Behavioral facility and there is no requirement that one being treated at the Out-Patient Behavioral Department be treated, if in-patient treatment is necessary, at the In-Patient Behavioral Department at the Main Hospital (Tr. 746). The In-Patient Behavioral Department is open 24 hours a day, seven days per week and the Out-Patient Behavioral Department is not (Tr. 747). The employees working at the Out-Patient Behavioral have their own time clock (Tr. 603). The only witness to testify concerning this department was not aware of whether this department had access to records at the Main Hospital and further the witness the Human Resource Manager stated that they had no contact with the Out-Patient Behavioral department (Tr. 603-604).

Supervision at Out-Patient Behavioral is separate from supervision at the In-Patient behavioral department at the Main Hospital. While both in-patient and out-patient report to the same person, Karen Shaughness, Director of Behavioral Health Services, there is a separate supervisory staff for the in-patient behavioral department and the out-patient behavioral department (tr. 594-597, 746). The in-patient behavioral department has their own assistant director of Behavioral Health Services, their own nurse manager and their own supervisor for Mental Health Counselors, Psych techs and Unit Secretary (Tr. 593-595). None of the

supervisors in the in-patient department supervise any of the employees at the out-patient department (Tr. 746).

The out-patient departments supervisors consist of a manager of the out-patient behavioral health department, Matthew McCluskey for the out-patient departments both at HC East and West (Tr. 595, 745). The out-patient department also has a manager of alcohol and chemical dependency, Joan Miller, who supervises those programs at both HC East and West and does not supervise any employees at the Main Hospital (Tr. 595, 746). McCluskey supervises the psychiatric social workers and clericals and Miller supervises the alcoholism counselors and shares some of the clerical supervisory roles.

However, the witness testified that the out-patient behavioral department also has a HC Lead Clerical (Tr. 598-601). As per Plaintiff Exhibit 1-F the HC Lead Clerical is Marva Freeman who is located at HC West. Although based upon Employer Exhibit 32 the Employer believes that the HC Lead Clerical should be a bargaining Unit employee, assuming that the out-patient behavioral department should be part of the Unit in general which the Petitioner objects to, in fact this position is a supervisory position and should not be part of the Unit in any event. A review of Employer Exhibit 41A, which is the job description for the HC Lead Clerical clearly reveals that it is a supervisory role. In the general summary concerning the job responsibilities the job description sets forth the HC Lead Clerical is “involved in the hiring, training and supervision of all clerical personnel”. Going on to page 2 of the document this job also “supervises billing procedures for out-patient services” as well as “provides supervision to other clerical staff”. Not only does this show that there is separate supervision in the out-patient behavioral department at the health centers but also shows that the Employer recognizes out-

patient serves as a separate department by specifying, as part of the job description that the Lead Clerical is supervising billing procedures for out-patient services, distinct from in-patient.

**D. ALL THE EVIDENCE PRODUCED BY EMPLOYER CONCERNING
THE OFFSITE FACILITY KNOWN AS SWEZEY PAVILION WAS
CONSIDERED AND WAS INSUFFICIENT TO OVERCOME THE REBUTTAL
PRESUMPTION OF A SINGLE FACILITY UNIT**

Swezey Pavilion is located at 103 West Main Street, Patchogue, New York and is approximately four miles from the Main Hospital (Tr. 428). The departments at Swezey Pavilion consists of Home Care Department, Hospice Department, Out-Patient Hemodialysis Department, and Engineering and the Finance Office which consists of the Finance Department, Accounts Payable Department and the Business Office (Tr. 429; Pt. Ex. 1-C). The Employer is not proposing that the Business Office, Accounts Payable Department or Engineering are part of their proposed Unit (Tr. 684-685). The Employer proposes that included in the proposed Unit from Swezey Pavilion should be the Department Secretary from the Finance Department, the Team Assistant in the Hospice Department, approximately 8-10 employees from the Home Care Department including Team Assistants, Home Health Aide Clerk, Department Secretary, Home Care Intake Clerk, Home Care Clerk and Health Information Management Clerk I and the Out-patient Hemodialysis Department consisting of a Patient Service Assistant, Unit Secretary and Insurance Coordinator (Tr. 684-685, 473, 700). As will be shown below, none of the aforesaid departments, based upon the evidence presented can overcome the presumption of the single facility requested by the Petitioner.

Swezey Pavilion, which is a separate building, as stated above is four miles from the Main Hospital and has separate distinct entrances for Out-Patient Hemodialysis, the Finance Department and Business Office and a separate Home Care/Hospice entrance (Tr. 687).

1. OUT-PATIENT HEMO-DIALYSIS DEPARTMENT

As testified by the Employer witness there is a distinct difference between the patient seen by in-patient hemodialysis department at the Main Hospital and the out-patient hemodialysis department at Swezey Pavilion. The in-patient department is for acute care hemodialysis patients who are admitted to the Main Hospital, as opposed to out-patient hemodialysis patients who are not admitted to the hospital (Tr. 430-431). It should be noted that the only witness produced to testify concerning out-patient hemodialysis, Ms. Foster, stated that Human Resources does not go to out-patient hemodialysis to handle employee issues and that no employees from out-patient hemodialysis have come to Human Resources with issues (Tr. 540). Out-patient hemodialysis is not open twenty four hours per day, seven days per week, however, in-patient hemodialysis at the Main Hospital is (Tr. 698). At the Swezey Pavilion a hemodialysis patient goes there to receive hemodialysis treatment only as opposed to a patient at in-patient hemodialysis who has been admitted to an acute care facility that is rendering other services and treatment. At in-patient hemodialysis a patient has treatment and then is sent back to their room in the Main Hospital, as opposed to out-patient hemodialysis where once treatment is done that patient goes home (Tr. 690). The witness believed that out-patient hemodialysis is done on an appointment basis only (Tr. 690-691).

The out-patient hemodialysis department has separate supervision from the in-patient hemodialysis department. In-patient hemodialysis is supervised by nurse manager Denise Youst and out-patient hemodialysis is supervised by nurse manager Doreen Loudon (tr. 454, 496).

Further, there is no evidence of any interchange between in-patient hemodialysis and out-patient hemodialysis. In fact, each has their own Unit secretary, who performs the clerical work for the department separately (Tr. 447, 695). The out-patient hemodialysis department staff

consists of Licensed Practical Nurses and there are no Licensed Practical Nurses working at the in-patient hemodialysis facility.

Based upon Employer's Exhibit 32 on the page entitled "Classifications at Swezey Pavilion" under the heading "Out-Patient Hemodialysis" the Employer claims there are three classifications that belong in their proposed Unit, Unit Secretary (E. Ex. 33A), Patient Service Assistant (E. Ex. 33B) and Insurance Coordinator-Hemodialysis (E. Ex. 33C). (Tr. 455). In fact, besides the Licensed Practical Nurse positions at the out-patient hemodialysis department that does not work as a classification in the in-patient hemodialysis department, the Patient Service Assistant and the Insurance Coordinator-Hemodialysis are also classifications that are not at the in-patient hemodialysis department at the Main Hospital. This provides you even further evidence that the out-patient hemodialysis department is a "separate department" and should be treated differently than the in-patient hemodialysis department (Tr. 455).

Finally, the Employer's witness stated that there are no "transporting" issues involved with respect to patients at the out-patient hemodialysis department, since they are walk-ins, and opposed to patients at the in-patient hemodialysis department where all the patients need transportation to receive their treatment. (Tr. 127).

2. HOME CARE DEPARTMENT

The Home Care department found at the Swezey Pavilion provides medical services to patients in their homes (Tr. 465, 698). Therefore, the patients seen by the employees working in the Home Care department are unlike the patients seen in the Main Hospital since all care is rendered at a patient's home as opposed to the Main Hospital or any other facility. In fact, a review of Plaintiff's Exhibit 1-A, which is a list of all departments and employees employed at

the Main Hospital reveals that the Home Care department does not exist at the Main Hospital nor do they have any staff at the Main Hospital. In fact, a review of Employer Exhibit 26 which provides all the codes for all the departments at the Main Hospital and all offsite facilities only contains a code for Home Care at Swezey Pavilion, 6180, and no where else.

All of the classifications of employees working at the Home Care department at Swezey Pavilion that the Employer alleges should be in the Unit can be found in Employer Exhibit 32 under the heading "Classifications at Swezey Pavilion" and under the subheading "Classifications/Home Care/Hospice". All six (6) of the classifications listed therein (item 2 should be "home health aide clerk" and not "clerk/typist" as per the testimony of Ms. Foster) are located at Swezey Pavilion only and not at the Main Hospital. There is no interchange between all of the employees working in the Home Care department and the Main Hospital or any other offsite facility (Tr. 470) The Employer's witness had not one example of any of the other classifications, such as the nurses in Home Care performing services outside of the Home Care department (Tr. 469-470).

All supervision is contained within the Home Care department at Swezey Pavilion. Debra Peterson is the Director of Patient Services for Home Care and Hospice and only supervises those departments and has no job duties with respect to the Main Hospital (Tr. 474-479). Her office is in Swezey Pavilion (Tr. 705).

There is no requirement that a patient at the Main Hospital use the Home Care department at Swezey Pavilion if they require home care (Tr. 702). In fact, when questioned, the Employer's witness did not know whether or not the Home Care department had access to the medical records at the hospital and was not familiar with the computer system used by the Home Care department (Tr. 501, 702). It is for that reason that the Employer witness testified that the

“interface” between the home care department and the Main Hospital consists of calling the hospital to get information concerning a patient leaving the hospital and going to the home care department (Tr. 500-501). However, the witness went on to state that this was a “standard communication” meaning that is the type of communication that is no different then the hospital would have with any Home Care agency, whether at Swezey Pavilion or elsewhere in order to get information on a patient (Tr. 502).

As set forth in Plaintiff Exhibit 3, a copy of the new hire file for those employees who are to work at the Home Care department at Swezey Pavilion is sent to the Home Care department (Tr. 645). The Home Care department at Swezey Pavilion also uses sub-contractors in fact are independent contractors hired directly by the home care department (as set forth in Plaintiff Exhibit 2) (Tr. 700-704).

In summary, the Home Care department at Swezey Pavilion is it’s own department, with no similar or in-patient department at the Main Hospital. The Home Care Department has its own supervision and there is no interchange with the Main Hospital or any of the other offsite facilities. The patients of this department are different than the patients at the Main Hospital and most of the offsite facilities in that the care is rendered at the patient’s home as opposed to the Main Hospital or an offsite facility.

3. HOSPICE DEPARTMENT

The Hospice Department provides medical care to patients that are dying, at home (Tr. 465, 698). As with the Home Care Department, the Hospice Department has its own supervisors (Tr. 468, 705).

As with the Home Care Department, the Hospice Department has no interchange of employees with the Main Hospital or any other offsite facility (Tr. 470, 705).

In fact, the only employee in the entire department that the Employer alleges should be in the multi facility bargaining Unit proposed is the Team Assistant classification, which classification is only found in the Home Care Department and Hospice Departments (Tr. 473, 701). As with the Home Care Department the Employer's witness did not know whether the Hospice Department had access to the records of the Main Hospital and was not familiar with the computer system used at the Hospice Department (Tr. 521, 702). As with the Home Care Department, the Hospice Department subcontracts work to independent contractors (Tr. 700, 704; Pt. Ex. 2). Again, the Human Resource Department had no contact with the supervisors at the Hospice Department (Tr. 539).

As with the Home Care Department, there is no requirement that a patient from the Main Hospital who is discharged and needs hospice use the Hospice Department at Swezey Pavilion and there is no requirement that in order to use the services of the Hospice Department at Swezey Pavilion that you were a patient at the Main Hospital (Tr. 702).

Therefore, as with the Home Care Department, the Hospice Department is a separate autonomous department with no connections to the Main Hospital. There is no hospice department at the Main Hospital, there is separate supervision of the Hospice Department and there is no interchange of Hospice Department employees with the Main Hospital or any other offsite facilities.

4. FINANCE DEPARTMENT

There was little, to no testimony or evidence provided by the Employer with regards to their proposal that the Finance Department located at Swezey Pavilion be part of a multi facility bargaining Unit. In fact, the Employer claims that there would only be one employee from that department, the Department Secretary in the proposed Unit (Tr. 684).

The Finance Department, and those working in the Finance Department under any job title or description does not belong in a Unit of non-professionals. Anyone working in that Unit would either be a professional or a business office clerical and if a business office clerical should be represented by Local 111. As described by the Employer's witness the Finance Department deals with the "revenue cycle", there is a comptroller and they put together financial data reports to support the organization, "they are accountants"(Tr. 686). Therefore, the proposed Unit member is actually the department secretary for the accountant and comptroller and all others that work in the Finance Department (Tr. 686). Her job tasks also include providing support for the Director of the Business Office and the Assistant Director or Manager of the office since they do not have a department secretary (Tr. 686-687).

Based upon the fact that the proposed Unit member does work for the Business Office alone would disqualify her from being part of the proposed Unit. As previously testified to by the Employer's witness and as stipulated by the Parties the Business Office is represented by Local 111 (Tr. 428-429, 631, 686). All employees in the Accounts Payable Department, except for supervisors, are also in Local 111. As such, anyone working in the Finance Department who is not a supervisor would not be in the proposed Unit and if they are to be represented at all would be represented by Local 111.

It is interesting to note that the Employer did not include the Finance Department as a classification to be included in the proposed bargaining Unit at Swezey Pavilion as is evident by the fact that it was not included on Employer Exhibit 32 under “Classifications at Swezey Pavilion” (Tr. 694).

Therefore, since all of the employees of the Finance Department, except supervisors, should be represented as professionals or business office clericals, no one from the department should be part of the proposed Unit.

**E. ALL THE EVIDENCE PRODUCED BY EMPLOYER CONCERNING
THE OFFSITE FACILITY KNOWN AS 100 HOSPITAL ROAD,
PATCHOGUE, NEW YORK WAS CONSIDERED AND WAS
INSUFFICIENT TO OVERCOME THE REBUTTAL PRESUMPTION
OF A SINGLE FACILITY UNIT**

The offsite facility located at 100 Hospital Road, Patchogue, New York has the following departments: Out-Patient Radiology, Payroll Services, Employee Health Services, Community Relations and Development, Corporate Compliance Office, Medical Library, Residency Program/Graduate Medical Education, Planning and Cardiac Rehabilitation (Tr. 555-556, 728; Pt. Ex. 1-B). Besides the departments set forth above, 100 Hospital Road also contains entities having no relationship whatsoever to the Employer (Tr. 728). Out of the departments set forth above the Employer alleges that Out-Patient Radiology, Payroll Department and the Employee Health Department should all be part of the proposed Unit (Tr. 729; Pt. Ex. 1-B). The Employer further alleges that there is only one employee in each of the above departments that would be part of the proposed Unit “the Radiology Records Clerk” for the Out-patient Radiology Department, “Employee Health Coordinator” for the Employee Health Services Department and “Nursing Payroll Coordinator” for the Payroll Department (Tr. 729; E. Ex. 32).

It is the Petitioner's position that none of the three (3) departments in question should be part of a multi facility Unit, individually or combined. Although the Employer claims that the Out-Patient Radiology Department should be combined with the In-Patient Radiology Department and the Women's Imaging Center as part of the hospital's radiology services, in this section of the brief we will address the Out-Patient Radiology Services individually and later on address the Women's Imaging Center individually.

1. EMPLOYEE HEALTH SERVICES DEPARTMENT

The Employee Health Services Department based upon the duties of the department, should not, and cannot be part of any proposed Unit. As will be shown below, the job duties of the department, and the one job classification the Employer proposes, Employee Health Coordinator clearly indicates that there is no "community of interest" with other departments in the Main Hospital, as well as the fact that all employees in this department are confidential employees and therefore are excluded from any proposed Unit.

The Employee Health Services Department is responsible for maintaining the Employee Health Records for all employees at the Main Hospital and offsite locations (Tr. 236). The department consists of the proposed Unit employee, an Employee Health Coordinator, a Licensed Practical Nurse and a Physician's Assistant (Tr. 236; Pt. Ex. 1-3). Of note is the fact that this department does not work with patients but rather they only perform their job duties and tasks with employees of the Employer and thus have a different "community of interest" with regards to who they perform services for as opposed to all other employees of the hospital (Tr. 237). As part of their responsibilities this department also provides health clearance for all new hires, maintains employees annual health assessments, issues the PPD test and performs the Fit Testing for employees that need to wear a respirator, as well as addressing exposures such as

needle sticks or employees splashed by bodily fluids (Tr. 556). Further, if an employee is out on leave they must go to this department in order to return to work (Tr. 562-563). Therefore, as is evident from the above, this is “an internal unit” that only deals with hospital employees (Tr. 730).

As a result of the job duties and responsibilities of this department, this department handles confidential information concerning the employees of the Employer since they are privy to medical and health information concerning employees working at the Main Hospital and the offsites (Tr. 673). It is this department that maintains the employees health records (Tr. 672). As a result they are privy to confidential information concerning the employees they work with (Tr. 674). That would include Employer’s Exhibit 19 the Annual Health Physical Assessment form which states that it contains “confidential medical information” (Tr. 234, 564). Those forms are kept in the files maintained by this department.

The proposed Unit position in question from this department, the Employee Health Coordinator is clearly a confidential employee and cannot be part of the Unit. A review of the job description for that position, Employer Exhibit 37 clearly confirms that fact. Included in the job description is the fact that this position has the responsibility of “typing sensitive correspondence”, “creates the medical chart”, “assists Director and Nurses with the completion of required forms and compliance health materials required for employees and other staff as assigned”; “organizes and maintains confidential and Administrative files”, and is “Responsible for taking meeting Minutes and maintaining confidential Minute files for Management”. Further, this position also performs supervisory tasks as set forth by the job description wherein it states that this position “renders supervision and guidance where necessary” and “maintains sufficient work flow by evaluating productivity”.

2. PAYROLL DEPARTMENT

The Employer proposes that two employees both classified as “Nursing Payroll Coordinators” should be part of the bargaining Unit. Again, based upon the job duties and responsibilities of the department as well as their job duties and descriptions, as well as the fact that they are clearly not “non-professionals” but rather, business office clericals, deems it necessary to find that they would not be part of the proposed bargaining Unit.

There are two nursing payroll coordinators presently working in the Payroll Department located at 100 Hospital Road (Tr. 564). Pursuant to the witness testimony they review nursing payroll data and answer questions that employees in the nursing department have (Tr. 564). Since they only deal with nursing payroll and nursing department employees they have no contact with the proposed bargaining Unit employees as well as no contact with patients of the Main Hospital. Therefore, since all job functions deal with nursing and since all job functions deal with payroll they are business office clericals and should not be part of the bargaining Unit.

Further, reviewing the department as a whole the department itself should not be part of this bargaining Unit or if found to be appropriate, any multi facility bargaining Unit. The department has its own supervisor Margot Natale-Cercone who is known as a “Payroll Specialist” and also known as a “Payroll Supervisor” (Tr. 564, 733). Of note is the fact that she reports to the Comptroller at Swezey Pavilion in the Finance Department, another department that is either a professional or business office clerical department and not a non-professional department.

There was no evidence presented that any of the employees in the Payroll Department interchanged with employees of any other department either in the Main Hospital or any other

offsite facility. In fact, as set forth by the Employer's witness, the Payroll Department is part of the Finance Department/Business Office (Tr. 734). You will also find the Payroll Department as a department under the direction of the Finance Department pursuant to the organizational chart admitted as Plaintiff's Exhibit 10, along with the Accounts Payable Department, and the Finance Department as well as General Accounting. In fact they all share the same department secretary (Tr. 737). The Business Office and its employees, as well as the Accounts Payable Department and its employees, are all represented by Local 111.

It should be noted that the employees in question in the Payroll Department are also privy to confidential information concerning employees, not only by virtue of the fact that they are doing payroll, but by virtue of the fact that they have access to the "Lawson System" as set forth on page 3 of the job description marked as Employer's Exhibit 38. The Lawson System is the computer system for the Human Resource Department and therefore, they would have access to confidential information concerning all employees.

3. OUT-PATIENT RADIOLOGY DEPARTMENT

It is the Employer's contention that the Out-Patient Radiology Department located at 100 Hospital Road should, along with the Women's Imaging Center located at a different offsite facility, be part of the multi facility bargaining Unit proposed. While the Employer in their presentation of evidence combined it's presentation for the In-Patient Radiology Department, Out-Patient Radiology Department and Women's Imaging Center for purposes of this brief I will first address the Out-patient Radiology Department and later on address the Women's Imaging Center although some of the arguments will be duplicated in each section.

The Outpatient Radiology Department located at 100 Hospital Road consists of only one (1) classification proposed by the Employer "Radiology Records Clerk" (Pt. Ex. 1-B; E. Ex. 32). The services provided at Out-Patient Radiology are different to some extent than those provided at In-Patient Radiology in that Out-Patient Radiology does not perform ultrasounds (Tr. 375). Out-Patient Radiology Department does not perform any of the services that are performed at the Women's Imaging Center which are Mammography, Ultrasounds and Bone Density tests (Tr. 392).

Although the Employer alleged that there is interchange between the In-Patient and Out-Patient Radiology Departments, the only evidence produced was a schedule for the In-Patient and Out-Patient Radiology Departments at the Main Hospital and 100 Hospital Road, for the Clerical Department only for a three (3) week time period from July 1, 2012 to July 21, 2012 (E. Ex. 40). Despite the fact that there are 140 employees working in In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center (Tr. 824) the Employer only provided specific documentary evidence consisting of documents for only three (3) clerical employees for a three (3) week period of time. With over twenty (20) clerical employees, not including the clerical employees at the Women's Imaging Center and over 140 employees overall in the Radiology Department a showing of three (3) employees who interchanged between the Main Hospital and offsite facility once or twice a week for three (3) weeks is a negligible showing which does not rise to the level necessary in order to rebut the single facility presumption. In fact, there were no documents, including schedules in the Record, showing any interchange other than for a three (3) week period of time and no documents or schedules showing any interchange whatsoever for any of the non-clerical employees of the Radiology Department. In fact, there were no schedules produced for the Women's Imaging Center to show interchange. There was

no testimony indicating other schedules were not available and one can only draw the conclusion that no others were produced because they did not support the Employer's position. If there were 1,562 pages of schedules, why did the Employer not put one into evidence or in the record?

Testimony by the Senior Director of Cardiovascular Services Nona Kupfer who is in charge of the Radiology Department indicates that although In-Patient Radiology is open twenty-four hours per day, seven days per week, Out-Patient Radiology (and Women's Imaging Center) are not (Tr. 871). Ms. Kupfer admitted that each of the facilities In-Patient, Out-Patient and the Women's Imaging Center serve a specific purpose and that "it is a different experience between going to Out-Patient vs. In-Patient" (Tr. 874). Ms. Kupfer further went on to state that there are separate staff meetings each month at In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center (Tr. 888).

Each facility, In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center have their own equipment (Tr. 766). Each facility has their own department codes pursuant to Employer Exhibit 26 (Tr. 757-758). The only Techs at the Out-Patient Department are "Radiographers" and there are none at the Women's Imaging Center and the only Techs at the Women's Imaging Center are "Mammographers" and there are none at the Out-Patient Department. (Pt. Ex. 1-B&1-D).

As with the testimony for most of the other departments, again the Employer failed to produce competent witnesses with sufficient knowledge concerning the Out-patient Radiology Department. Since neither of the witnesses had anything to do with scheduling no competent witness concerning interchange was produced despite the fact that the appropriate witness Diane Masino, is a Supervisor for the Employer and could have been produced. The witnesses produced did not know whether there was a separate schedule for the Out-Patient Department

and the Women's Imaging Center (Tr. 591). Although both witnesses testified that there are sub-contractors working in both the In-Patient Radiology Department and the Out-Patient Department the witness could not testify as to who they were, what they did and where they worked (Tr. 753-756). Neither witness could testify as to the exact number of proposed Unit employees there were in any of the three (3) departments at issue In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center (Tr. 491-493, 889). Finally, the only "interaction" between employees working In-Patient Radiology, Out-Patient Radiology and the Women's Imaging Center with other staff of the Employer was to inquire about insurance information (Tr. 424).

Therefore, the Employer has failed to meet its burden of producing sufficient and competent evidence that the Out-Patient Radiology Department should be part of a multi-facility Unit sufficient to have overcome the single facility presumption and therefore this department should not be part of that Unit.

F. ALL THE EVIDENCE PRODUCED BY EMPLOYER CONCERNING THE OFFSITE FACILITY KNOWN AS WOMEN'S IMAGING CENTER WAS CONSIDERED AND WAS INSUFFICIENT TO OVERCOME THE REBUTTAL PRESUMPTION OF A SINGLE FACILITY UNIT

The Women's Imaging Center is a free standing building in an industrial park located at 285 Sills Road East, Patchogue, New York (Tr. 629). The Employer is alleging three (3) job classifications at the Women's Imaging Center that should be part of the bargaining Unit, Radiology File Clerk, Radiology Records Clerk and Medical Assistant/Appointment Coordinator (E. Ex. 32). However, as to employees working at the Women's Imaging Center that are alleged to not be part of the bargaining Unit by the Employer, most, if not all, are not found at any other facility or at the Main Hospital, that is the job classification of Mammographer (Pt. Ex. 1-D). In

fact, the Women's Imaging Center performs mammography, ultrasound and bone density tests and only mammography and bone density tests are done at the Women's Imaging Center and at no other departments including In-Patient Radiology or Out-Patient Radiology (Tr. 376, 758). The reason why is that the patients who come to the Women's Imaging Center are different than those seeking services at Out-Patient Radiology and In-Patient Radiology. The Women's Imaging Center was established for women's health issues and services are rendered only for women related issues (Tr. 758). The reverse is true in that no MRIs are done at the Women's Imaging Center but rather MRIs can only be performed at the In-Patient Radiology Department and Out-Patient Radiology Department (Tr. 626). One need only review Petitioner's Exhibit 12 but to realize that the Women's Imaging Center is a stand alone department that deals with specific women's health care issues only. As set forth on Petitioner's Exhibit 12, which is the website for the Women's Imaging Center, the Women's Imaging Center concentrates on women's healthcare. In fact, the Women's Imaging Center is affiliated with Breast Health Services which is a newly formed practice affiliated with the Employer as set forth on Petitioner's Exhibit 14. Both In-Patient Radiology and Out-Patient Radiology Departments are not affiliated with the Breast Health Services practice and do not cater to only the needs of women's health. In fact, the sign outside of the Women's Imaging Center states "Brookhaven Women's Health Services" as denominated in Petitioner's Exhibit 13.

The Women's Imaging Center is supervised by an onsite Supervisor, Diane Scollo and has its own Appointment Coordinator Patricia Lenhard (Tr. 378, 381, 764-765' Pt. Ex. 1-D). With regards to the non-clerical staff at the Women's Imaging Center those techs specialize in the modality of mammography (Tr. 388). As previously stated mammography is not performed anywhere else either in the Main Hospital or any other offsite facility. Although there was some

testimony from witnesses that techs can go back and forth, no evidence was produced or examples given of techs doing so.

Again, as with the Out-Patient Radiology Department the only interaction testified to by the Employer witness between the Women's Imaging Center and the Main Hospital is to answer insurance questions (Tr. 424). However, again no specific examples were given with regards to interaction. Clearly if this is the only interaction, the Women's Imaging Center can function without the Main Hospital or any other offsite facility. In fact, Ms. Foster the Employer's witness testified as the Human Resource Director, she has not gone to the Women's Imaging Center to handle any employee issues or spoken directly to any employees there (Tr. 540-541).

Environmental Services at the Main Hospital does not clean the facility at the Women's Imaging Center as they do in the Out-Patient Radiology Department and In-Patient Radiology Departments (Tr. 425).

When a patient has services performed at the Women's Imaging Center their paperwork is done at the Women's Imaging Center (Tr. 766). There is no requirement that in order to obtain services at the Women's Imaging Center that you had to be an in-patient at the hospital or a former in-patient at the Main Hospital to make an appointment (Tr. 765). With regards to the issue of supervision the Employer's witness admitted that previously there was a separate clerical supervisor in the Women's Imaging Center (Tr. 778). This would clearly indicate that in fact the Women's Imaging Center is a department that runs on its own and should not be part of any multi facility bargaining Unit. Although sub-contractors are used at In-Patient Radiology and Out-Patient Radiology there are no sub-contractors used at the Women's Imaging Center.

IV. LEGAL POSITION

It is well established that the National Labor Relations Act (“Act”) requires only that the petitioned for Unit sought be “an appropriate Unit”, not the only, ultimate or most appropriate Unit. Overnight Transportation Co., 322 NLRB 723 (1996). If the Unit sought by the Petitioner is an appropriate Unit, an alternative appropriate Unit will not imposed. Dezcon, 295 NLRB 109 (1989). The Board can, if the petitioned for Unit is not appropriate, exam alternatives but has discretion to select an appropriate Unit that is different from proposals of the parties. Overnight Transportation Co., *supra*.

As proposed by the Union herein, a single facility Unit in the health care industry is presumptively appropriate. Catholic HealthCare West, 344 NLRB 790 (2005); Manor Healthcare Corp., 285 NLRB 224 (1987). There are numerous cases wherein the Board has found the single facility appropriate in the health care industry. Children’s Hospital of San Francisco, 312 NLRB 920(1993); Staten Island University Hospital, 308 NLRB 58, enforced, 24 F. 3d 450 (2d Cir. 1994); O’Brien Memorial, 308 NLRB 553 (1992); Pomona Golden Age Convalescent Home, 265 NLRB 1313 (1982); Samaritan Health Services, 238 NLRB 629 (1978); National G. South, Inc., 230 NLRB 976 (1977); Saint Anthony Center, 220 NLRB 1009 (1975); Jackson Manor Nursing Home, 194 NLRB 892 (1972).

As the party opposing the single facility Unit, the Employer had the heavy burden of overcoming the presumption. Trane, 339 NLRB 866 (2003). In order to rebut this presumption the Employer must demonstrate integration so substantial as to negate the separate identity of the single facility. Heritage Part Health Center, 324 NLRB 447, 451 (1997) enforced 159 F.3d 1346 (2d Cir. 1998).

The following are the factors the Board will consider when determining if the presumption of single facility has been rebutted:

1. Centralized control over daily operations and labor relations, including the extent of local autonomy;
2. The degree of Employee interchange;
3. Transfer/Contact;
4. Functional integration;
5. Similarity of skills, functions and working conditions;
6. Geographical proximity; and
7. Bargaining history.

New Britain Transportation, 330 NLRB 397 (1999); West Jersey Health System, 293 NLRB 749, 751 (1989).

The most important factors that the Board will examine in determining whether the presumption has been rebutted are the degree of interchange and separate supervision. Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994). (emphasis added).

In the health care industry another important factor is the principal that the Health Care Rule was created so as to avoid proliferation of bargaining Units at health care facilities. While an Employer may argue that by allowing bargaining Units at one facility and not including employees at offsite facilities there could be fragmentation of Units and therefore a proliferation of bargaining Units the Board observed, in creating the Health Care Rule, that the proliferation of bargaining Units to which the relevant comments in the Health Care Legislation were directed was the fragmentation of occupational groups within a single facility. Manor Healthcare 285 NLRB 224 (1987). The Board has interpreted the Health Care Legislation to be a general rejection of the applicability of the anti-proliferation policy to single as opposed to multi-facility questions and therein stated that there is no health care facility exception to the single facility presumption. The Board in Manor Haven Healthcare went on to state that in the health care

industry the Board also examines whether a single facility Unit creates an increased risk of work disruption or other adverse impact upon patient care should a labor dispute arise. In this matter, allowing a multi-facility unit would create a greater risk of spread of work stoppages or other disruptions which would be the normal consequence of a broader unit.

In Manor Healthcare the Board therein held there was insufficient evidence to rebut the single facility presumption. In finding there was not enough evidence to rebut the presumption, the Court noted the following factors as determinative in making its decision: (1) the facilities were miles away from one another; (2) the degree of interchangeability between the Employers at the different sites was negligible; (3) there was a certain degree of administrative centralization but almost a complete lack of functional integration; (4) patient care proceeds independently at each facility; (5) day to day labor matters are administered within the separate facilities despite the fact that the guidelines were created by corporate officials; (6) infrequent contact between the facility and higher authority within the corporate structure; and (7) there is no bargaining history. This case is directly on point herein when you examine the above factors with the evidence produced at hearing.

The Board in Manor Healthcare found no evidence that separate bargaining Units in each facility would cause work stoppages or jurisdictional disputes. In fact the Board found “if anything, an employer wide unit in this situation would tend to broaden a given dispute and increase the potential for disruption of patient care.” 285 NLRB at 228.

Another major case wherein the Employer desired a multi facility Unit where a Union petitioned for a single facility is Catholic HealthCare West, 344 NLRB 790 (2005). The Court, set forth in detail the well established rules to follow when a Union petitions for a single facility Unit in the health care industry and the Employer seeks a multi facility Unit. The Board in

Catholic HealthCare in rejecting the Employer's contention that a multi facility Unit was appropriate, stated that the centralization of administrative functions and labor relations matters were not enough for a showing to negate the separate identity of the single facility and based on its decision on the fact that there was local autonomy in the separate facility, and a lack of Employee contact and interchange and separate supervision in most of the facilities. Of note is the fact that the Board found the Employer did not provide evidence of substantial permanent interchanges and differentiated between permanent transfers, which it felt to be less significant indication of actual interchange, then temporary transfers. Again, directly on point to the within matter!

Therefore, when reviewing the well established Board law concerning single versus multi facility Units in the health care industry with the evidence or lack thereof, produced by the Employer at the hearing, including a showing of negligible, if any interchange between employees at the different sites, separate supervision at the offsite facilities, the ability of patient care to proceed independently at each facility, the Employer failed to meet its burden to rebut the presumption of the single facility Unit proposed by the Union and the Decision clearly follows officially reported Board precedent.

V. CONCLUSION

It is respectfully requested that the Board deny the Employers Request to Review. The Employer has failed to show that a substantial question of law or policy is raised because of the absence or departure from officially reported Board precedent or that the Decision, on a

substantial factual issue, is clearly erroneous on the record and such error prejudicially affects the rights of a party.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ira D. Wincott, hereby certify that the Brief in Opposition to Employer Request for Review, in Case No. 29-RC-084828 has been served this day by E-Filing and UPS overnight:

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