EXHIBIT 1

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 20

In the Matter of:

Mission Neighborhood Health Center,
Employer,

Case No. 20-RC-085529

and

National Union of Healthcare Workers,

Petitioner,

and

Service Employees International Union United Healthcare Workers West,

Intervenor.

Place: San Francisco, California

Dates: July 26, 2012

Pages: 1 through 123

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OFFICIAL REPORTERS

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(602) 263-0885

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

In the Matter of: MISSION NEIGHBORHOOD HEALTH CENTER, Employer, and NATIONAL UNION OF HEALTHCARE WORKERS, Petitioner, and SERVICE EMPLOYEES INTERNATIONAL UNION UNITED HEALTHCARE WORKERS WEST, Intervenor.	Case No. 20-RC-085529

The above-entitled matter came on for hearing, pursuant to notice, before **LANA PFEIFER**, Hearing Officer, at the National Labor Relations Board, Region 20, 901 Market Street, Suite 900, E.V.S. Robbins Courtroom, Room 306, San Francisco, California 94103, on **Thursday, July 26, 2012, at 11:44 a.m.**

A P P E A R A N C E S

On behalf of the Employer:

TYLER PAETKAU, ESQ.
HARTNETT, SMITH & PAETKAU
777 Marshall Street
Redwood City, CA 94063
Tel. 650-260-1066
Fax. 415-385-4972

On behalf of the Intervenor:

YURI Y. GOTTESMAN, ESQ.
WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Tel. 510-337-1001
Fax. 510-337-1023

On behalf of the Petitioner:

BENJAMIN J. SIEGEL
SIEGEL LEWITTER MALKANI
1939 Harrison Street, Suite 307
Oakland, CA 94612
Tel. 510-452-5000
Fax. 510-452-5004

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Becky Hucke	21	56	64	

E X H I B I T S

EXHIBIT	IDENTIFIED	IN EVIDENCE
Board:		
B-1(a) through B-1(d)	6	6
B-2	8	8
Employer:		
E-1	23	29
E-2	31	31
E-3(a)	31	44
E-3(b)	31	50
E-3(c)	31	54
E-3(d)	31	54
E-3(e)	31	54

1 **P R O C E E D I N G S**

2 HEARING OFFICER PFEIFER: All right. The hearing will be
3 in order. This is a formal hearing in the matter of Mission
4 Neighborhood Health Center, case number 20-RC-85529 before the
5 National Labor Relations Board. The Hearing Officer appearing
6 for the National Labor Relations Board is Lana Pfeifer.
7 All parties have been informed of the procedures at formal
8 hearing before the Board by service of the Statement of the
9 Standard Procedures with the Notice of Hearing. I have
10 additional copies of this statement for distribution if any
11 party wants more.
12 Will counsel please state their appearances for the
13 record? For the Petitioner?
14 MR. SIEGEL: Benjamin Siegel for the Petitioner, National
15 Union of Healthcare Workers.
16 HEARING OFFICER PFEIFER: Okay. For the Employer?
17 MR. PAETKAU: Tyler Paetkau, Hartnett, Smith & Paetkau,
18 for the Employer, Mission Neighborhood Health Center.
19 HEARING OFFICER PFEIFER: Okay. And for the Intervenor?
20 MR. GOTTESMAN: Yuri Gottesman of Weinberg, Roger &
21 Rosenfeld for the Intervenor, Service Employees International
22 Union United Healthcare Workers West.
23 HEARING OFFICER PFEIFER: Okay. Are there any other
24 appearances? Let the record reflect no further response.
25 Are there any persons, parties or labor organizations in

1 the hearing room at this time to claim an interest in this
2 proceeding?
3 Let the record reflect show no response.
4 I now propose to receive the formal papers. They have
5 been marked for identification as Board's Exhibit 1(a) through
6 1(d), inclusive of upon 1(d) being an index and interpretation
7 of the entire exhibit.
8 The exhibit has already been shown to all parties. Are
9 there any objections to the receipt of these exhibits into the
10 record?
11 Hearing no objections, the formal papers are received into
12 evidence.
13 Richard, do I need to give these here to you?
14 THE COURT REPORTER: Yes.
15 **(Board Exhibit Number 1(a) through 1(d) Received into Evidence)**
16 HEARING OFFICER PFEIFER: And I just want to check on the
17 names of, I guess the name of the Employer. It's my
18 understanding, in receiving a Commerce Questionnaire from the
19 Employer, that its full name is Mission Area Health Associates,
20 doing business as, or d/b/a Mission Neighborhood Health Center;
21 is that correct?
22 MR. PAETKAU: That's correct.
23 HEARING OFFICER PFEIFER: Okay. So I guess I propose to
24 amend the petition to include the full legal name of the
25 Employer. Is there any objection to doing this by the parties

1 of Petitioner?

2 MR. SIEGEL: No.

3 HEARING OFFICER PFEIFER: For the Employer?

4 MR. PAETKAU: No objection.

5 HEARING OFFICER PFEIFER: And Intervenor?

6 MR. GOTTESMAN: No objection.

7 HEARING OFFICER PFEIFER: Okay. All right. So let the

8 record reflect that the Employer's legal name has been amended

9 to be Mission Area Health Associates, d/b/a Mission

10 Neighborhood Health Center.

11 Okay. All right. The parties to this proceeding have

12 executed, and I have approved, a document which is marked as

13 Board's Exhibit 2. That exhibit contains a series of

14 stipulations among other items that Petitioner is a labor

15 organization within the meaning of the Act. There's no

16 contract bar, and the Employer meets the jurisdictional

17 standards of the Board.

18 Are there any objections to the receipt of Board's Exhibit

19 2, Petition?

20 MR. SIEGEL: No objection.

21 HEARING OFFICER PFEIFER: For the Employer?

22 MR. PAETKAU: No objection.

23 HEARING OFFICER PFEIFER: And for the Intervenor?

24 MR. GOTTESMAN: No objection.

25 HEARING OFFICER PFEIFER: Okay. Hearing that there's no

1 objections, Board's Exhibit 2 is received in evidence.

2 **(Board Exhibit Number 2 Received into Evidence)**

3 HEARING OFFICER PFEIFER: In terms of intervention, are

4 there any motions for any other party to intervene in these

5 proceedings to be submitted to the Hearing Officer at this

6 time?

7 Anything, Petitioner? Or I guess it would be sort of

8 anyone else, sorry.

9 Are the parties aware of any other Employers or labor

10 organizations that have any interest in this proceeding? From

11 the Petitioner?

12 MR. SIEGEL: The Petitioner is not aware.

13 HEARING OFFICER PFEIFER: Employer?

14 MR. PAETKAU: Not aware.

15 HEARING OFFICER PFEIFER: And Intervenor?

16 MR. GOTTESMAN: Same.

17 HEARING OFFICER PFEIFER: Okay. All right. And based on

18 Board's Exhibit 2, the parties have already stipulated -- or

19 the Employer has already stipulated to commerce and

20 jurisdiction, and also to labor organization status. Okay, so

21 we'll move on.

22 Okay, so now we move onto issues and burdens of proof.

23 Will the parties please identify the issues for hearing and

24 their positions on each issue? I guess I'll start with the

25 Employer in terms of the supervisory status issue. Go ahead.

1 MR. PAETKAU: The positions that we believe, the Employer
2 believes are supervisory are the pharmacist position, it's
3 actually called pharmacist in charge, and also the staff RN
4 position which is called charge nurse. And also the Employer
5 believes that those positions, as well as the nurse
6 practitioner are professional, what qualifies as professional
7 employees.
8 HEARING OFFICER PFEIFER: Okay. Are there any other
9 positions that the Employer would stipulate were professional
10 positions?
11 MR. PAETKAU: Well, the staff RN I mentioned, which is
12 charge nurse, the RN on-call is professional.
13 HEARING OFFICER PFEIFER: Okay.
14 MR. PAETKAU: And I think I mentioned nurse practitioner.
15 Physician assistant, we don't have that position. I know it's
16 in the contract, the old contract, but it's not a current
17 position.
18 HEARING OFFICER PFEIFER: Okay.
19 MR. PAETKAU: But if it did, that would be professional.
20 HEARING OFFICER PFEIFER: Okay.
21 MR. PAETKAU: Assistant to an M.D.
22 HEARING OFFICER PFEIFER: And what about the pharmacist?
23 MR. PAETKAU: Pharmacist also, professional and
24 supervisory.
25 HEARING OFFICER PFEIFER: Okay.

1 MR. PAETKAU: Pharmacist in charge.

2 HEARING OFFICER PFEIFER: Okay. And what is the

3 Employer's position on the nutritionist with respect to being a

4 professional employee?

5 MR. PAETKAU: They are not a professional, but we're not

6 sure that that position exists.

7 HEARING OFFICER PFEIFER: Okay. And, let's see. Also, is

8 there a condition by the Employer that the unit description

9 does not correctly reflect the names of the bargaining unit

10 positions at this time, Mr. Paetkau?

11 MR. PAETKAU: Yes. Some of the titles have changed from

12 when the contract was signed or was renewed or extended, so

13 that there are several positions that are listed in the

14 contract that no longer -- that no longer exist.

15 HEARING OFFICER PFEIFER: Okay.

16 MR. PAETKAU: So the list that I have of positions that no

17 longer exist are x-ray aide, typist, clerk typist, janitor,

18 OB/GYN receptionist, assistant intake service supervisor,

19 laboratory aide, health-ed aide, medical records supervisor

20 assistant, and utility worker, those 10 positions.

21 HEARING OFFICER PFEIFER: Okay. And does the Employer

22 have a condition in terms of what the positions are, the

23 positions that currently exist in the bargaining unit if they

24 differ from what's in the -- what's Petition 4 in the petition,

25 or attached to the petition?

1 MR. PAETKAU: Yes. We provided a list of who we believe
2 is in the bargaining unit, or the old bargaining unit. And we
3 listed their positions, current positions, or their titles. So
4 we can, I guess we can enter that into evidence as well.
5 HEARING OFFICER PFEIFER: Do you want to enter that in
6 through Becky? Or, I'm sorry, through your witness?
7 MR. PAETKAU: Sure. Yes.
8 HEARING OFFICER PFEIFER: Okay. Okay, we'll do that that
9 way. Okay, and are those all the issues that the Employer is
10 raising or has sought to bring about in this proceeding,
11 Mr. Paetkau?
12 MR. PAETKAU: As far as I know, those are the only issues.
13 HEARING OFFICER PFEIFER: Okay. All right. And so let's
14 go ahead and get the other parties' positions on that.
15 For the Petitioner, Mr. Siegel?
16 MR. SIEGEL: Well, we believe that the staff RN, the RN
17 on-call, the nurse practitioner, physician assistant, the
18 pharmacist and the nutritionists are professionals. And we
19 don't believe any of them are supervisors. And we believe the
20 correct bargaining unit is the existing bargaining unit as
21 specified in the existing contract.
22 HEARING OFFICER PFEIFER: Okay. And is that what's
23 attached to the petition filed by the Petitioner?
24 MR. SIEGEL: Yes, that was attached to the petition that
25 was filed, was the positions taken from the expired bargaining

1 unit between the Intervenor, SEIU-UHW and the Employer, which
2 expired February 28th, 2011.
3 HEARING OFFICER PFEIFER: Okay. Petitioner's position on
4 the issues?
5 MR. GOTTESMAN: I'm sorry, the Intervenor?
6 HEARING OFFICER PFEIFER: Oh, I'm sorry. The Intervenor's
7 position on the issues in this matter, Mr. Gottesman?
8 MR. GOTTESMAN: The Intervenor's position on the
9 professional issue is that none of the classifications
10 identified qualify as professionals so as to trigger a Sonotone
11 election. The Intervenor's not taking a position on the
12 supervisor issue with -- in regards to the job classification
13 issue about what is included and what is -- who still exists or
14 doesn't. The Intervenor agrees with the Petitioner on that
15 issue.
16 HEARING OFFICER PFEIFER: Okay. And I'm sorry, did you
17 mention your position, the Intervenor's position with respect
18 to supervisory status issues?
19 MR. PAETKAU: The Intervenor's not taking a position with
20 regard to supervisor status issue.
21 HEARING OFFICER PFEIFER: Okay. All right. Now that I
22 know the parties' position, I just want to make the parties
23 aware that statutory exclusion such as Section 211, supervisory
24 status, is -- well, statutory exclusion; the party seeking to
25 exclude employees on this basis bears the burden of proof. You

1 must present specific, detailed evidence in support of your
2 position. General conclusionary statements by witnesses will
3 not be sufficient.
4 Do the parties know if there are any petitions pending in
5 other regional offices involving other facilities of the
6 Employer?
7 Mr. Paetkau?
8 MR. PAETKAU: I'm not aware of any.
9 HEARING OFFICER PFEIFER: Okay. And Mr. Siegel?
10 MR. SIEGEL: Not aware of any.
11 HEARING OFFICER PFEIFER: And Mr. Gottesman?
12 MR. GOTTESMAN: Not aware.
13 HEARING OFFICER PFEIFER: Okay. Do any of the parties
14 contend that there is a contract bar to an election in this
15 case?
16 Mr. Paetkau?
17 MR. PAETKAU: No.
18 HEARING OFFICER PFEIFER: And Mr. Siegel?
19 MR. SIEGEL: No contract bar.
20 HEARING OFFICER PFEIFER: And Mr. Gottesman?
21 MR. GOTTESMAN: No.
22 HEARING OFFICER PFEIFER: Okay. Can it be stipulated that
23 there is no contract or other bar in existence that would
24 preclude the processing of this petition?
25 Mr. Paetkau, do you stipulate so for the Employer?

1 MR. PAETKAU: So stipulated.

2 HEARING OFFICER PFEIFER: Okay. And, Mr. Siegel, do you

3 stipulate so for the Petitioner?

4 MR. SIEGEL: So stipulated.

5 HEARING OFFICER PFEIFER: And Mr. Gottesman, do you

6 stipulate so for the Intervenor?

7 MR. PAETKAU: Stipulated.

8 HEARING OFFICER PFEIFER: Stipulations received.

9 Okay. In light of the bargaining unit classifications

10 issue that we'll be addressing through testimony, it seems like

11 at this point we can't make any stipulations with respect to

12 what the bargaining unit should include. I mean, not that

13 everyone would agree to anyway, so we'll address that through

14 testimony.

15 And one more bargaining unit I wanted to get into before

16 we frame the issues and go into the presentation of evidence

17 is, in reviewing the bargaining units sought by the Petitioner

18 going from the attachment to the petition which lists the

19 bargaining unit positions that are being petitioned for, there

20 were two positions that were on there that had the titles

21 assistant intake -- or Asst, which I assume is the assistant

22 intake service supervisor, and medical records supervisor Asst,

23 again I believe that would be assistant.

24 I would like to get the parties' positions as to whether

25 or not these positions would constitute being a supervisor

1 within the meaning of Section 211 of the Act.

2 Mr. Paetkau, for the Employer?

3 MR. PAETKAU: The two positions, first of all, they don't

4 exist any longer. And the Employer doesn't have a position on

5 whether it would qualify as a supervisor of the Act, because

6 I'm not sure when it was eliminated. It no longer exists.

7 HEARING OFFICER PFEIFER: Okay. Mr. Siegel, for the

8 Petitioner?

9 MR. SIEGEL: Our positions, are not supervisors.

10 HEARING OFFICER PFEIFER: Okay. And Mr. Gottesman, for

11 the Intervenor?

12 MR. PAETKAU: No position on the supervisor status issue.

13 HEARING OFFICER PFEIFER: Okay. All right. So in terms

14 of the issues that we're going to be testifying to, basically

15 it's my understanding that the issues to be litigated today are

16 whether or not the charge nurses and/or physicians --

17 pharmacists or pharmacists in charge, whether they're

18 supervisors within the meaning of Section 211 of the Act.

19 Also we're going to be discussing professional employee

20 status of the positions concerning staff RN, RN on-call, nurse

21 practitioner, physician assistant, pharmacist and nutritionist.

22 And we'll also be -- well, we'll also be speaking about

23 the bargaining unit positions and their names at this point,

24 what are the current classifications, if they've changed or

25 not, what the parties' positions are on that. So that's what

1 we should be addressing today in the hearing.

2 Are there any other issues of which I'm not aware or that

3 I've not spoken about? Mr. Siegel?

4 MR. SIEGEL: No, I'm not aware of any.

5 HEARING OFFICER PFEIFER: Okay. Mr. Paetkau?

6 MR. PAETKAU: Not aware of any.

7 HEARING OFFICER PFEIFER: And Mr. Gottesman?

8 MR. GOTTESMAN: Also not aware.

9 HEARING OFFICER PFEIFER: Okay. All right. Let's go

10 ahead and start with the presentation of evidence.

11 Mr. Paetkau, it's my understanding you would like to put

12 on a witness from the Employer?

13 MR. PAETKAU: Yes, I would like to call Becky Hucke to the

14 stand.

15 HEARING OFFICER PFEIFER: Okay.

16 MR. GOTTESMAN: Madam Hearing Officer?

17 HEARING OFFICER PFEIFER: Yes, Mr. Gottesman.

18 MR. GOTTESMAN: It's 12:00, and I'm just wondering whether

19 or not now might be a good time to break for lunch before we

20 start on what may be a lengthy witness.

21 HEARING OFFICER PFEIFER: That's true. Okay. Parties'

22 positions, is now a good time to break to the extent that

23 Becky, the first witness, should be on for a while?

24 MR. SIEGEL: That's fine, as long as we take a short lunch

25 to make sure we get out of here as soon as possible.

1 HEARING OFFICER PFEIFER: Okay. Mr. Paetkau?
2 MR. PAETKAU: We have no objection.
3 HEARING OFFICER PFEIFER: Okay.
4 MR. PAETKAU: I mean, we also want to get out of here, so.
5 HEARING OFFICER PFEIFER: Is everyone okay with half an
6 hour lunch, be back by 12:30? Is that doable?
7 MR. GOTTESMAN: Can we do 45 minutes?
8 MR. SIEGEL: I would never say no to a hungry man.
9 HEARING OFFICER PFEIFER: Mr. Paetkau, is that --
10 MR. PAETKAU: That's fine, Your Honor.
11 HEARING OFFICER PFEIFER: 12:45.
12 MR. GOTTESMAN: Thank you.
13 HEARING OFFICER PFEIFER: Okay. All right. So we'll go
14 off the record and resume at 12:45.
15 (Off the record at 12:02 p.m.)
16 HEARING OFFICER PFEIFER: Just quickly, in off-the-record
17 discussions with the parties, we have a couple of stipulations
18 to add.
19 The first one has to do with collective bargaining
20 representation or collective bargaining history. And that
21 refers to the Intervenor in this matter, who is -- it's my
22 understanding from the parties that the Intervenor and the
23 Employer have had a collective bargaining history going back
24 several years. It's unclear how many years it is, and they've
25 had a series of contracts up until the most recent one which

1 expired in February 2011. I believe there was an extension,
2 maybe until February of 2012; is that correct?
3 MR. PAETKAU: Yes, there was an extension. I think it is
4 attached to the expired contract.
5 HEARING OFFICER PFEIFER: The contract, okay.
6 MR. PAETKAU: That goes through -- yeah, the one that's
7 attached is through March 1, 2011.
8 HEARING OFFICER PFEIFER: Okay.
9 MR. PAETKAU: But I believe there was another extension.
10 No, that was the last extension.
11 HEARING OFFICER PFEIFER: Oh, that was the last extension,
12 was March --
13 MR. PAETKAU: March 11, 2011.
14 HEARING OFFICER PFEIFER: Okay.
15 MR. PAETKAU: March 1, 2011.
16 HEARING OFFICER PFEIFER: March 1, 2011, okay. Do the
17 parties stipulate to the description I have stated with respect
18 to collective bargaining history?
19 For the Petitioner, Mr. Siegel?
20 MR. SIEGEL: I didn't -- I can stipulate to everything,
21 except I don't have in front of me extension to March 1, 2011,
22 so I can't stipulate to that.
23 HEARING OFFICER PFEIFER: Okay.
24 MR. SIEGEL: So I don't know that for certain, and I can't
25 stipulate to that. I can stipulate that it was -- it's

1 expired.

2 HEARING OFFICER PFEIFER: Okay. Otherwise, in terms of

3 the --

4 MR. SIEGEL: Otherwise, I can stipulate to that there was

5 a bargaining history for several years between the Intervenor,

6 SEIU-UHW and the Employer, including collective bargaining

7 agreements.

8 HEARING OFFICER PFEIFER: Okay. All right.

9 And for the Employer, Mr. Paetkau?

10 MR. PAETKAU: The stipulation as to?

11 HEARING OFFICER PFEIFER: As to collective bargaining

12 history representation?

13 MR. PAETKAU: Yes, we stipulate to --

14 HEARING OFFICER PFEIFER: My description of it?

15 MR. PAETKAU: Yes.

16 HEARING OFFICER PFEIFER: Okay. And for the Intervenor,

17 Mr. Gottesman?

18 MR. GOTTESMAN: So stipulated.

19 HEARING OFFICER PFEIFER: Okay. And also in

20 off-the-record conversations, the parties and I spoke about

21 exclusions the parties could -- bargaining unit exclusions that

22 the parties could stipulate to, and that those exclusions,

23 which can also be -- well, those exclusions would be the

24 physicians, optometrists, dentists, guards and supervisors, as

25 defined by the Nation Labor Relations Act. Do the parties so

1 stipulate?

2 Mr. Siegel, for the Petitioner?

3 MR. SIEGEL: So stipulated.

4 HEARING OFFICER PFEIFER: Okay. And Mr. Paetkau?

5 MR. PAETKAU: So stipulated.

6 HEARING OFFICER PFEIFER: And Mr. Gottesman?

7 MR. GOTTESMAN: Stipulated.

8 HEARING OFFICER PFEIFER: Okay. Now, that we have those

9 stipulations taken care of, let's go ahead and start with

10 witnesses.

11 Mr. Paetkau, your first witness.

12 MR. PAETKAU: Yes. I call Ms. Hucke to the stand.

13 HEARING OFFICER PFEIFER: Okay. Ms. Hucke, come on up

14 here. I'll have you sit right here. I'll actually have you

15 stand for a second.

16 Whereupon,

17 **BECKY HUCKE**

18 having been duly sworn, was called as a witness herein and was

19 examined and testified as follows:

20 HEARING OFFICER PFEIFER: All right. You may sit down.

21 And, let's see. Okay, and please go ahead and state your name

22 and spell it for the record, Ms. Hucke.

23 THE WITNESS: Becky Hucke, B-E-C-K-Y H-U-C-K-E.

24 HEARING OFFICER PFEIFER: Okay. And, Mr. Paetkau, go

25 ahead with your questioning.

1 MR. PAETKAU: Okay, thank you.

2 **DIRECT EXAMINATION**

3 Q BY MR. PAETKAU: What is your position with Mission
4 Neighborhood Health Center, Ms. Hucke?
5 A I'm the human resources director.
6 Q And how long have you held that position?
7 A Six months.
8 Q Prior to that, what was your, briefly, your employment
9 history?
10 A I was a senior director of HR with a large mental health
11 facility in Portland, Oregon.
12 Q How long did you hold that position?
13 A Fifteen years.
14 Q As part of your job as the HR director for Mission
15 Neighborhood Health Center, have you had a chance to become
16 familiar with the personnel policies and procedures that are in
17 existence at Mission Neighborhood Health Center?
18 A Somewhat. Not completely, but mostly.
19 Q Okay. Are you somewhat familiar with what the prior
20 contract with United Healthcare Workers was?
21 A Yes. Yes, I am.
22 Q SEIU United Healthcare Workers West?
23 A Yes, I am.
24 Q Can you briefly describe the general business operations
25 of Mission Neighborhood Health Center?

1 A Mission Neighborhood Health Center is a primary care
2 physicians clinic providing care for mostly the Latino
3 community in the Mission District of San Francisco. Ninety-
4 five percent of the patients are Latino; several only speak
5 Spanish.
6 Q Is Mission Neighborhood Health Center a non-profit?
7 A Yes, it is.
8 Q Does it receive grant money from the government?
9 A It does.
10 Q What is the largest source of grant money for the Mission
11 Neighborhood Health Center?
12 A It's a Section 300 grant from the federal government.
13 Q I am going to ask you about a document that we previously
14 submitted to the Board. It's the -- and unfortunately I just
15 have one copy -- but it's the list of employees that we believe
16 in the bargaining unit, and also the list from the Petition, it
17 was attached to the petition.
18 MR. PAETKAU: I can make copies of this, unless you have
19 extras. This is the --
20 HEARING OFFICER PFEIFER: Yeah, I think I just have maybe
21 one extra. Let's see.
22 Would the parties or the unions, would you guys like a
23 copy of that as well while we're talking about it?
24 MR. SIEGEL: I would.
25 HEARING OFFICER PFEIFER: Yeah.

1 MR. SIEGEL: I think it would be helpful.

2 HEARING OFFICER PFEIFER: Yeah, I think so too. Can we go

3 off the record for a minute? I'm going to make copies.

4 (Off the record at 1:02 p.m.)

5 HEARING OFFICER PFEIFER: Mr. Paetkau, please continue.

6 MR. PAETKAU: Thank you. Could you provide -- I'm handing

7 your officer a copy of this exhibit for the witness.

8 HEARING OFFICER PFEIFER: Oh, sure.

9 MR. PAETKAU: Thanks.

10 Q BY MR. PAETKAU: Ms. Hucke, you've been handed what I'll

11 just refer to as Exhibit 3 pending admission.

12 HEARING OFFICER PFEIFER: Mr. Paetkau, I'm going to have

13 you call it Employer's Exhibit 1, if you don't mind, just to

14 sort of differentiate it from the other exhibits.

15 **(Employer Exhibit Number 1 Marked for Identification)**

16 MR. PAETKAU: Okay, sure.

17 HEARING OFFICER PFEIFER: Which are kind of Board Exhibits

18 or Joint Exhibits, so.

19 MR. PAETKAU: Okay.

20 HEARING OFFICER PFEIFER: Thank you.

21 Q BY MR. PAETKAU: Do you recognize Employer 1, Ms. Hucke?

22 A I do.

23 Q And what do you recognize it to be?

24 A A list provided by the Union, I believe, of the bargaining

25 unit, as listed in the contract.

1 Q Okay. And are you referring to the second page?
2 A Yes.
3 Q Okay. And I notice there's some handwritten notes on
4 there. Do you know what that refers to?
5 A Yes. I sat with the executive director, she wanted to
6 look at the list, and she wrote next to each one that didn't
7 exist anymore.
8 Q And who is that executive?
9 A Brenda Storey.
10 Q So is it your understanding that where it says "does not
11 exist" that those positions no longer exist at the Center?
12 A That's correct.
13 Q Just kind of going through the list, I have the same
14 general questions for each position, so let me get them out and
15 then we can make it quicker.
16 For the x-ray aide, do you know what that position was
17 eliminated?
18 A I do not.
19 Q Do you know if there's anyone currently who holds that
20 position or something similar to that position at the Center?
21 A Not to my knowledge, no.
22 Q Same questions with regard to typist.
23 A No.
24 Q Is there anyone currently who holds that title of typist?
25 A No.

1 Q How about clerk typist?
2 A No.
3 Q Janitor, do you know when that position was eliminated?
4 A I do not know.
5 Q And does anyone hold a position that's either called
6 janitor or has the duties of a janitor currently?
7 A No.
8 Q The OB/GYN receptionist, do you know when that position
9 was eliminated?
10 A I do not.
11 Q Do you know if anyone currently at the Center holds that
12 position --
13 A They do not.
14 Q -- or a job with similar duties?
15 A The medical assistants rotate through that position. So I
16 think it's a shared position amongst the medical assistants.
17 Q And the medical assistants are included in the bargaining
18 unit?
19 A That's correct.
20 Q The next on the list is -- well, just to make it complete,
21 there's a -- it looks like a line through pharmacy helper,
22 pharmacy tech. Is that the current title?
23 A Yes, it is.
24 Q Do you know how long it's been called pharmacy tech?
25 A I do not.

1 Q Since you've been there, has it been referred to as
2 pharmacy tech?
3 A That's correct.
4 Q The next position in order, assistant intake service
5 supervisor, do you know when that position was eliminated?
6 A I do not.
7 Q Do you know whether anyone currently holds that position
8 or performs the duties of that position?
9 A There is no one.
10 Q Laboratory aide, and it looks like it's crossed out, tech,
11 does that position currently exist at the Center?
12 A The laboratory tech does, but it was listed down below
13 further on the list.
14 HEARING OFFICER PFEIFER: Oh, yeah.
15 Q BY MR. PAETKAU: Okay, I see lab tech. Does the Center
16 have -- strike that. Is the laboratory tech position the same
17 as what used to be the laboratory aide?
18 A I believe it's probably similar.
19 Q The next one, health-ed aide, do you know when that
20 position was eliminated?
21 A I do not.
22 Q Do you know if anyone currently at the Center holds that
23 position?
24 A They do not.
25 Q Does anyone perform the duties currently, even if it's a

1 different title, of health-ed aide?
2 A Not to my knowledge.
3 Q Medical records supervisor assistant, do you know when
4 that position was eliminated?
5 A I do not.
6 Q Do you know if anyone currently holds that position at the
7 Center?
8 A They do not.
9 Q Utility worker, do you know when that position was
10 eliminated?
11 A I do not.
12 Q Do you know if anyone currently holds that position?
13 A They do not.
14 Q Okay. Now that's the second page. On the first page, do
15 you know who compiled this list on the first page?
16 A It came out of the payroll system as a report on the
17 bargaining unit.
18 Q And is it your belief that this is a list of all the
19 current employees in the -- what was the bargaining unit under
20 the contract, the expired contract with SEIU?
21 A That's my understanding.
22 Q And then I think there was one person that maybe you
23 thought was no longer there at the Center?
24 A Correct.
25 Q Who is that?

1 A That would be Emily Himes, nurse practitioner.
2 Q And the positions that are listed in the first page of
3 Employer's Exhibit 1, are those the current titles for the
4 positions for the employees listed?
5 A That is correct.
6 Q Are there any other employees who have those titles who
7 are not -- current employees who are not listed on the first
8 page of Employer's 1?
9 A There are not.
10 Q As far as you know, you included -- or the Center included
11 from payroll all of the individuals who you believe were
12 included in the old bargaining unit?
13 A That's correct.
14 Q If you could turn to what I think I provided, the job
15 descriptions.
16 MR. PAETKAU: First, I would move Employer's Exhibit 1
17 into evidence at this time.
18 HEARING OFFICER PFEIFER: Okay. Is there any objection to
19 the Employer's entering into evidence Employer's Exhibit 1?
20 Petitioner, Mr. Siegel?
21 MR. SIEGEL: No objection.
22 HEARING OFFICER PFEIFER: All right. The Intervenor,
23 Mr. Gottesman?
24 MR. GOTTESMAN: I just want to make sure that -- I'm still
25 unclear about where this document came from. Because if it

1 was -- if it came from the payroll records, I'm not sure why it
2 would have the NLRB case number on it.
3 THE WITNESS: I typed that in there.
4 MR. GOTTESMAN: Okay. Well, that's an -- the Intervenor
5 no longer has any objection.
6 HEARING OFFICER PFEIFER: Okay.
7 Q BY MR. PAETKAU: Just so we're clear, you received the
8 petition or a copy of the petition and then went to payroll and
9 compiled this list, or got help from payroll to compile it?
10 A I asked them to send me the list from the payroll system,
11 yes.
12 Q All right. Well, if you could --
13 HEARING OFFICER PFEIFER: Hold on a second. So,
14 Mr. Gottesman, any objection at this point?
15 MR. GOTTESMAN: No, no objection.
16 HEARING OFFICER PFEIFER: Okay. Employer's Exhibit 1 is
17 entered into the record.
18 **(Employer Exhibit Number 1 Received into Evidence)**
19 Q BY MR. PAETKAU: Ms. Hucke, do you have the job
20 descriptions that we brought today?
21 A I do not.
22 Q Here, we have a copy.
23 MR. PAETKAU: This is the same that I gave you previously.
24 Q BY MR. PAETKAU: Before I get to the job descriptions, are
25 you familiar with the expired contract between the Center, CBA,

1 Mission Neighborhood Center and United Healthcare Workers
2 West?
3 A Yes.
4 Q SEIU and United Healthcare Workers West. I'm going to
5 show you a copy and ask you do you recognize this document?
6 A I do.
7 Q And what do you recognize it to be?
8 A The expired contract between SEIU and Mission Neighborhood
9 Health Center.
10 MR. PAETKAU: Okay. And I would move that also into
11 evidence as Employer's Exhibit 2.
12 HEARING OFFICER PFEIFER: Okay. Is there --
13 MR. SIEGEL: Can I just look at -- can I look at it?
14 HEARING OFFICER PFEIFER: Oh, sure.
15 MR. SIEGEL: No objections to that into evidence.
16 HEARING OFFICER PFEIFER: Okay.
17 MR. GOTTESMAN: No objection, except for the NLRB case
18 which appears to have been typed onto the front of the
19 documents, along with perhaps the Mission Neighborhood Health
20 Center. Other than that, no objection.
21 THE WITNESS: That's requesting --
22 HEARING OFFICER PFEIFER: And this will be -- go ahead.
23 THE WITNESS: That's requested to put that on all the
24 documents that I submitted.
25 HEARING OFFICER PFEIFER: Okay.

1 MR. PAETKAU: Okay. I'll clarify that.
2 HEARING OFFICER PFEIFER: Okay.
3 Q BY MR. PAETKAU: Did you have some involvement in
4 preparing or submitting this document exhibit, Employer's
5 Exhibit 2, to the Board?
6 A I did.
7 Q And did you type the -- there's a case number on top in
8 the Mission Neighborhood Health Center.
9 A Yeah. It's a little sticker actually.
10 Q Sticker, okay. Other than that, did you make any changes
11 to the old collective bargaining agreement?
12 A I did not.
13 MR. PAETKAU: Okay. And I'll represent this is what we
14 submitted at your request when we got the petition.
15 HEARING OFFICER PFEIFER: Okay. Mr. Gottesman?
16 MR. GOTTESMAN: No objection, with that understanding.
17 HEARING OFFICER PFEIFER: Okay. All right. Employer's
18 Exhibit 2 is entered into the record.
19 **(Employer Exhibit Number 2 Received into Evidence)**
20 Q BY MR. PAETKAU: Now, you've also just been handed a stack
21 of job descriptions.
22 MR. PAETKAU: I will preliminarily mark them as Employer's
23 Exhibit 3.
24 **(Employer Exhibit Number 3 Marked for Identification)**
25 Q BY MR. PAETKAU: Are you generally familiar with those

1 documents?
2 A I am.
3 Q And to follow up on the hearing officer's request, I'm
4 going to start with the positions that the Center contends are
5 supervisory positions under Act, or excluded under the Act. So
6 I'd like to start with the -- first of all, for the record, can
7 you just describe what is in collectively Exhibit 3?
8 A Several job descriptions. The women's clinic charge
9 nurse.
10 Q Can you, Ms. Hucke, can you just do them in order, in the
11 order that they are in the list there?
12 A I think I took them out of order. The family nurse
13 practitioner. Another family nurse practitioner. Another
14 family nurse practitioner. A pharmacist in charge. A family
15 planning counselor. A women's clinic charge nurse. And a
16 registered dietician.
17 Q Okay. I think we might have gotten the order mixed up.
18 So maybe what I'll do, just to make it clear is, I'll just have
19 you take out each one as I ask about and we'll mark it
20 separately.
21 A Okay.
22 Q So let me ask you first about --
23 MR. PAETKAU: Or maybe we can do 3(a), 3(b) and 3(c).
24 HEARING OFFICER PFEIFER: Okay, yeah. Just for sort of
25 clarification, what should they be? What are the ones which

1 was the family nurse practitioner.

2 MR. PAETKAU: Right, the order that I have them in are

3 family nurse practitioner, December 23, 1992; family nurse

4 practitioner, April 2008.

5 HEARING OFFICER PFEIFER: Okay.

6 MR. PAETKAU: Women's clinic charge nurse, January 2012.

7 There's a family planning counselor, August 2008; a registered

8 dietician, May 2001; family nurse practitioner, November, 2002;

9 and a pharmacist in charge, which is signed, it looks like it

10 was September 6th of 2011.

11 HEARING OFFICER PFEIFER: Okay. But in terms of

12 supervisory status, it's my understanding that the Employer's

13 position is that it's the charge nurse and the pharmacist in

14 charge, that they would be supervisors under the meaning of the

15 Act; is that correct?

16 MR. PAETKAU: Correct.

17 HEARING OFFICER PFEIFER: Okay. So maybe -- should we

18 just address those two first?

19 MR. PAETKAU: Yes. Yeah.

20 HEARING OFFICER PFEIFER: And separate those ones out.

21 Q BY MR. PAETKAU: So let me ask you, Ms. Hucke, about the

22 job descriptions as the title women's clinic charge nurse.

23 A Uh-huh.

24 Q Does the women's clinic charge nurse job description that's

25 dated January 2012, does that accurately describe the job

1 duties of the women's clinic charge nurse?
2 A It does.
3 Q This refers to a women's clinic charge nurse. Are there
4 other types of charge nurses at the Center?
5 A There are. Depending on which clinic they work in, their
6 title may be different, like a pediatric charge nurse.
7 Q And how many charge nurses are there all inclusive, not
8 just women's clinic?
9 A I believe there's five.
10 Q And other than the pediatric clinic or women's clinic, is
11 there any difference in the actual job descriptions?
12 A Not exactly. I mean, there may be small differences
13 depending on the clinic, whether it's pediatric or women's or
14 adult.
15 Q Does the charge nurse or charge nurses, do they supervise
16 other employees?
17 A They do.
18 Q Can you describe, whether by reference to the job
19 description or just from your own knowledge, what are the
20 general duties of the charge nurse?
21 A They directly supervise the medical assistants in each
22 clinic. They provide supervision to them. They hire and --
23 they have the ability to hire and fire those medical
24 assistants. And they do their performance evaluations.
25 Q Okay. And you just raised an issue with regard to the

1 organizational structure. Who do the charge nurses report to?
2 A The director of nursing.
3 Q And then who does that person, the director of nursing,
4 report to?
5 A The medical director.
6 Q And who does the medical director report to?
7 A The executive director.
8 Q Is there anyone above the executive director besides the
9 Board?
10 A There is not.
11 Q And who -- again, I know you already said this -- but who
12 reports to the charge nurses?
13 A The medical assistants.
14 Q Do the charge nurses set schedules for the medical
15 assistants?
16 A They do.
17 Q What are the medical assistants' duties generally?
18 A They provide the front desk for the patients. They groom
19 the patients, meaning they go in and they take their vital
20 signs for the doctors or the nurse practitioners. And then
21 they check the patients out on the way out.
22 Q Does anyone report to the medical assistants?
23 A No.
24 Q And you mentioned hiring and firing authority. Does the
25 charge nurse need to get approval to hire a new medical

1 assistant?
2 A They do group interviews, so it's a collective process.
3 Q Does the charge nurse recommend -- or can the charge nurse
4 recommend an applicant for employment at the Center?
5 A Yes, they can.
6 Q When you -- you mentioned performance reviews. Are those
7 formal performance evaluations?
8 A They are.
9 Q Do the charge nurses prepare written performance
10 evaluations for the medical assistants?
11 A They do.
12 Q And on either a daily, weekly or monthly basis, do the
13 charge nurses regularly supervise and direct the work of the
14 medical assistants?
15 A They do.
16 Q If the medical assistants have an issue with regard to
17 their schedule or leave of absence, vacation or injury or
18 whatever, would they be expected to go to the charge nurses for
19 guidance?
20 A They would.
21 Q This job description that we've been talking about here,
22 one is clinic charge nurses dated January 2012. Do you know
23 what if any changes were made to the job description prior to
24 this version in January 2012?
25 A The top section where it says "Introduction" was added to

1 the job description.

2 Q Other than that, have the duties of the charge nurse

3 changed --

4 A They have not.

5 Q -- over the last --

6 A They have not.

7 Q There was in the contract -- and I think it's also in the

8 Employer's Exhibit 1 -- a list, a list of employees or

9 positions in the unit. Are the charge nurses included in the

10 list of employees or positions in the bargaining unit?

11 A They are not.

12 Q And why not?

13 A Because they supervise the staff that are in the

14 bargaining unit.

15 Q How about the RNs, registered nurses?

16 A We don't have any nurses who are just RNs, they are charge

17 nurses, except for the on-call RNs.

18 MR. SIEGEL: I would object to non-responsive and lack of

19 foundation.

20 HEARING OFFICER PFEIFER: Parties' positions? Intervenor,

21 Mr. Gottesman?

22 MR. GOTTESMAN: On the objection?

23 HEARING OFFICER PFEIFER: Uh-huh.

24 MR. GOTTESMAN: It sounds like a fair objection to me.

25 HEARING OFFICER PFEIFER: I guess -- so, Mr. Paetkau, I

1 guess in terms -- so I think I understand what the -- I mean --
2 MR. PAETKAU: Well, let me just --
3 HEARING OFFICER PFEIFER: -- to the extent that the
4 charge -- I mean, I understand there's some dispute, I believe,
5 as to whether or not the charge nurse is like -- I mean, is it
6 a title thing, or they are actually technically two different
7 types of nurses, but can you maybe explain why -- I mean,
8 what's the foundation of your question?
9 MR. PAETKAU: Sure. I will lay more foundation.
10 Q BY MR. PAETKAU: Currently, does the Center have just
11 registered nurses that hold that title of RN?
12 A No.
13 Q Do you know --
14 MR. SIEGEL: I would object to vague and ambiguous.
15 HEARING OFFICER PFEIFER: In terms of -- so the charge
16 nurses, are those RNs? Are they registered nurses? I mean --
17 THE WITNESS: They are registered --
18 HEARING OFFICER PFEIFER: Isn't that a certain -- a
19 certain --
20 MR. PAETKAU: Qualification.
21 HEARING OFFICER PFEIFER: -- yeah, a certification or like
22 licensure or something.
23 THE WITNESS: Yes. In order to be a charge nurse, you
24 have to be a registered --
25 HEARING OFFICER PFEIFER: You have to be an RN.

1 THE WITNESS: -- an RN, right.

2 HEARING OFFICER PFEIFER: Yeah, okay.

3 THE WITNESS: And LPN.

4 MR. GOTTESMAN: Madam Hearing Officer, if I may?

5 HEARING OFFICER PFEIFER: Go ahead, Intervenor.

6 MR. GOTTESMAN: It seems like that's the issue that we're
7 discussing, is whether these nurses have supervisorial duties.
8 The title, I think, is irrelevant to the determination of 211
9 status. And so I'm just wondering -- I understand the Employer
10 calls them charge nurses.

11 HEARING OFFICER PFEIFER: Right.

12 MR. GOTTESMAN: But does that even matter. I mean, the
13 issue is what their job duties are, isn't it?

14 HEARING OFFICER PFEIFER: Yeah, I tend to agree, to the
15 extent that the contract covers -- I mean, the contract covers
16 RNs. I mean, RNs -- well, right, I guess whether the Employer
17 calls them charge nurses or not, I mean, that's sort of more a
18 function of their duty in addition to being like RNs in the
19 first place. I mean, I think that's the dispute as to whether
20 or not they should be covered by the contract. So, I mean, I
21 guess there can be --

22 MR. SIEGEL: I guess I can explain my position.

23 HEARING OFFICER PFEIFER: Yeah.

24 MR. SIEGEL: And I think I agree with Mr. Gottesman to the
25 extent that if the question is whether these individuals in the

1 charge nurse positions are supervisors, that's one issue; and
2 then another issue is whether or not these are the positions
3 who are listed in the bargaining agreement as RN, on-call,
4 etcetera. And therefore neither position, if they -- if the
5 charge nurse is a supervisor, whether neither the charge nurse
6 nor the position listed in the expired collective bargaining
7 agreement should be in the unit. So it's two different issues
8 as far as I see.
9 HEARING OFFICER PFEIFER: But I guess is there now -- I
10 mean, I don't -- I'm guessing -- could there be any stipulation
11 that the charge nurses are the RNs, or is that -- I mean, that
12 seems to be an issue too in terms of the Employer calling them
13 that. I'm trying to figure out how you guys want to address
14 this to the extent we can have an agreement on what these
15 positions are and whether or not they're -- we need to discuss
16 them for inclusion or exclusion.
17 MR. SIEGEL: I mean, I could stipulate that they are. If
18 she testified, I have no reason to believe that they aren't
19 registered nurses. And they're licensed as registered nurses
20 whether or not -- I mean, and there are bargaining units where
21 you have certain registered nurses who are supervisors, others
22 who are not. I mean, it depends on the bargaining unit, it
23 depends on the position. So I'm fine with stipulating that
24 they have the licensure and training to be registered nurses.
25 Whether or not these charge nurses are supervisors or not

1 is one question; whether or not they're the same as what were
2 in the collective bargaining agreement described therein as
3 registered nurses is a different question. So I'll stipulate
4 that they have the training and the licensure of registered
5 nurses.
6 HEARING OFFICER PFEIFER: So the Employer's position is
7 that the charge nurses are -- I mean, they are totally removed
8 from the collective bargaining agreement in terms of coverage.
9 It's like a newly created position?
10 MR. PAETKAU: I don't know when it was created, but
11 they're not in the bargaining unit, correct, because they're
12 supervisors. They're excluded by the Act. And they are -- I
13 mean, it's not the qualifications -- they are California
14 licensed -- licensure as a registered nurse. The
15 qualifications are on here. But let me -- if I can explore and
16 lay some more foundation.
17 Q BY MR. PAETKAU: Do any of the charge nurses not supervise
18 two or more medical assistants?
19 A No, they all do.
20 Q Okay. Are there any other job descriptions that are
21 currently in existence for charge nurses at the Center, other
22 than the one that we've marked, January 2012?
23 A They would be titled dependent on the clinic they work in.
24 Q Okay. So other than, it says women's clinic, it might say
25 pediatric clinic?

1 A Correct.
2 Q But in terms of the duties, are they all the same?
3 A Yes.
4 Q Okay. I'd like to ask you about the job description for
5 pharmacist in charge.
6 HEARING OFFICER PFEIFER: Well, let's go off the record
7 for a minute. I want to go check. First of all, at some point
8 we need to enter into, I guess, the record, I guess Employer's
9 Exhibit 3, or 3(a). Mr. Paetkau, what would you like to title
10 the job description for the charge nurse?
11 MR. PAETKAU: 3(a) is fine.
12 HEARING OFFICER PFEIFER: 3(a).
13 MR. SIEGEL: Yeah, I mean, you know, to speed things
14 along, I have -- I'm not going to object to any of these in the
15 record whether or not they are --
16 HEARING OFFICER PFEIFER: Hold on just a second.
17 MR. SIEGEL: I think we're off the -- I thought we were
18 off the record.
19 HEARING OFFICER PFEIFER: That's right.
20 THE COURT REPORTER: We are off the record for this
21 discussion?
22 HEARING OFFICER PFEIFER: No, actually, I want it to be on
23 the record for a second more before --
24 MR. SIEGEL: I'm sorry, I thought you were off the record.
25 HEARING OFFICER PFEIFER: I'm sorry. I was confusing in

1 terms of my break. I guess before we go off -- well, okay,
2 let's go off the record. Okay.
3 (Off the record at 1:33 p.m.)
4 HEARING OFFICER PFEIFER: All right. In summing up the
5 off-the-record discussions, the parties and I spoke about the
6 job description, the position of charge nurse, and basically
7 the positions on that. From what I understand from the
8 parties, and they can correct me if I'm wrong on this, is with
9 the charge nurse with respect to the Petitioner's position on
10 that, believes that that position should be excluded from the
11 unit.
12 And the Employer is contending that it should be excluded
13 as a supervisory employee.
14 Petitioner's position is that we should go through the
15 charge nurse -- if the Employer currently -- the Petitioner
16 doesn't represent charge nurses, but we'll go through the
17 position of the Petitioner to go through the charge nurse.
18 MR. SIEGEL: The Intervenor, I believe.
19 HEARING OFFICER PFEIFER: I'm sorry, I keep doing that.
20 Sorry.
21 For the Intervenor, the position is, Mr. Gottesman
22 mentioned the position was that the Intervenor presently
23 doesn't currently represent charge nurse, but that we should go
24 through with testimony regarding the charge nurse. And if that
25 position is not in fact a supervisory position, that it should

1 be included in the bargaining unit.

2 Is that correct, the parties? Mr. Gottesman?

3 MR. GOTTESMAN: That accurately reflects our position,

4 yes.

5 HEARING OFFICER PFEIFER: Okay. And Mr. Paetkau?

6 MR. PAETKAU: Yes, I think that fairly summarizes where we

7 are.

8 HEARING OFFICER PFEIFER: Okay. And Mr. Siegel?

9 MR. SIEGEL: Yes.

10 HEARING OFFICER PFEIFER: Okay. And just so we don't

11 forget to do it, Mr. Paetkau, do you want to enter in Exhibit

12 3(a) into the record?

13 MR. PAETKAU: Yes. Yes, I would move to admit Employer's

14 3(a), the women's clinic charge nurse job description.

15 HEARING OFFICER PFEIFER: Okay. And, Mr. Siegel, do you

16 have any objection to the admission of Exhibit 3a, the charge

17 nurse job description, into the record?

18 MR. SIEGEL: No, no objection.

19 HEARING OFFICER PFEIFER: And Mr. Gottesman?

20 MR. GOTTESMAN: No objection.

21 HEARING OFFICER PFEIFER: Okay. Hearing no objection,

22 Employer's Exhibit 3(a) is entered into the record.

23 **(Employer Exhibit Number 3(a) Received into Evidence)**

24 HEARING OFFICER PFEIFER: Okay. And, Mr. Paetkau, go

25 ahead and continue.

1 MR. PAETKAU: Thank you.
2 Q BY MR. PAETKAU: If you could turn to the pharmacist in
3 charge job description, which I'll refer to as Employer's
4 Exhibit 3(b)? Is that an accurate -- first of all, do you
5 recognize 3(b), Ms. Hucke?
6 A I do.
7 Q And what do you recognize this to be?
8 A Yes.
9 Q And does this accurately reflect the job descriptions, the
10 duties and responsibilities, and the qualifications for the
11 pharmacist in charge?
12 A It does.
13 Q Do you know whether this position had another name before?
14 A It was previously just called pharmacist.
15 Q Okay. And do you know --
16 A Prior, yeah.
17 Q I'm sorry to cut you off. Do you know why that position
18 was listed on the list of bargaining unit positions that's
19 Exhibit -- second page of Employer's Exhibit 1?
20 A I do not know why.
21 Q Do you know if the pharmacist's position, if the duties
22 changed? For example, if at one time they were not supervising
23 other employees and then at some point later they started
24 supervising employees?
25 A That's correct, they did.

1 MR. SIEGEL: Objection; lack of foundation.
2 HEARING OFFICER PFEIFER: Yeah, Mr. Paetkau, can you --
3 actually I'll address this question to Ms. Hucke.
4 Do you know if -- how would you know when there was any
5 sort of change from them supervising -- not supervising to them
6 supervising?
7 THE WITNESS: Attached to the job description is an email.
8 HEARING OFFICER PFEIFER: Okay.
9 THE WITNESS: Would you like me to read it?
10 MR. SIEGEL: Objection. Lack of foundation; hearsay to
11 this portion.
12 HEARING OFFICER PFEIFER: Okay. Mr. Siegel, I understand
13 your objection. I'm going to let the evidence into the record.
14 It will be accorded the weight of its worth by the reader of
15 the record and the writer of the decision. But yeah, your
16 objection is noted for the record.
17 Q BY MR. PAETKAU: Does the Employer's Exhibit 3(b)
18 accurately reflect the current duties of the pharmacist in
19 charge?
20 A It does.
21 Q The tenth bullet points refers to, quote, supervisors,
22 pharmacy employees, professional and non-professional,
23 maintaining a high standard of patient care. How many
24 employees does the pharmacist in charge supervise?
25 A I believe there's three or four.

1 Q And what are the titles of those people?
2 A Pharmacy techs.
3 Q Does the pharmacist in charge conduct performance reviews?
4 A He does.
5 Q Does the pharmacist in charge have the ability to hire and
6 fire or make recommendations that are given weight in hiring
7 and firing of employees?
8 A Yes.
9 Q Does the pharmacist in charge set the schedule of the
10 pharmacy techs?
11 A I believe so.
12 Q Does the pharmacist in charge discipline the pharmacy
13 techs, if necessary?
14 A He does.
15 Q If the pharmacy techs have an issue with regard to their
16 leave of absence or their terms and conditions of employment,
17 are they expected to go to the pharmacist in charge for
18 guidance?
19 A They are.
20 MR. SIEGEL: Objection. Vague and ambiguous as to terms
21 and conditions.
22 HEARING OFFICER PFEIFER: Ms. Hucke, how do you know this
23 information? Do you know whoever reports to the pharmacist in
24 charge, do you see them doing that? Or how would you know
25 that?

1 THE WITNESS: I speak to the pharmacists in charge. I
2 have had conversations with them.
3 HEARING OFFICER PFEIFER: Okay. Okay, Mr. Siegel, your
4 objection's noted. I'm going to let the evidence in for what
5 it's worth. Cross-examination, please feel free to delve into
6 your questions about --
7 MR. SIEGEL: Okay.
8 HEARING OFFICER PFEIFER: -- to the witness with respect
9 in this regard. Mr. Paetkau, go ahead and continue.
10 MR. PAETKAU: Yes.
11 Q BY MR. PAETKAU: This email that you referenced, the
12 second page of Employer's Exhibit 3(b), can you -- do you know
13 what this is regarding?
14 A It's regarding the changes in supervisory role for the
15 pharmacist.
16 MR. SIEGEL: Again, objection. It speaks for itself.
17 That's best evidence rule.
18 HEARING OFFICER PFEIFER: Again your objection's noted,
19 Mr. Siegel. I'm going to let the evidence into the record for
20 what it's worth.
21 MR. SIEGEL: Right. And I'm just object to what her
22 testimony --
23 HEARING OFFICER PFEIFER: Okay.
24 MR. SIEGEL: Not to the email. So my objection is the
25 email speaks for itself. Best evidence rule includes testimony

1 about a document, in describing a document when the document
2 speaks for itself.
3 MR. PAETKAU: As long as we're making technical
4 evidentiary objections, that's a mistake of the best evidence
5 rule. Best evidence rule applies when the document, the
6 authenticity of the document is challenged. I think it's a
7 hearsay --
8 MR. SIEGEL: Well, it's a hearsay objection.
9 MR. PAETKAU: Yeah.
10 HEARING OFFICER PFEIFER: Okay.
11 MR. PAETKAU: But in any case, let me try to lay some
12 foundation.
13 Q BY MR. PAETKAU: Did you talk to anybody about any
14 description in the job for the pharmacist in charge?
15 A I did not.
16 Q Did anyone tell you anything about the second page of this
17 email?
18 A They did not.
19 Q Do you know what the change was in the pharmacist in
20 charge job description?
21 A Only by what I've read in the email.
22 Q In the email, which we're looking at here, the second
23 page?
24 A Correct.
25 Q Okay. As far as you know, the actual job description in

1 the first page, that's a correct description of the pharmacist
2 in charge position?
3 A It is.
4 MR. PAETKAU: I would to move that Exhibit 3(b) into
5 evidence, Your Honor.
6 HEARING OFFICER PFEIFER: Okay. Mr. Siegel, Petitioner,
7 any objection to the admission of Employer's Exhibit 3(b) into
8 the record?
9 MR. SIEGEL: Same objection as stated before as to the
10 second page with the emails.
11 HEARING OFFICER PFEIFER: Uh-huh, okay. And,
12 Mr. Gottesman?
13 MR. GOTTESMAN: Intervenor has the same objection as to
14 the second page, given that it's hearsay.
15 HEARING OFFICER PFEIFER: Okay.
16 MR. GOTTESMAN: And it doesn't even appear that the
17 witness was copied or sent this email -- these emails.
18 HEARING OFFICER PFEIFER: Okay. Hearing the Petitioner's
19 and the Intervenor's objections, it's understood; they're noted
20 for the record. I'm going to let the exhibit in for how it is,
21 to be accorded the weight that it's worth by the reader of the
22 record and the writer of the decision.
23 All right, Employer's Exhibit 3(b) is entered into the
24 record.
25 **(Employer Exhibit Number 3(b) Received into Evidence)**

1 Q BY MR. PAETKAU: Let me ask about the job descriptions.
2 There's different dates on them for the family nurse
3 practitioner, so just to kind of put them in chronological
4 order. The first one that I have is dated December 23, 1992.
5 Ms. Hucke, do you have that in front of you?
6 A I do.
7 Q And do you recognize this job -- this document, Employer's
8 Exhibit 3(c)?
9 A I do.
10 Q What do you recognize this to be?
11 A For a family nurse practitioner.
12 Q How is a family nurse practitioner different than a --
13 let's say just a regular RN?
14 A They have more education, and they've had training in
15 order to prescribe medications.
16 Q The next document, Exhibit 3, Employer's 3(d) is the job
17 description dated November of 2002. Well let me -- before I
18 ask about Exhibit 3(d), does the family nurse practitioner have
19 the ability to write prescription medications?
20 A They do.
21 Q Does a regular RN have that ability?
22 A They do not.
23 Q Is there additional educational requirements to become a
24 family nurse practitioner?
25 A There are.

1 Q Do you know what those -- generally what those
2 requirements are, educational requirements?
3 A It's specific training in regards to being a nurse
4 practitioner under the direction of a physician.
5 MR. GOTTESMAN: I'm sorry, I didn't hear that.
6 THE WITNESS: I said it's specific training in order to
7 become a nurse practitioner under the direction of a physician.
8 MR. GOTTESMAN: Thank you.
9 Q BY MR. PAETKAU: In terms of the reporting relationship,
10 and let's stick with currently at the Center, who does the
11 family nurse practitioner report to?
12 A Usually the director -- I'm trying to think -- the
13 clinical chief of the clinic, which is a physician.
14 Q And does anyone report directly to the family nurse
15 practitioner?
16 A In some instances, medical assistants do.
17 Q Okay.
18 MR. PAETKAU: And just for the record, we're contending
19 that this is a supervisory position, but this goes to
20 professional status.
21 HEARING OFFICER PFEIFER: Okay.
22 Q BY MR. PAETKAU: The exhibit, Employer's Exhibit 3(d), the
23 November 2002 job description, do you recognize 3(d)?
24 A I do.
25 Q And what do you recognize it to be?

1 A A family nurse practitioner --
2 Q Job description?
3 A -- job description, yes.
4 Q Okay. And I'll show you the next one in chronological
5 order is dated April 2008, Employer's Exhibit 3(e). Do you
6 recognize 3(e), Ms. Hucke?
7 A I do.
8 Q And what do you recognize this to be?
9 A Family nurse practitioner job description.
10 Q To your knowledge, is this the job description, 3(e),
11 currently in use that currently applies to the family nurse
12 practitioner position?
13 A It is.
14 Q Did you do a search in your files or in the human
15 resources department files for all job descriptions for the
16 family nurse practitioner?
17 A We pulled as many as we were able to this morning.
18 Q Okay. And as far as you know, this is the last family
19 nurse practitioner job description, the last one that was
20 created?
21 A In this person's file. And I'm not sure whose file it
22 came out of.
23 Q Okay. On the second page of Exhibit 3(e) it says in the
24 bullet points at the bottom, possession of a valid California
25 nurse practitioner license and furnishing license. Do you know

1 what a furnishing license is?

2 A It's a license to prescribe prescriptions.

3 Q And the California nurse practitioner also needs to be a

4 registered nurse, licensed and registered nurse?

5 A That's correct.

6 Q And does Exhibit 3(e) accurately describe the current

7 duties and responsibilities, the reporting relationship, and

8 the qualifications and experience of the family nurse

9 practitioner position at the Center?

10 A It does.

11 MR. PAETKAU: I have no further questions. Actually, I'd

12 like to move 3(c), (d) and (e) into evidence, the three job

13 descriptions in chronological order for family nurse

14 practitioner.

15 HEARING OFFICER PFEIFER: Okay. Mr. Siegel, for the

16 Petitioner?

17 MR. SIEGEL: No objections.

18 HEARING OFFICER PFEIFER: And, Mr. Gottesman, for the

19 Intervenor?

20 MR. GOTTESMAN: No objection.

21 HEARING OFFICER PFEIFER: Okay. Employer's Exhibit 3(c),

22 3(d) and 3(e) have been entered into the record.

23 **(Employer Exhibit Number 3(c), 3(d) and 3(e) Received into**

24 **Evidence)**

25 MR. PAETKAU: Unless there are issues that, Your Honor,

1 you would like us to address, I think I have covered the areas
2 that I was planning to cover, which was the supervisor --
3 supervisory positions, professional positions, and the title
4 changes from what was in the old contract versus what is
5 currently in use at the Center.
6 HEARING OFFICER PFEIFER: Okay. Is the Employer done with
7 its professional employee examination? Have we gone through
8 all the professional positions that the Employer is --
9 MR. PAETKAU: Yes. Yeah, this charge nurse is the nurse
10 practitioner -- well, actually, one more question.
11 Q BY MR. PAETKAU: Is there currently a position at the
12 Center called physician assistant?
13 A There is not.
14 MR. PAETKAU: Okay. And pharmacist we did cover. So I
15 think that covers it.
16 HEARING OFFICER PFEIFER: Okay.
17 MR. PAETKAU: From our perspective.
18 HEARING OFFICER PFEIFER: Okay. Okay, and -- all right.
19 We'll go onto the Union's questioning in this matter. Is that
20 all right with the Petitioner, Mr. Siegel, go ahead and ask
21 your questions of Ms. Hucke.
22 MR. SIEGEL: Can I get two quick minutes just to prepare
23 my questions, to consult with my client just a minute?
24 HEARING OFFICER PFEIFER: Sure. We'll take a quick break,
25 a couple minutes, if anyone needs some water or the bathroom.

1 (Off the record at 2:00 p.m.)

2 HEARING OFFICER PFEIFER: All right. We just took a quick

3 break for Petitioner counsel to prepare questions for the

4 witness.

5 And, Ms. Hucke, please know that you are still under oath

6 in terms of giving testimony.

7 And go ahead, Mr. Siegel.

8 MR. SIEGEL: Okay. Thank you.

9 **CROSS EXAMINATION**

10 Q BY MR. SIEGEL: As I said, before my name is Ben Siegel.

11 I represent the petitioner, National Union of Healthcare

12 Workers. First I just wanted to refer you to Employer's

13 Exhibit 1. It's this one with the list.

14 A Okay.

15 Q Just to clarify, is the Employer's position that every

16 employee whose name is listed on that first page and the

17 corresponding job description are in the bargaining unit?

18 A That's correct.

19 Q So refer you to the second position, it says laboratory

20 aide, Ursula Alcaraz.

21 A Uh-huh, yes.

22 Q Your position is that that should be in the bargaining

23 unit then though, correct?

24 A Yes.

25 Q Okay. So I thought -- so are you amending your previous

1 -- I think previously you testified, maybe I'm wrong, that
2 there were no laboratory aides. But are you changing that
3 testimony now to stand with this list?
4 A That could have been an oversight.
5 Q Okay. So is that -- do you agree with me that this
6 position should be in the bargaining unit?
7 A Yes.
8 Q Okay. Thank you. To go down to the name Jorge Gonzalez.
9 Do you see that?
10 A Yes.
11 Q The position next to that is building maintenance. Now
12 I'll refer you, then, to the collective bargaining agreement.
13 I'm not sure -- what exhibit number is that?
14 HEARING OFFICER PFEIFER: That's Exhibit 2. I'm sorry, do
15 we have that Employer Exhibit? I believe that's Employer
16 Exhibit 2. Sorry.
17 Q BY MR. SIEGEL: Which is Employer Exhibit 2, and the wage
18 scale is in the back.
19 A He took my copies.
20 MR. PAETKAU: I gave my copy to the court reporter.
21 THE WITNESS: Okay.
22 Q BY MR. SIEGEL: So that title building maintenance, that
23 doesn't appear in any of these job titles, right?
24 A That's correct.
25 Q But the job title janitor does, correct?

1 A Yes.
2 Q And also utility worker?
3 A Correct.
4 Q Isn't it true that the building maintenance position is a
5 conglomeration, an overlapping with the previous job titles of
6 janitor and utility worker?
7 MR. PAETKAU: Objection.
8 THE WITNESS: I'm not clear.
9 MR. PAETKAU: Vague and ambiguous. And also objection as
10 to relevance. We're conceding that person is in the unit.
11 MR. SIEGEL: Right. I guess I won't ask anything further,
12 if the SCIU would stipulate that should be in the unit also. I
13 just wanted to make sure that that person stays in.
14 MR. PAETKAU: So stipulated.
15 MR. SIEGEL: Okay. Never mind then.
16 HEARING OFFICER PFEIFER: Okay.
17 MR. SIEGEL: I'll move on.
18 Q BY MR. SIEGEL: Are you familiar with an employee by the
19 name of Luis Cortez?
20 A I'm not certain who that is.
21 Q Okay. I guess I would just ask: What is the position
22 title for the individuals who give immunizations, who dispense
23 the drugs in the pharmacy?
24 A That dispense the drugs in the pharmacy?
25 Q Yeah, and the give immunizations.

1 A I'm not sure, unless it's the pharmacy tech.
2 Q Could that be the pharmacy tech or the lab tech?
3 A I'm not certain.
4 Q You're not certain. Do you know the title for the
5 individual who is in charge of filling drugs, putting them on
6 the shelves when they come in from the manufacturer?
7 A I'm not familiar with each position.
8 Q Okay. I'll move on. Just want to refer you to the job
9 description for the pharmacist, pharmacist in charge.
10 A I'm sorry, the reporter has my copies.
11 HEARING OFFICER PFEIFER: It's 3(b), Employer's Exhibit
12 3(b).
13 Q BY MR. SIEGEL: Some of this might have been covered with
14 the previous examination, so I -- excuse some repetition. But
15 this individual in the pharmacist in charge position, their
16 qualifications, as stated in here, requires they get special
17 training and accreditation from a school of pharmacy, correct?
18 A That's correct.
19 Q And they need to be licensed as a registered pharmacist in
20 the State of California?
21 A Correct.
22 Q Individuals without that education and training and
23 experience would not be qualified to be in that position,
24 correct?
25 A That's correct.

1 Q Does this person, in dispensing the duties and
2 responsibilities under the heading in this job description,
3 exercise independent judgment in carrying out their duties,
4 including such as determining, you know, which drugs to
5 dispense or organizing the pharmaceuticals within the
6 department?
7 MR. GOTTESMAN: Objection, compound question.
8 MR. SIEGEL: I'll rephrase.
9 Q BY MR. SIEGEL: What are the -- the job description, job
10 duty number 3, purchases -- you see where it says, "Purchases
11 all pharmaceuticals in the most economic manner consistent with
12 the M&HC formulary"? What does mean in layman's terms? Are
13 you familiar with that job duty?
14 A I couldn't speak to that.
15 Q Is this individual in charge of determining which
16 pharmaceuticals to purchase for the pharmacy?
17 A I would think so.
18 Q Okay. And then job description number 2, individual does
19 advise -- the individual in the position of pharmacist in
20 charge does advise patients of potential drug interactions,
21 possible side effects, storage information, instructions on how
22 to use the medication.
23 A Yes.
24 Q Okay. Correct me if I'm wrong, but isn't it true that you
25 said these duties and responsibilities here, that they

1 accurately describe duties and responsibilities for the
2 pharmacist in charge? Isn't it true there's nothing in the
3 duties and responsibilities or anywhere in this job description
4 that says that this individual has the power to hire and fire
5 employees?
6 A It's not listed in the job description, no.
7 Q And there's nothing in here that says they have the power
8 to discipline employees?
9 A I don't believe.
10 MR. PAETKAU: Objection, vague and ambiguous.
11 Q BY MR. SIEGEL: Is there anything in the job description
12 that states that the pharmacist in charge has the
13 responsibility to discipline employees?
14 A It's not stated in this job description, no.
15 Q Can you provide an example of when the pharmacist in
16 charge disciplined or fired an individual?
17 A A disciplinary action was taken against one of the techs
18 who wasn't providing coverage, break coverage, in the pharmacy.
19 Q Did the pharmacist in charge solely make the determination
20 to discipline that individual or was it done in consultation
21 with other employees?
22 A It was in consult with me.
23 Q Consult with you. And did you approve of his -- did you
24 approve of the decision to discipline that individual?
25 A I did.

1 Q Does the pharmacist in charge have the authority to
2 suspend or discipline an employee without consultation with
3 you?
4 A No.
5 Q Does the pharmacist in charge have the authority to lay
6 off or terminate employees on his or her own?
7 A No.
8 Q Can the pharmacist in charge make the determination to
9 increase the wages or benefits of an employee?
10 A No.
11 Q Does the pharmacist in charge handle -- is the pharmacist
12 in charge involved in the grievance process?
13 A Could be.
14 Q Could be. Do you know an example, since you've been
15 employed there, where a pharmacist in charge was involved in
16 the grievance process?
17 A There haven't been any grievances since I've been there.
18 Q Has there been any hiring in that department since you've
19 been there?
20 A There has not.
21 Q I don't think we discussed the physician's assistant
22 position so far today. I'd like just to direct you back to the
23 Employer's Exhibit 2, I believe, the collective bargaining
24 agreement. Physician's assistant is listed in the wage scale
25 at the end of the collective bargaining agreement.

1 A Correct.
2 Q Are there currently any physicians assistants?
3 A Not to my knowledge.
4 Q Not to your knowledge.
5 A No.
6 Q Do you know when the last physician assistant was
7 employed?
8 A I do not.
9 Q In the bargaining unit. Are you familiar at all with the
10 duties and responsibilities for a physician's assistant if one
11 were to be hired?
12 A Yes.
13 Q What are the duties and responsibilities for the
14 physician's assistant position?
15 A A physician's assistant works under the direction of a
16 physician and all of their orders have to be signed off by a
17 physician.
18 Q Is there any particular educational requirements for being
19 a physician's assistant?
20 A I'm not familiar with the exact requirements.
21 Q Do you know whether someone needs -- do you know whether
22 or not there are special educational requirements beyond
23 standard curriculum?
24 A It's similar to a nurse practitioner level, but not quite
25 as high.

1 Q Is there licensure for the physician's assistant position?
2 A Yes.
3 Q And that licensure is done through the State of
4 California?
5 A Correct.
6 Q Do physician's assistants exercise any independent
7 judgment in their role?
8 A Yes.
9 Q What type of independent judgment?
10 A They would provide the care of patients as a primary care.
11 I don't know how to explain that.
12 Q So they could make the judgment as to a particular --
13 within discretion, of course, but a particular type of care to
14 provide to a patient?
15 A Correct.
16 Q One moment. The Employer's position is that the nurse
17 practitioners would be in the unit, correct?
18 A Can you restate?
19 Q The Employer's position is that the nurse practitioners
20 are currently -- should be in the bargaining unit.
21 A They are currently in the unit, yes.
22 MR. SIEGEL: Okay. I have no further questions.
23 HEARING OFFICER PFEIFER: Mr. Gottesman.
24 **CROSS-EXAMINATION**
25 Q BY MR. GOTTESMAN: Good afternoon.

1 A Hello.
2 Q My name is a Yuri Gottesman, attorney for SEIU-UHW, the
3 Intervenor in this matter. I want to first start off by asking
4 you questions about the RNs whom you have been referring to as
5 charge nurses. Specifically in relation to whether they are
6 supervisors. I believe you testified that they supervise
7 medical assistants; is that correct?
8 A That's correct.
9 Q And that these charge nurses have the power to both hire
10 and fire the medical assistants?
11 A Correct.
12 Q You've been in your current position for six months?
13 A Correct.
14 Q As the HR director?
15 A Correct.
16 Q In the last six months, have the charge nurses, have any
17 of them hired a medical assistant?
18 A I believe we've hired some on-call medical assistants, but
19 no full-time medical assistants.
20 Q Okay. When you say "we," who are you referring to?
21 A The charge nurses. I meant as the organization.
22 Q Okay. Who specifically of the on-call medical assistants,
23 who was hired in the last six months?
24 A I don't know the names.
25 Q Do you know how many medical assistants on-call were

1 hired?
2 A I do not.
3 Q Do you know who among the charge nurses hired those
4 medical assistants?
5 A One of the charge nurses in the pediatric clinic, Alma
6 Hernandez.
7 Q Do you know how many medical assistants on-call she hired?
8 A I do not.
9 Q Are you sure that she hired medical assistants?
10 A I think I said earlier that they do a group interview, so
11 there's usually a group of nurses interviewing the MAs, the
12 medical assistants. I don't know specifically which one hired
13 who.
14 Q Okay. Can you remember the last -- the most recent time
15 in which an on-call medical assistant was hired?
16 A A couple of weeks ago.
17 Q Okay. So a few weeks ago there was an individual who was
18 an on-call medical assistant and that person was hired?
19 A Correct.
20 Q What was the process that that person went through to
21 become hired by the facility?
22 A I believe they submitted their resume. I'm not directly
23 involved in recruitment. They submitted their resume and an
24 interview was set up with charge nurses and the director of
25 nursing and the HR manager coordinator. And then a

1 determination was made whether to hire the person or not after
2 references were checked.
3 Q Okay. I'd like to go through the steps one by one. You
4 said a resume was submitted. I'm assuming, am I correct, that
5 the candidate was the person who submitted that resume?
6 A That's correct.
7 Q Okay. And who did person submit the resume to?
8 A To the HR coordinator.
9 Q Okay. The coordinator is not -- is not on this list in
10 Exhibit 1; is that right?
11 A That's correct.
12 Q Okay. What did the HR coordinator do with that resume, if
13 you know?
14 A Our process is to forward resumes to the hiring
15 supervisors, and they determine whether they want to interview
16 the person or not.
17 Q Who specifically among the hiring supervisor was this
18 resume forwarded to?
19 A Charge nurses. I can't specifically say who, because I
20 don't have firsthand knowledge of that.
21 Q Okay. So it may not have been submitted to the charge
22 nurses?
23 A I want to say -- I want to assume it was, but I can't say
24 that. That would be our process, that it would be submitted to
25 the charge nurses.

1 Q It's fair to say that you don't know whether this resume
2 was submitted to the charge nurses?
3 A Because I didn't forward it, I can't say for sure where it
4 went.
5 Q Next I believe you testified that an interview was set up.
6 Who set up the interview?
7 A The HR coordinator.
8 Q So none of the charge nurses set up the interview; is that
9 right?
10 A No, the HR coordinator coordinates the interview process.
11 Q Okay. Next in this process I think that you mentioned
12 there was a group interview.
13 A Correct.
14 Q With this applicant. In that group interview, I think
15 that you said there were charge nurses, director of nursing,
16 and was there one other person there?
17 A The HR coordinator.
18 Q HR coordinator. Are all of the charge nurses present at
19 this interview?
20 A I don't think so.
21 Q Okay. For this most recent hire that happened a few weeks
22 Ago, how many of the charge nurses were present?
23 A I do not know.
24 Q Is it possible that none of the charge nurses were there?
25 A I don't know who was in the room, so I can't speak to

1 that.
2 Q You testified that, I believe, following the interview --
3 well, let me ask you this; determination about whether Mission
4 Neighborhood Health Center would hire this medical assistant,
5 that was not made during the interview; is that right?
6 A That's correct.
7 Q So the determination was made sometime after the
8 interview?
9 A After the candidate left, yes. I would --
10 Q Not right in front of the candidate?
11 A No, we don't do that.
12 Q It's not like an American Idol type thing?
13 A Right.
14 Q Who made that decision?
15 A I'm thinking the hiring supervisor did.
16 Q This is fairly important, so I'm not asking --
17 A I know, but I don't know who was in the room.
18 Q -- you about what you're speculating.
19 A So I tell you who made that decision. As I said, I'm
20 not involved in the actual recruitment piece of the HR
21 department.
22 Q Okay.
23 A I oversee the HR department.
24 Q Let me be clear. I'm not asking you to guess in any way
25 about what happened or I'm not asking you to think about what

1 might have happened. I'm asking you what did happen. And if
2 you don't know, please just say you don't know.
3 MR. PAETKAU: She's already said that. She's described a
4 general practice. Objection. It's cumulative.
5 MR. GOTTESMAN: I'm not actually not asking about a
6 general practice. I'm asking about what happened a few weeks
7 ago.
8 HEARING OFFICER PFEIFER: I think in order to salvage your
9 record in terms of supervisory status or lack therefore, these
10 are relevant, so I'll overrule the objection.
11 MR. PAETKAU: They're cumulative. It's the same question
12 over and over again. She's described a practice. She wasn't
13 there personally. We'll stipulate to that. And I want to make
14 an objection for the record. Based on the untimely notice, if
15 we wanted to have the actual hiring people here we would have
16 brought them here, if that was going to be an issue today. And
17 obviously we didn't have time to do that.
18 HEARING OFFICER PFEIFER: Okay.
19 MR. GOTTESMAN: May I respond to that, Madam Hearing
20 Officer?
21 HEARING OFFICER PFEIFER: Sure.
22 MR. GOTTESMAN: I believe it was the Employer who actually
23 brought up the issue of supervisor status in this case. And so
24 the issue of notice would be moot, because obviously the
25 Intervenor does not have the obligation to notify the Employer

1 that it will defend against its stated issue that there's a
2 supervisor
3 issue.
4 MR. PAETKAU: So if I can be heard on that. I mean, we
5 got mixed messages. We got a petition that was withdrawn. I
6 got several e-mails. Some people are supervisors, some people
7 are not. We are just learning today some people are -- they're
8 conceding or supervisors and excluded. But it wasn't until
9 today, after the hearing started. So there's a lack of notice,
10 proper notice, a lack of due process from the Employer's
11 perspective.
12 HEARING OFFICER PFEIFER: Okay. I mean that sort of
13 objection, which is maybe kind of like more of a motion, is
14 noted for the record. In terms of the prior objection with
15 respect to the questions, I'm going to overrule that objection
16 and allow the questions, because I believe the Intervenor
17 counsel is asking direct questions, which he's looking for a
18 direct answer to and has not yet gotten, so please continue.
19 Q BY MR. GOTTESMAN: Okay. Just refocus ourselves, I'm
20 asking about this most recent process in which a few weeks ago
21 you stated that an on-call medical assistant was hired. Do you
22 know who made the decision to hire that person?
23 MR. PAETKAU: Objection, asked and answered.
24 HEARING OFFICER PFEIFER: I'm not clear on what the answer
25 was, so I'm going to overrule the objection and ask the witness

1 for a response, Ms. Hucke.

2 THE WITNESS: It would have been in a collaboration with

3 the charge nurse, the HR coordinator, and the director of

4 nursing. The people that were involved in the interview would

5 have made the decision collectively.

6 Q BY MR. GOTTESMAN: Was there not one person who would make

7 the final decision?

8 A I don't know if there was -- in that instance, if there

9 was a final person. I don't know.

10 Q Okay. You stated that references were checked with regard

11 to this medical assistant. Who did the reference checks?

12 A The HR coordinator.

13 Q Did those reference checks happen before the decision was

14 made to hire this person, at the same time, or after?

15 A The process is they are usually checked after the

16 interview.

17 Q I understand that it happened after the interview.

18 A Before an offer is made.

19 Q Okay. I'm still unclear. So you're saying it happened

20 before an offer was made. But I'm wondering, did the reference

21 check happen before the decision was made to hire this person?

22 A There may have been a preliminary decision to hire the

23 Person, but it wouldn't have been final until the references

24 were checked.

25 Q Okay. To make that final decision, did the HR coordinator

1 back to the director of nursing and the charges nurses?
2 A That would be the process. Whether that -- I can't speak
3 to that. I don't know. I wasn't there.
4 Q Okay. Let me ask you this: You've testified that you
5 can't speak with certainty about what happened in terms of
6 certain aspects of this most recent hire two to three weeks
7 ago. Can you also not speak with certainty about the aspects
8 of the hiring process for any of the on-call medial assistants
9 in the last six months?
10 A I have not been involved, so I would say that could be
11 accurate.
12 Q I understand you haven't been involved. Is there any
13 other way in which you would have personal knowledge about the
14 hiring process for the on-call medical assistant in the last
15 six months?
16 MR. PAETKAU: Objection, asked and answered.
17 MR. GOTTESMAN: That was a different question.
18 HEARING OFFICER PFEIFER: Yeah, I'm going to overrule.
19 MR. PAETKAU: And also, we've been over this. She's
20 described -- we're wasting time. She's described a process.
21 She wasn't physically present in the interviews. End of story.
22 So we're beating a dead horse.
23 HEARING OFFICER PFEIFER: That doesn't mean that she
24 doesn't have knowledge of the process, other than being
25 involved with it.

1 MR. PAETKAU: We're wasting time. We've been wasting
2 hours here.
3 MR. GOTTESMAN: I think we're wasting time with meritless
4 objections.
5 MR. PAETKAU: I think we're wasting time with just this,
6 like, bait and switch, got one issue today, one issue at 5:00,
7 one issue at 9:00. It's just -- it's just a kangaroo
8 proceeding. If you wanted to have a trial today on supervisory
9 status, we would have brought the hiring people.
10 MR. GOTTESMAN: Ma'am Hearing Officer, I believe the
11 Employer brought the issue of supervisory status to your
12 attention. I'm a little bit --
13 HEARING OFFICER PFEIFER: Yeah, that's accurate.
14 MR. SIEGEL: I hate to -- yeah, I hate to join in here and
15 agree with the Intervenor, because we never agree, but I also
16 happen to agree with him on this one that, you know, if they --
17 when the Employer or any party raises a supervisory status
18 issue or any other issue and a hearing is notified, they're
19 required to bring the evidence needed to establish that
20 particular -- and this is the type of issue where they have the
21 burden.
22 MR. PAETKAU: Again, it's been a moving target. The
23 record will reflect that. Your e-mails, Your Honor, will
24 reflect that and so -- it's unfair. It's a violation of our
25 client's due process rights. If there's any ruling based on

1 this ridiculous kind of proceeding here today, lack of due
2 process, it will be challenged.
3 HEARING OFFICER PFEIFER: All right. You're welcome to
4 put whatever you'd like to put in your brief, Mr. Paetkau, but,
5 yeah, I mean, for the record, with respect to supervisory
6 status, I had no idea that this was going to be an issue until
7 yesterday when you brought it to my attention. And per our
8 rules and regulations, which I'm not sure how familiar you are
9 with them, it is the party who is making the assertion as to
10 any sort of statutory exclusion to support that assertion with
11 firsthand evidence or the best evidence they have possible.
12 MR. PAETKAU: You sent me an e-mail at 6:00.
13 HEARING OFFICER PFEIFER: We spoke on the phone before
14 that.
15 MR. PAETKAU: Yeah, and I told you my client was out of
16 town on vacation.
17 HEARING OFFICER PFEIFER: We speak on the phone prior to
18 the e-mail.
19 MR. PAETKAU: Okay, we're done for today. We'll come
20 back, but we'll bring witnesses.
21 HEARING OFFICER PFEIFER: That's -- we have a witness
22 here. I'd like to keep --
23 MR. PAETKAU: We've been wasting the whole day. This is
24 just more of the same. We'll bring witnesses who will talk
25 about what the supervisors -- what they did that were in on the

1 actual hiring decision.

2 HEARING OFFICER PFEIFER: I mean this is our opportunity

3 now to address such matters.

4 MR. PAETKAU: Well, I don't have my witnesses here because

5 of the late notice. So I need to bring the witnesses, live

6 witnesses here.

7 HEARING OFFICER PFEIFER: Your opportunity was to do that

8 now.

9 MR. PAETKAU: No, I didn't get sufficient notice. We

10 didn't get sufficient notice. The Employer did not get

11 sufficient notice; it's been a moving target. I mean I can

12 read the e-mails into the record. I mean it's like one day

13 it's one thing, the next day -- I mean the next hour it's

14 something else. That's not due process.

15 MR. GOTTESMAN: Can I just -- just state for the record, I

16 mean, obviously he can leave if he wants to, but I don't

17 believe -- it's up to the Hearing Officer whether to close the

18 hearing or not, and in the interest of getting an election in a

19 timely manner, I believe the Hearing Officer should determine

20 whether and when the hearing is closed. And that's his choice

21 to leave, but that shouldn't effect whether or not you close

22 the hearing today, because that's the only way we're going to

23 move forward in this process.

24 MR. PAETKAU: I'm requesting a continuance so I can bring

25 in live witnesses. And this is a blatant violation of my

1 client's due process rights, for the reasons that I stated, for
2 the reasons that are in the correspondence going back and
3 forth. If we're going to have cross-examination of my client
4 with the same questions over and over again when it's already
5 been established she wasn't in on the meeting, we're wasting
6 time.
7 HEARING OFFICER PFEIFER: We're doing this hearing here --
8 it's to make -- it's a fact-finding mission. We're just trying
9 to get evidence for the record in order for the Regional
10 Director to base a decision and direction of election.
11 MR. PAETKAU: Right, you've said that already. We know
12 that. I'm talking about a continue to present live witnesses
13 that will testify about the actual hiring decisions that
14 counsel is asking the witness about.
15 MR. SIEGEL: When was the hearing notice issued? Because
16 I don't think the hearing notice was issued yesterday. If I
17 recall, it was issued within the statutory period for when you
18 can issue a hearing notice. And if he received the hearing
19 notice in a timely manner, then he should know under the rules
20 and regulations that if he's going to bring an issue that's
21 properly before the representation hearing, then he has to
22 bring the evidence pursuant to that. Whether or not he
23 realized there was a supervisory issue until yesterday is not,
24 frankly, our problem.
25 He got the hearing notice in a timely manner and it was

1 his duty to bring all the evidence that he can to the hearing
2 when it was noticed, if it was noticed in a timely manner,
3 which I believe that it was.
4 MR. PAETKAU: The issues were completely unclear the
5 notice that we received in terms of supervisors. That didn't
6 come up until yesterday, when you called me. That was after
7 the original petition had been withdrawn, with no explanation
8 given to the Employer as to why it was withdrawn. So frankly,
9 we didn't know until yesterday what the issues were. My client
10 client's out of town. We have a new HR director who has only
11 been there six months. And now, you know, she's being asked
12 about -- over and over again -- a meeting where she wasn't
13 there. She didn't attend.
14 MR. SIEGEL: I'm sorry, it's the duty of -- I don't know
15 how familiar -- with all due respect, I don't know how familiar
16 you are with these proceedings.
17 MR. PAETKAU: Don't lecture me on NLRB procedure. What
18 I'd like to again ask is a continuance --
19 HEARING OFFICER PFEIFER: Okay, let me -- okay.
20 MR. SIEGEL: Well, I think I would like to respond to
21 that. Like I said, if there's any objection to the lack of
22 timeliness of the notice of hearing, then that's one thing.
23 But if there's no objection to that, then he was under a duty
24 to bring us evidence. It's a violation of our rights if --
25 when a timely notice is issued a hearing, they don't bring

1 their evidence, and therefore we don't have an election after
2 the hearing. We are representing -- we are the petitioning
3 party. We filed a timely petition. We filed a petition that
4 no one objects did not have the requisite number of signatures.
5 You issued -- you and your office issued a notice of hearing
6 pursuant to the rules. They were on duty if they had any
7 issues, such as the issue of supervisory status, which is
8 frankly a common issue that people bring up, to know that if
9 they were going to bring that up that they had under a timely
10 notice of hearing to bring up that issue. That's not our
11 problem.
12 MR. GOTTESMAN: May I be heard, Madam Hearing Officer?
13 HEARING OFFICER PFEIFER: Sure.
14 MR. GOTTESMAN: In some sense I do agree with the Employer
15 in this matter in that my further questioning of this witness
16 won't lead to much information, because this witness appears
17 not to have the knowledge that is required to answer my
18 questions.
19 However, that said, I have no choice but to ask all of my
20 questions to try to get a complete record in this matter. I
21 The Employer's suggestion to continue the hearing until there
22 is someone qualified seems to be, at least to the Intervenor,
23 seems to be the Intervenor's only choice to get a complete
24 record in this case matter. I think the Region has an interest
25 also in getting a complete record in this matter. I'm not sure

1 we can get that with this witness.

2 MR. SIEGEL: The Intervenor's -- with all due respect, I

3 won't speak to his motivations as to why he would want to

4 continue this hearing, but again it's not his issue. The issue

5 is the Employer's issue and if the Employer doesn't meet his

6 burden, then there's not a supervisor and the Intervenor wins.

7 So if he doesn't -- he doesn't really have a interest in

8 continuing, other than delay. And this shouldn't be delayed

9 for no reason if there is a timely issued hearing notice.

10 HEARING OFFICER PFEIFER: I mean, to the extent the

11 Employer has made a motion with respect to continuance, I'm

12 going to take a quick break and go check with my office on

13 that.

14 Can we go off the record for a minute, Richard?

15 (Off the record at 2:51 p.m.)

16 HEARING OFFICER PFEIFER: Mr. Paetkau, your motion was --

17 I addressed to the regional management with your motion with

18 respect to a continuance and at this point the Region is

19 disinclined to grant that. But what I would like to do, if you

20 guys will allow, is ask questions of Ms. Hucke myself that I

21 think would be possibly dispositive of the issue, and I think

22 that would maybe preclude the need for any more witnesses on

23 the matter. If I can do that, then just --

24 Sorry, Mr. Gottesman, I'm going to interrupt your

25 questioning.

1 MR. GOTTESMAN: That's fine.

2 HEARING OFFICER PFEIFER: And move on to mine. And just
3 sort of move things along from there, and I'm hoping we can
4 hopefully address everything by going through that way. So
5 let's do that.

6 MR. GOTTESMAN: Madam Hearing Officer, does that mean that
7 -- I mean I assume that I'll be able to continue my questioning
8 subsequent to your questioning.

9 MR. PAETKAU: And I want to object also to any questions
10 from counsel, because at the outset he said we don't have a
11 position on supervisory status, and now he's crossing my
12 witness on that issue. So, you know, you stake out one
13 position and then you do a 180. That's not fair. That's not
14 proper.

15 MR. GOTTESMAN: I wasn't doing any 180. I don't believe
16 that -- I don't believe a party has to take a position in order
17 to have an interest in the position, and specifically the facts
18 which allegedly support a position. I think we have every
19 right to question this witness.

20 HEARING OFFICER PFEIFER: How many more questions do you
21 have, Mr. Gottesman? What are you in terms of --

22 MR. GOTTESMAN: I didn't write my questions down, so I
23 can't tell you, you know, you have 72.5 more questions. But I
24 was on -- I believe I was talking about hiring and firing or
25 hiring authority of RNs. There are multiple, as you know,

1 categories in which someone may be classified as supervisor
2 under 211. So I was going to ask questions relating to Section
3 211, and to see whether, as the Employer contends, these,
4 quote, charge nurses, unquote, are actually supervisors.
5 MR. PAETKAU: But if there's no position at the outset,
6 then he should be precluded from asking any questions about
7 supervisory status of charge nurses. He's taken that off the
8 table voluntarily by saying we have no position on that issue,
9 Your Honor.
10 MR. GOTTESMAN: I absolutely didn't take anything off the
11 table.
12 HEARING OFFICER PFEIFER: I think at one point the
13 Intervenor mentioned -- I mean we set forth the positions with
14 respect to charge nurses, and I believe that the Intervenor's
15 position was -- I don't know that it was committed to them not
16 being supervisors, per se, it was sort of a matter of
17 developing a record in terms of such evidence. But if I can
18 interrupt with my questions first, and then let's see if you
19 still have questions after I'm done, and we'll go from there.
20 How's that sound?
21 MR. SIEGEL: I just want to state, since I haven't said
22 anything recently, that I hope the Employer would reconsider
23 the issue, after she's given her question and answer, whether
24 or not you would ask for a continuance, because it would seem
25 to me -- and I don't know the Employer's position as to wanting

1 an election in timely manner and getting this issue resolved,
2 it's probably in the Employer's interest, and the Intervenor,
3 which as you said as changed its position, it's clearly -- with
4 all due respect, and I'm speculating here, but could be
5 interested in just delaying the election, which I don't think
6 would be in the Employer's interest.
7 So if the Employer no longer will want a continuance,
8 afterwards I would just ask that he reconsider his position and
9 that the Hearing Officer does, as we see -- as I have here in
10 the exhibits that we've all referenced at the beginning, the
11 notice of representation hearing was signed and drafted on July
12 18, 2012, within the requisite notice. It was for the parties
13 to bring up the issues. It was not for you to identify the
14 issues. It was for the parties to identify the issues. And if
15 they didn't identify the issues in a timely manner, that should
16 not prejudice the employees who signed the petition asking to
17 be represented by NUHW, and therefore having an election to
18 determine that.
19 I just think it's totally out of bounds for the Employer
20 to complain about that, if they didn't develop the issue until
21 the day before, that you didn't identify it. It was for the
22 Employer to identify. And the employees should not be
23 threatened, should not be disadvantaged because of that, no
24 matter how eloquent Mr. Gottesman is in his questions or how
25 angry anyone is that he asked questions that the Employer was

1 not prepared for. I would ask the Employer to reconsider its
2 position and for the Hearing Officer to reconsider its position
3 due to that.
4 MR. PAETKAU: Yeah. I just want to state for the record,
5 the Employer has no interest in delaying this proceeding or the
6 election. I was told yesterday by the Hearing Officer bring
7 some of the job descriptions, we'll sit down and work it out.
8 Not bring a bunch of live witnesses who I had, like, two hours
9 to get, by the way. So, you know, bringing a couple job
10 descriptions is different than what we're here today.
11 Here it is 3:00; we started at 10 a.m. Are you kidding
12 me? I mean, we didn’t even plan to be here for more than an
13 hour, based on what you told me yesterday.
14 HEARING OFFICER PFEIFER: For the record, I believe I --
15 MR. PAETKAU: Bring a couple job description. That's what
16 we did.
17 HEARING OFFICER PFEIFER: Well --
18 MR. PAETKAU: It's not just my word. It's yours. It's in
19 writing. It's in an e-mail. I mean it's in an e-mail, the
20 later one, at 5:45.
21 HEARING OFFICER PFEIFER: Uh-huh. Okay, I'm not going to
22 -- okay, that's -- whatever you say is whatever you say. So
23 let's just move on in terms of -- let me ask my questions and
24 we're going to go from there.
25 So Ms. Hucke, with respect to the charge nurses, just so

1 we're clear on this, charge nurses are different than the staff
2 RN. There's no one under the term staff RN at this point?
3 THE WITNESS: That's correct.
4 HEARING OFFICER PFEIFER: Okay. So let's see. With
5 respect to the charge nurses, and you mentioned there were --
6 I'm sorry, you mentioned there were five of those? Around
7 five?
8 THE WITNESS: Yes.
9 HEARING OFFICER PFEIFER: Do they have any involvement in
10 disciplining the medical assistants?
11 THE WITNESS: Yes, they do.
12 HEARING OFFICER PFEIFER: Okay. What is their involvement
13 with disciplinary action?
14 THE WITNESS: They could write it up or it could be a
15 verbal, or they could counsel the medical assistant, depending
16 on the type of disciplinary action it might be.
17 HEARING OFFICER PFEIFER: And do you have any examples of
18 them doing this within -- since you've been at the employer?
19 THE WITNESS: Last week.
20 HEARING OFFICER PFEIFER: Okay.
21 THE WITNESS: We met with two MAs, myself, charge nurse,
22 and the director of nursing and the MA.
23 HEARING OFFICER PFEIFER: Okay.
24 THE WITNESS: One was a counsel and one was a verbal.
25 HEARING OFFICER PFEIFER: What was the charge nurse's

1 involvement in that disciplinary action or those meetings?
2 THE WITNESS: She used her documentation show that she had
3 counseled the MA previously, and that it was a continuance, and
4 therefore it bumped up it up to a verbal warning.
5 HEARING OFFICER PFEIFER: Did the charge nurse make any
6 recommendations as to the disciplinary action on that?
7 THE WITNESS: She asked that the MA improve her behavior.
8 HEARING OFFICER PFEIFER: But did the charge nurse -- did
9 they recommend counseling or I guess that there be -- I'm
10 sorry. Was it a verbal notice?
11 THE WITNESS: It was a verbal.
12 HEARING OFFICER PFEIFER: Did she recommend that that
13 verbal notice be given?
14 THE WITNESS: Yes, because she had counseled the employee
15 previously on several occasions.
16 HEARING OFFICER PFEIFER: Okay.
17 THE WITNESS: And there was also a union steward involved.
18 I forgot, sorry.
19 HEARING OFFICER PFEIFER: Okay. Great. Do you have any
20 other examples of disciplinary action that the charge nurses
21 have been involved with?
22 THE WITNESS: I haven't had that many, so --
23 HEARING OFFICER PFEIFER: So with respect to the
24 evaluations you spoke about, what kind of evaluations are the
25 charge nurses involved with?

1 THE WITNESS: It's a written performance evaluation. It's
2 a form. They go in and they make comments on each section, on
3 the performance of the MA based on safety, attendance and those
4 types of things.
5 HEARING OFFICER PFEIFER: Okay. Are those annual
6 evaluations?
7 THE WITNESS: They are supposed to be annual and we just
8 reinstituted them this last May.
9 HEARING OFFICER PFEIFER: So do you have any examples of a
10 charge nurse doing evaluations since you've been at the
11 employer?
12 THE WITNESS: Yes.
13 HEARING OFFICER PFEIFER: Can you describe what that
14 consists of?
15 THE WITNESS: It consists of the charge nurse filling out
16 the form for each MA in the department and meeting with the
17 employee to go over the evaluation, and then they both sign off
18 on it and turn it in to HR.
19 HEARING OFFICER PFEIFER: So did that happen for all of
20 the medical assistants in May?
21 THE WITNESS: It happened probably for about a half of
22 them so far.
23 HEARING OFFICER PFEIFER: Was that in May of this year?
24 THE WITNESS: Yes. Well, between May and to date.
25 HEARING OFFICER PFEIFER: Oh, okay, and okay. So what do

1 these evaluations lead to, if anything?

2 THE WITNESS: In some instances they're just

3 recommendations for improvement for attendance, for example, or

4 tardiness.

5 HEARING OFFICER PFEIFER: Do evaluations -- are those

6 connected to any sort of pay increases or --

7 THE WITNESS: Not with the bargaining unit employees. The

8 other employees haven't had raises.

9 HEARING OFFICER PFEIFER: Okay. So in terms of the

10 evaluations, if the medical assistants don't improve what needs

11 to be improved per the evaluations, are there any

12 repercussions?

13 THE WITNESS: They could be put on a work plan for

14 improvement.

15 HEARING OFFICER PFEIFER: Okay. Let's see. So I know you

16 mentioned earlier when we were talking about the charge nurses

17 and them scheduling medical assistants to work, what does that

18 mean?

19 THE WITNESS: They basically say who's going to work on

20 what days, who gets vacation off, who covers for someone when

21 someone is out sick or the on vacation.

22 HEARING OFFICER PFEIFER: Do the charge nurses -- do they

23 create the schedules?

24 THE WITNESS: Yes.

25 HEARING OFFICER PFEIFER: What if a medical assistant

1 wants to take some time off, who would they submit that to?
2 THE WITNESS: To the charge nurse.
3 HEARING OFFICER PFEIFER: And the charge nurse has the
4 authority to --
5 THE WITNESS: To sign off on those.
6 HEARING OFFICER PFEIFER: -- to sign off on those. Okay.
7 Do you have an example of charge nurses signing off on such?
8 THE WITNESS: They turn those notices in to the payroll
9 department, but I have seen them.
10 HEARING OFFICER PFEIFER: You have seen them. Okay.
11 Since you've worked at the employer?
12 THE WITNESS: Yes.
13 HEARING OFFICER PFEIFER: Okay. Let's see. In terms of,
14 like, any direct supervision that the charge nurses have over
15 the medical assistants, what would that consist of? What do
16 they direct that they do?
17 THE WITNESS: They would direct them on which physician or
18 provider they're working with on any particular day.
19 HEARING OFFICER PFEIFER: Are those like customary
20 directions? Is it just what the MAs would do? I mean is it
21 some sort of employer guideline or does the charge nurse have
22 to give special instructions or specific instruction?
23 THE WITNESS: The medical assistants have a job
24 description, so they follow that. But it would be concerning
25 patient flow, who's working the front desk, who's working with

1 the providers, who's doing the back end of the office on any
2 particular day.
3 HEARING OFFICER PFEIFER: So which department they're
4 working in for --
5 THE WITNESS: Well, within the department which area they
6 are working in that clinic.
7 HEARING OFFICER PFEIFER: Does that change on, like, as
8 needed?
9 THE WITNESS: They do rotate positions.
10 HEARING OFFICER PFEIFER: Daily, depending on when they're
11 working or --
12 THE WITNESS: It could be daily or weekly.
13 HEARING OFFICER PFEIFER: Okay. Let's see. Moving on to
14 the pharmacist in charge. And you say that that is the new
15 position for what used to be the pharmacist; is that correct?
16 THE WITNESS: That's correct.
17 HEARING OFFICER PFEIFER: Or it is a different position?
18 THE WITNESS: I believe it's the same person in the
19 position who's been there a long time.
20 HEARING OFFICER PFEIFER: Just at some point the title
21 changed, is that what we're talking about?
22 THE WITNESS: Right, and the duties.
23 HEARING OFFICER PFEIFER: And the duties, okay. And those
24 are per the job description. Okay. I know you mentioned when
25 we were talking about the pharmacist in charge there was

1 discipline, that that person was involved in disciplining; is
2 that the pharmacy techs?
3 THE WITNESS: I believe it was the pharmacy tech. It had
4 to do with break coverage.
5 HEARING OFFICER PFEIFER: Okay. Do you know when that
6 was, that example that you gave us earlier?
7 THE WITNESS: For the --
8 HEARING OFFICER PFEIFER: For the disciplinary action.
9 THE WITNESS: It was within the first couple of weeks of
10 me, so it was like the beginning of February.
11 HEARING OFFICER PFEIFER: Of?
12 THE WITNESS: Of when I started working there.
13 HEARING OFFICER PFEIFER: 2012?
14 THE WITNESS: Yes.
15 HEARING OFFICER PFEIFER: Do you know what the
16 disciplinary action consisted of?
17 THE WITNESS: It was a verbal counsel regarding not
18 providing break coverage in the pharmacy.
19 HEARING OFFICER PFEIFER: In terms of the pharmacists in
20 charge, are they involved with doing evaluations of employees?
21 THE WITNESS: They are.
22 HEARING OFFICER PFEIFER: Which employee?
23 THE WITNESS: The pharmacy staff.
24 HEARING OFFICER PFEIFER: Since you've been working at the
25 employer, has the pharmacist in charge been dealing -- have

1 they administered any evaluations?

2 THE WITNESS: They have not.

3 HEARING OFFICER PFEIFER: They have not. Okay. Let's

4 see. Is the pharmacist in charge involved with any hiring?

5 THE WITNESS: There hasn't been any opportunity since I've

6 been there for them to hire anybody.

7 HEARING OFFICER PFEIFER: Okay. Also with respect to the

8 pharmacist in charge, do they create the schedules of pharmacy

9 techs?

10 THE WITNESS: I don't have firsthand knowledge of that.

11 HEARING OFFICER PFEIFER: Let's see. So in terms of the

12 pharmacist in charge and the pharmacy techs, what do the

13 pharmacist -- do they give the techs any direction or guidance

14 in doing their work?

15 THE WITNESS: Yes.

16 HEARING OFFICER PFEIFER: What does that consist of?

17 THE WITNESS: I believe it has to do with filling the

18 prescriptions and stocking the shelves.

19 HEARING OFFICER PFEIFER: What is the chain of command for

20 the pharmacist in charge? Who do they report to?

21 THE WITNESS: To the medical director.

22 HEARING OFFICER PFEIFER: And then who does the medical

23 director report to?

24 THE WITNESS: The executive director.

25 HEARING OFFICER PFEIFER: Okay. All right, okay. So

1 let's see. With respect to the pharmacist in charge, there's
2 just one person in that position; is that correct?
3 THE WITNESS: Yes.
4 HEARING OFFICER PFEIFER: Okay. And let's see. Moving on
5 to the professional employees that we were talking about
6 earlier, let's see -- for the nurse practitioner, I know we
7 went over a series of job descriptions on that. And let's see.
8 I just wanted to check on that as to -- there we go. So with
9 respect to the nurse practitioners, does the work they perform
10 -- can you say if the work they perform is intellectual and
11 varied in character?
12 THE WITNESS: I don't know how to answer that question.
13 I'm sorry.
14 HEARING OFFICER PFEIFER: Okay. We talked about their
15 credentials earlier. With respect to, I guess, okay -- with
16 respect -- I'm not sure we went through all of the
17 classifications concerning the nurse practitioner. Did we go
18 over the education and training, experience requirements for
19 the nurse practitioner?
20 THE WITNESS: We did.
21 HEARING OFFICER PFEIFER: Okay. Does the job description
22 describe what they are required to have in terms of licensure?
23 THE WITNESS: It does.
24 HEARING OFFICER PFEIFER: And experience or preferred
25 experience? Okay. And as far as you know, the nurse

1 practitioners that are employed by the Employer have met these
2 credentials per the job requirements in terms of licensure and
3 experience and the requirements set forth in that?
4 THE WITNESS: They have.
5 HEARING OFFICER PFEIFER: Okay. Let's see. I guess to
6 the extent it's a position in the bargaining unit, regarding
7 the staff RN it's my understanding that that position -- the
8 staff RN and the RN on call there's no one currently in those
9 positions, or they don't exist, according to the employer. But
10 to be -- we're talking about the professional employee status
11 of those. Is there any sort of particular education or
12 training or experience requirements that the RNs have to have,
13 like either the RN staff or on-call RN?
14 THE WITNESS: They have to --
15 HEARING OFFICER PFEIFER: If they were to be there.
16 THE WITNESS: They need to be licensed as a registered
17 nurse in the State of California.
18 HEARING OFFICER PFEIFER: Okay. If there were RNs there,
19 other than charge nurses, do you know what their duties would
20 entail?
21 THE WITNESS: I do not.
22 HEARING OFFICER PFEIFER: Okay. All right. And then for
23 the pharmacists or I guess the pharmacist in charge, do you
24 know if they have to have any particular education or training
25 or experience requirements?

1 THE WITNESS: I believe they need to be licensed as a
2 pharmacist.
3 HEARING OFFICER PFEIFER: Would any of that criteria be in
4 the job description that the Employer provided?
5 THE WITNESS: It is. A bachelor degree and a registered
6 pharmacist in the State of California.
7 HEARING OFFICER PFEIFER: As far as you know, the
8 pharmacist in charge of the employer meets that criteria that's
9 set forth in the job classification or the job description?
10 THE WITNESS: That's correct.
11 HEARING OFFICER PFEIFER: Okay. In terms of nutritionist,
12 it's my understanding there's no one that works in that
13 position at this point.
14 THE WITNESS: That's correct.
15 HEARING OFFICER PFEIFER: But if that -- since that
16 position exists, if there was someone in that position, do you
17 know if they have to have any special education, training or
18 experience requirements?
19 THE WITNESS: They could have a master's degree.
20 HEARING OFFICER PFEIFER: Uh-huh.
21 THE WITNESS: And be trained in nutrition. But they would
22 still work under the direction of a registered dietitian.
23 HEARING OFFICER PFEIFER: Okay. Do they not have to have
24 a master's degree?
25 THE WITNESS: They could be just trained in nutrition.

1 HEARING OFFICER PFEIFER: Okay. Do you know what the
2 nutritionist's duties would be?
3 THE WITNESS: I do not.
4 HEARING OFFICER PFEIFER: Okay. In terms of a
5 nutritionist, if it existed, do you know if any of the work
6 performed by such an employee would involve the exercise of
7 discretion and independent judgment?
8 THE WITNESS: I do not know.
9 HEARING OFFICER PFEIFER: Okay. That's fine. And for, I
10 guess to maybe go back a little bit to the pharmacist in
11 charge, so that position now -- do you know if the pharmacist
12 in charge has had any involvement in terminating employees?
13 THE WITNESS: There hasn't been any terminations.
14 HEARING OFFICER PFEIFER: I think that's all the questions
15 I have for you right now.
16 Are there any questions from the parties?
17 MR. GOTTESMAN: Yes.
18 THE COURT: Mr. Gottesman, go ahead.
19 MR. SIEGEL: I just have a question.
20 HEARING OFFICER PFEIFER: Sure.
21 MR. SIEGEL: Based on your questioning, does the Employer
22 still want to move for a continuance or does that satisfy --
23 MR. PAETKAU: Well, if it's going to matter, you know, to
24 have the actual people who did the interviews, the charge
25 nurses, if that's going to make a difference in the decision,

1 absolutely. I don't consider getting an e-mail at 6:00 the day
2 before a hearing saying it would be very helpful to bring some
3 live witnesses in those professional capacities, I don't
4 consider that to be fair notice. So if the decision is going
5 to turn on that, I want to have my live witnesses here just as
6 a matter of common sense, fairness and due process.
7 HEARING OFFICER PFEIFER: Okay. Mr. Gottesman.
8 MR. PAETKAU: And I also object to any questions when this
9 has been -- counsel has already taken the position that they
10 don't have a position on supervisory status. So any questions
11 about charge nurses or pharmacists in charge is just a waste of
12 time, irrelevant, improper.
13 MR. GOTTESMAN: May I respond or continue my questioning?
14 HEARING OFFICER PFEIFER: Yeah, I'm going to overrule the
15 objection and let Mr. Gottesman continue.
16 MR. SIEGEL: I don't want to waste time. That's the last
17 thing I want to do, but I just wanted to see if we could take a
18 minute because if we're going to continue this hearing, then,
19 you know, I mean I think that's just -- I would like a moment
20 to consult with counsel to figure out if this is in everyone's
21 best interest, because I don't know if we're going to get done
22 today or not. You know, I don't know if you've made a ruling
23 or if you're subject to change or what's going on.
24 HEARING OFFICER PFEIFER: I mean --
25 MR. PAETKAU: That's my problem with this whole thing.

1 The rules -- we're making them up as we go along. I've never
2 had a proceeding like this where we're not given notice, here's
3 the four issues. And given an e-mail at 6:00 the day before a
4 hearing, my client's out of town, it's just -- and then there's
5 moving targets when we get here. To me, this is just not the
6 way to proceed. It's not fair for anyone. It's certainly not
7 fair to my client. That's our position. I just want to make
8 it clear.
9 HEARING OFFICER PFEIFER: Okay. It's understood. I mean
10 I'm -- the Region was disinclined to grant the continuance at
11 this point, and I wanted to go forward with my questioning and
12 allowing the parties to continue with their questions in the
13 interest of trying to get done today. That's where we are now.
14 MR. SIEGEL: But are we going to -- if you're, I guess
15 here's what I'm trying to say; if you're going to grant the
16 continuance, then okay, we know we're finishing the day knowing
17 that we're not going to finish the day. Because he just asked
18 for a continuance and you just granted it.
19 HEARING OFFICER PFEIFER: No.
20 MR. SIEGEL: Oh, you haven't granted it?
21 THE COURT: No, I said the Region is disinclined to grant
22 the continuance on this. We'd like to continue today to
23 finish.
24 MR. SIEGEL: Oh, okay.
25 MR. GOTTESMAN: I heard inclined.

1 MR. SIEGEL: Yeah, I heard inclined.

2 HEARING OFFICER PFEIFER: Oh, inclined? Disinclined.

3 MR. SIEGEL: Disinclined?

4 HEARING OFFICER PFEIFER: Disinclined, sorry, no.

5 MR. SIEGEL: I'm sorry.

6 HEARING OFFICER PFEIFER: No. Yeah, that would be the

7 opposite of why I would be asking questions.

8 MR. SIEGEL: That's what my confusion was, I'm sorry.

9 HEARING OFFICER PFEIFER: Oh, okay. No. No. That's

10 okay. I'm sorry. The region is disinclined to grant a

11 continuance because we were thinking we could go with the

12 questions we have here, I mean, the witness we have here we

13 thought would be dispositive of an outcome which would preclude

14 us from having to have more witnesses.

15 MR. SIEGEL: I think, for the record anyway, NUHW thinks

16 your questions have taken care of the issue, but obviously SEIU

17 is allowed to ask their questions. So, yes, sorry. I was

18 under the opposite impression.

19 HEARING OFFICER PFEIFER: I'm sorry. Obviously so was

20 Intervenor counsel, so I'm sorry. The region has not granted

21 the continuance request.

22 MR. SIEGEL: Okay.

23 **CROSS-EXAMINATION CONTINUED**

24 Q BY MR. GOTTESMAN: Ms. Hucke, I would like to continue my

25 questioning from before. I believe you testified that charge

1 nurses do performance evaluations of medical assistants,
2 correct?
3 A That's correct.
4 Q When was the last time that a charge nurse did a
5 performance evaluation of a medical assistant?
6 A A couple of weeks ago.
7 Q Is there a set form that they use or is this something
8 that they kind of make up on their own, the charge nurses?
9 A No, as I stated earlier, it's a form with sections in it
10 and the charge nurse fills out and puts comments in each
11 section.
12 MR. SIEGEL: I'll have my first, I'm sure, of many
13 objections of this kind. It's cumulative, asked and answered,
14 and I think he's going to continue with that.
15 MR. PAETKAU: Join in this objection.
16 HEARING OFFICER PFEIFER: Yeah. Mr. Gottesman, if you can
17 ask questions we haven't already addressed, I'd prefer that.
18 Sustain the objection. Let's move on to something I haven't
19 asked.
20 Q BY MR. GOTTESMAN: Okay. In terms of the schedules that
21 the charge nurses create for the medical services, how often do
22 they create the schedules for the medical assistants?
23 A I don't know.
24 Q There is anyone else that creates schedules for medical
25 assistants, other than charge nurses?

1 A No.
2 Q Who do the medical assistants go to to get their
3 schedules?
4 A The charge nurses.
5 Q Okay. Are the schedules weekly for medical assistants or
6 every other week?
7 A As I stated a couple minutes ago, I don't know.
8 Q I believe you testified that charge nurses direct the work
9 of medical assistants, and I'm wondering what tasks
10 specifically do charge nurses direct the medical assistants to
11 do?
12 MR. PAETKAU: Objection, misstates prior testimony. You
13 can answer.
14 MR. GOTTESMAN: I don't mind rephrasing the question and
15 maybe laying some foundation, if you want to spend that time.
16 MR. PAETKAU: Well, it's just whenever you try to
17 summarize the witness's prior testimony, there's a risk that it
18 could be mischaracterized or misstated. I'm just making my
19 objection for the record.
20 HEARING OFFICER PFEIFER: Okay, can you --
21 MR. GOTTESMAN: I completely agree with that objection.
22 HEARING OFFICER PFEIFER: Can you rephrase the question,
23 Mr. Gottesman?
24 MR. GOTTESMAN: The only reason that I was trying to
25 characterize the witness's testimony was to save time. But if

1 counsel thinks that I'm misstating the testimony --

2 MR. PAETKAU: This is not saving time, by the way.

3 MR. GOTTESMAN: -- then I will go forward and make sure

4 that I have her testimony correctly.

5 MR. PAETKAU: This is not saving time.

6 Q BY MR. GOTTESMAN: So Ms. Hucke, yes?

7 A Yes.

8 Q Do charge nurses direct the work of medical assistants?

9 A They do.

10 MR. GOTTESMAN: I think that was asked and answered.

11 MR. PAETKAU: There is no reason for the colloquy. Just

12 ask her questions, don't engage me. If you want to --

13 MR. GOTTESMAN: You're engaging me right now.

14 MR. PAETKAU: No, no, instead of just asking a question

15 you said "that was asked and answered," and you turned to me.

16 Just ask your questions. Don't engage in colloquy with me, all

17 right?

18 MR. GOTTESMAN: Is that -- are you threatening me?

19 MR. PAETKAU: No, I'm promising.

20 MR. GOTTESMAN: You're promising what?

21 MR. PAETKAU: Yes.

22 HEARING OFFICER PFEIFER: Okay, guys, let's just get back

23 to the questions.

24 MR. PAETKAU: I don't make threats.

25 MR. GOTTESMAN: What are you promising?

1 HEARING OFFICER PFEIFER: Please.

2 MR. PAETKAU: If you do this again, you're wasting time.

3 MR. GOTTESMAN: Go ahead. Do it. Do what?

4 MR. PAETKAU: Why do you need to engage me? Why do you --

5 HEARING OFFICER PFEIFER: Mr. Gottesman. Mr. Paetkau.

6 MR. PAETKAU: -- need to make sarcastic comments after

7 your repetitive questions?

8 HEARING OFFICER PFEIFER: Come on. Let's get back to the

9 questions.

10 MR. PAETKAU: Why do you need to -- do you like to hear

11 yourself talk? Is that it?

12 MR. SIEGEL: Come on, guys, we've here for --

13 MR. PAETKAU: You want to engage with me? You want to

14 engage with me instead of with the witness?

15 MR. GOTTESMAN: I'll engage with whomever. I'm actually

16 here to create a --

17 MR. PAETKAU: There's no need to ask --

18 MR. SIEGEL: Madam Hearing Officer, just tell them to

19 stop, please. We're wasting time.

20 MR. PAETKAU: There's no need to add your sarcastic,

21 little, snide remarks. Just ask your questions, counsel.

22 MR. GOTTESMAN: I'd ask for an admonishment of counsel for

23 the Employer.

24 HEARING OFFICER PFEIFER: I'm not making any admonishments

25 of anyone.

1 MR. GOTTESMAN: I'm trying to speak to the witness.
2 HEARING OFFICER PFEIFER: We're on a fact-finding mission.
3 We have a witness here who can provide testimony that is --
4 will help the reader of the record and the writer of the
5 decision make a decision one way or the other. Let's just ask
6 her questions, since we have her here. I think might we might
7 have one more witness to speak to briefly. No? No. We have
8 one witness here to finish with. Intervenor counsel, ask your
9 questions that you need to ask and let's move on with this.
10 We're almost done.
11 MR. GOTTESMAN: I'm not almost done, actually. I'm just
12 getting started.
13 MR. PAETKAU: At this point, Your Honor, we would like to
14 make an objection. I think counsel agrees this is cumulative.
15 He's asking the same questions over and over again. It does
16 appear that he wants to delay this proceeding. We'd like to go
17 forward with the election tomorrow. He just -- all he's
18 interested in is hearing himself talk, repeating the same
19 questions over and over again. He's got -- he can't give you,
20 like, 75.5 questions because he doesn't have them written down.
21 He's just going to keep dragging this out. It's improper. Put
22 a stop to it, please.
23 MR. GOTTESMAN: All of my questions are directly relevant
24 to these issues. When I ask the question that says: What task
25 do they direct the work? It's very hard to see how that's not

1 relevant to 211 supervisory duties. But then when I ask that
2 question, I get an objection that that misstates testimony. So
3 I say: Do you direct the work? How that is not relevant?
4 MR. PAETKAU: It's not relevant because he's already
5 staked out a position that we don't have a position on
6 supervisory status. Now he's trying to delay the proceeding,
7 delay the election for his own reasons, because his client
8 didn’t serve the employees and they want to kick the SEIU out.
9 That's what's going on here.
10 MR. SIEGEL: Petitioner agrees.
11 MR. GOTTESMAN: I'm sure. I think that insults are not
12 appropriate for this hearing.
13 MR. PAETKAU: I'm just -- that's just the reality.
14 MR. SIEGEL: So if the Employer wants to insult people --
15 HEARING OFFICER PFEIFER: Okay, let's go back to your
16 questions, Mr. Gottesman, and try to get through this as
17 quickly as possible, and then that's that.
18 Q BY MR. GOTTESMAN: Do charge nurses direct the work of
19 medical assistants?
20 MR. PAETKAU: Objection, asked and answered.
21 HEARING OFFICER PFEIFER: Overruled, please answer.
22 THE WITNESS: Yes.
23 Q BY MR. GOTTESMAN: What specific tasks do charge nurses
24 direct to the medical assistants?
25 A They direct which physician they're going to work in on

1 any certain day, whether it's the front desk, rooming patients,
2 or the back office.
3 Q I was having a hard time hearing. They direct which
4 position the medical services are going to work in; is that
5 what you said?
6 A Yes, it is.
7 Q Do they direct -- do they direct any other tasks, other
8 than the position in which they will work?
9 A I believe they direct them in their day-to-day activities
10 within the clinic. I couldn't say specifically which duties.
11 I don't have a job description in front of me.
12 Q Okay. So you don't know of any duties that the charge
13 nurses direct of the medical assistants?
14 A I'm not sure how to answer that question.
15 Q Okay. Well, can you tell me one duty that the charge
16 nurses direct the medical assistants to do?
17 MR. PAETKAU: Objection, asked answer answered. She's
18 answered that to the best of her knowledge.
19 MR. GOTTESMAN: She didn't answer that.
20 MR. PAETKAU: She did.
21 HEARING OFFICER PFEIFER: Yeah. I mean, she just said
22 without the job description in front of her, she couldn't say
23 what duties the charge nurses directed the medical assistants
24 to do.
25 MR. PAETKAU: And prior to that she answered the exact

1 same question.

2 HEARING OFFICER PFEIFER: Yeah, she mentioned where they

3 work. Mr. Gottesman, if you're going to ask the same questions

4 we've already asked, then yeah, I'm inclined to just stop

5 questioning right now.

6 MR. GOTTESMAN: I'd like to ask counsel for the employer

7 not to make comments under his breath that are not possibly

8 recorded by the record to me in my ear.

9 MR. PAETKAU: For the record I said, let's move on.

10 That's all I said.

11 HEARING OFFICER PFEIFER: Yes, I concur. Let's move on.

12 Q BY MR. GOTTESMAN: The charge nurses have they, in your

13 six months, have they received any type of discipline for the

14 actions of the medical assistants?

15 A Can you repeat the question?

16 MR. SIEGEL: Objection, vague and ambiguous.

17 MR. GOTTESMAN: Sure, I'll clarify.

18 HEARING OFFICER PFEIFER: Can you restate the question.

19 MR. PAETKAU: Objection, unintelligible, compound, vague

20 and ambiguous.

21 HEARING OFFICER PFEIFER: Can you please rephrase the

22 question?

23 MR. GOTTESMAN: Sure, sure.

24 Q BY MR. GOTTESMAN: Have charge nurses in the last six

25 months faced any sort of discipline because one of the

1 employees whom they supervised did something improperly?
2 A No.
3 Q Have charge nurses faced any type of discipline because
4 one of their employees, one of the employees whom they
5 supervise, didn't do something they were supposed to do?
6 A Not to my knowledge.
7 Q Who is held accountable when a medical assistant does
8 something improperly?
9 A The medical assistant.
10 Q Is anybody else held accountable?
11 MR. PAETKAU: Objection, incomplete hypothetical, vague
12 and ambiguous.
13 MR. GOTTESMAN: I think that was pretty complete.
14 MR. PAETKAU: Well, it depends on the circumstances.
15 MR. SIEGEL: I will join in the objection.
16 MR. PAETKAU: If the medical tech shoots a patient, you
17 know, is somebody going to be held accountable? I mean there's
18 all kinds of different --
19 MR. GOTTESMAN: Who's wasting time, Madam Hearing Officer,
20 now?
21 MR. PAETKAU: It's an unfair question. It's an unfair
22 question because there's so many variables.
23 THE WITNESS: The employee is held accountable for their
24 actions.
25 HEARING OFFICER PFEIFER: Is the question you're getting

1 at is the charge nurse held accountable or what are you asking
2 in asking that question?
3 MR. GOTTESMAN: I think, well, one of the ways in which
4 the board tells whether someone is a supervisor, as you know,
5 is whether the supervisor is held accountable for the actions
6 of the employees whom they've reportedly supervised. I'm
7 trying to get at whether that's the case in this scenario.
8 HEARING OFFICER PFEIFER: So wouldn't the question be; is
9 the charge nurse held accountable if the medical assistant is
10 -- does something improper? Didn't you already ask that?
11 MR. SIEGEL: He already asked that.
12 MR. GOTTESMAN: I asked that, but I want to make sure that
13 for actions or inactions of the medical assistant, I want to
14 know who actually does -- is held at accountable for the
15 medical assistant. Because if there is a different supervisor,
16 then that strengthens the position that perhaps these people
17 are not supervisors. Am I not entitled to that information?
18 HEARING OFFICER PFEIFER: Please, go ahead.
19 Q BY MR. GOTTESMAN: Is there anyone other than the medical
20 assistant is who is held accountable for a medical assistant's
21 improper actions?
22 A The charge nurse would be held accountable in order to
23 discipline or provide counseling to the medical assistant that
24 did the improper action.
25 Q So the charge nurses are accountable for the improper

1 actions of medical assistants?

2 MR. PAETKAU: Objection, asked and answered four time now,

3 Judge.

4 THE WITNESS: That's not what I said.

5 MR. GOTTESMAN: But she said something that was completely

6 opposite to what was testified to minutes prior.

7 HEARING OFFICER PFEIFER: I mean I think it's hard for her

8 to understand because you're asking similar questions varied

9 slightly.

10 THE WITNESS: And I've varied my answer.

11 HEARING OFFICER PFEIFER: Yeah, I mean, can you just ask

12 straightforward questions that you're not later changing

13 slightly to -- which would seem to confused the witness?

14 MR. GOTTESMAN: Sure.

15 Q BY MR. GOTTESMAN: Has a charge nurse ever transferred a

16 medical assistant?

17 A Not to my knowledge.

18 Q Has a charge nurse ever promoted a medical assistant?

19 A No. There is no place for them to promote to.

20 Q Okay. How about rewards? Has a charge nurse ever

21 rewarded a medical assistant?

22 MR. PAETKAU: Objection, vague and ambiguous as to the

23 word reward. I'm just making an objection.

24 HEARING OFFICER PFEIFER: Sustained. Can you define what

25 you mean by rewarded?

1 MR. GOTTESMAN: Sure.
2 Q BY MR. GOTTESMAN: Has a charge nurse ever stated praise
3 for a medical assistant in some formal fashion?
4 A I haven't witnessed it, but I know of it.
5 Q During general staff meetings? How does a medical
6 assistant request vacation time?
7 A They fill out a form and submit it to their supervisor,
8 the charge nurse.
9 Q What does the charge nurse do with that form?
10 A She checks to see if they have vacation available, if the
11 staffing for that time requested off is adequate, and then
12 either approves it or denies it.
13 Q Does the charge nurse have the final say in whether the
14 medical assistant gets to go on vacation, for example?
15 A Yes.
16 Q Does anyone else review that decision?
17 A If there's a complaint made, it goes up to the next
18 supervisor.
19 Q If there's no complaint made, does anyone else?
20 A No.
21 Q Okay. What about sick time? How does the medical
22 assistant request sick time?
23 A They call in on the phone line to say that they're calling
24 in sick, unless it's a family medical leave issue, then they
25 have to go through the process.

1 Q Who do they call in to?
2 A It's a joint phone call line, and then they're supposed to
3 call their supervisor after. They have to call in before the
4 clinic opens. And then they call their supervisor later.
5 Q You said it was a joint call in line?
6 A It's like a phone service that they call into.
7 Q Who from the facility checks that phone service?
8 A I believe the receptionist picks up the names and then
9 supplies them to the supervisors.
10 HEARING OFFICER PFEIFER: When you say supervisors --
11 THE WITNESS: The charge nurses or whichever department.
12 Q BY MR. GOTTESMAN: I believe you testified that there was
13 a disciplinary action that was taken against one of the
14 pharmacy techs by a pharmacist in charge; is that correct?
15 A Correct.
16 Q What was that disciplinary action?
17 A It was a verbal for, as I stated earlier, for not
18 providing break coverage for the other techs.
19 Q Did anyone review that discipline, other than the
20 pharmacist in charge?
21 A I was consulted and the medical director was consulted.
22 Q Do you have the power -- do you personally have the power
23 to charge that discipline?
24 A I do.
25 Q You do?

1 A I can say at what level it should be.
2 Q Okay. What about the director of nursing?
3 A The director of nursing?
4 Q I'm sorry, the --
5 A Medical director?
6 Q Medical director.
7 A In consultation with me.
8 Q Okay. In consultation with you, the medical director has
9 the power to change the discipline, is that what you're saying?
10 A Right.
11 MR. GOTTESMAN: I'd like request a five-minute break,
12 Madam Hearing Officer.
13 MR. PAETKAU: We object.
14 HEARING OFFICER PFEIFER: Yeah, I'm not going to allow it.
15 Let's keep going.
16 MR. GOTTESMAN: I'd like to note that every time that any
17 other party has requested a short break, it's been granted.
18 HEARING OFFICER PFEIFER: All right. It's noted for the
19 record. Continue, please.
20 Q BY MR. GOTTESMAN: For the on-call registered nurses, do
21 you know what type of education is required for that position?
22 MR. PAETKAU: Objection, asked and answered.
23 MR. SIEGEL: Join in the objection.
24 MR. GOTTESMAN: I don't know if that question has been
25 asked or answered.

1 HEARING OFFICER PFEIFER: I'll allow it. I think I
2 combined the two things when I said the staff nurse and the RN
3 on-call. It's my understanding it was the same for both. Is
4 that correct?
5 THE WITNESS: That's correct.
6 HEARING OFFICER PFEIFER: The educational requirement.
7 THE WITNESS: Yes.
8 Q BY MR. GOTTESMAN: How do the duties of the RN on-call
9 differ from the staff RN position, if it existed?
10 A An on-call RN would float from different departments and a
11 staff RN would be in a specific department.
12 Q Other than that, is there any difference between their
13 day-to-day duties?
14 A There shouldn't be.
15 Q Okay. Is there?
16 A I don't have the job description in of me, so I don't know
17 if there might be specific small duties that an on-call
18 wouldn’t provide when a regular person was there, staff was
19 there.
20 Q All right. Fair enough.
21 MR. SIEGEL: Ms. Hearing Officer, just wondering, can I
22 get an honest assessment from Mr. Gottesman how long this is
23 going to take, because I had a call for 4:00 that I was sure I
24 was going to get to, but I want -- need to call the person and
25 tell them that I'm not going to be able to make it. Do you

1 have an idea?

2 MR. GOTTESMAN: I don't think I'll be much longer.

3 MR. SIEGEL: Continue with your questioning. I'm just

4 going to step out and allow him to be here.

5 HEARING OFFICER PFEIFER: Okay.

6 Q BY MR. GOTTESMAN: Is there any way -- I'm going to turn

7 my attention to the nurse practitioner position.

8 A Okay.

9 Q Does the facility have a way of quantifying the work that

10 a nurse practitioner does? In other words, how many patients

11 they see, what medicine they give, something like that?

12 A It's my understanding that they don't see as many patients

13 as a medical doctor does in a day. I'm not sure of the exact

14 number, but it is less. And the physician does sign off of on

15 their pharmacy orders. When I say "sign off," they look over

16 their charts to ensure that the proper dosage and care was

17 given.

18 Q Okay. Fair enough. The physician's assistants, do they

19 see patients alone or with --

20 A Excuse me. Do you mean the family nurse practitioners or

21 the physicians --

22 Q No.

23 A Okay, you're changing. I just wanted to clarify.

24 Q I'm trying to be quick, so I'm jumping around from

25 position to position.

1 A Okay.
2 Q The physician's assistants, do they see patients by
3 themselves or with other individuals?
4 A That I don't know. We don't have one, so I can't really
5 speak to how they do that.
6 MR. GOTTESMAN: Okay. I don't have any further questions.
7 Thank you.
8 HEARING OFFICER PFEIFER: One more question. Ms. Hucke, in
9 terms of the pharmacist in charge, with respect to the
10 disciplinary action we were talking about, the verbal. Do you
11 know if the person -- if the pharmacist in charge recommended
12 that the pharmacy tech be disciplined or -- I guess to the
13 extent the decision was made, do you know who made the decision
14 or if the pharmacist in charge made the recommendation?
15 THE WITNESS: He inquired whether it was okay to do it.
16 HEARING OFFICER PFEIFER: Okay.
17 THE WITNESS: He came to me to inquire whether it was okay
18 to proceed with that.
19 HEARING OFFICER PFEIFER: That was the pharmacist in
20 charge? Okay. He was asking for approval to do -- to issue
21 the verbal warning?
22 THE WITNESS: Right.
23 HEARING OFFICER PFEIFER: And you said okay?
24 THE WITNESS: Yes.
25 HEARING OFFICER PFEIFER: And the verbal warning was

1 issued to the pharmacy tech?

2 THE WITNESS: Yes.

3 HEARING OFFICER PFEIFER: Do you know if the pharmacist in

4 charge, if they -- in terms of -- I know you mentioned that

5 they assign some work or direct work. And I forget what you

6 actually said in terms of what they did. Okay. Never mind.

7 In terms of the -- sorry. Going back to the pharmacist in

8 charge, I guess, do you know if they use any independent

9 judgment assigning tasks to the pharmacy techs?

10 THE WITNESS: I would believe so.

11 HEARING OFFICER PFEIFER: I have no further questions.

12 Any of the parties -- any more questions?

13 MR. GOTTESMAN: Just one follow-up question based on that.

14 **CROSS EXAMINATION (CONTINUED)**

15 Q BY MR. SIEGEL: Can you give an example from your personal

16 knowledge of the type of independent judgment that pharmacists

17 in charge would use in directing the work of pharm techs?

18 A From looking into the pharmacy, they are in an enclosed

19 environment and I would think --

20 Q Do you have personal knowledge? I guess I'm asking.

21 A No, I'm not in the pharmacy.

22 MR. SIEGEL: Okay. No more questions.

23 MR. PAETKAU: No questions.

24 MR. GOTTESMAN: No questions.

25 HEARING OFFICER PFEIFER: Okay. All right. Are there any

1 -- Ms. Hucke, you can sit down. Thank you so much for your
2 time.
3 Okay. Do we have any further witnesses from the Employer?
4 MR. PAETKAU: No witnesses.
5 MR. SIEGEL: No witnesses for the Petitioner.
6 HEARING OFFICER PFEIFER: Okay. Well, then I think we've
7 addressed all of the issues that we were coming here today to
8 address, so let me just summarize what those issues are on the
9 record. We'll just complete the record at this point of the
10 hearing. So basically at the hearing today we were addressing
11 the bargaining unit positions, whether or not those have
12 changed to what is in Employer Exhibit 1, on the first page of
13 that. And then the with respect to page 2, whether the
14 positions which the Employer has identified not existing
15 anymore, whether those should be removed.
16 It's both Unions' position on, it's my understanding, is
17 that the bargaining unit should remain the way it is from the
18 expired contract. And it's my understanding that the both
19 Petitioner and Intervenor are not inclined to make any sort of
20 stipulations as to different positions, other than the ones
21 that are in the appendix of the expired contract.
22 With respect to supervisory status, the Employer is
23 asserting that the charge nurses and the pharmacists in charge
24 are supervisors within the meaning of the Act. The
25 Petitioner's position with respect to the charge nurses is to

1 exclude them. The Intervenor's position would be to have the
2 region make a determination as to their supervisory status, and
3 if they were not found to be supervisors, to include them in
4 the unit.
5 And then last issue that we addressed was the professional
6 employee status of various employees. It's my understanding
7 that the Petitioner's position was that the staff RN, RN
8 on-call, nurse practitioner, physician assistant, pharmacist
9 and nutritionist would be considered professional employees.
10 And it's my understanding that the Employer's position would be
11 that -- I guess, well, I'm sorry.
12 Mr. Paetkau, can you mention the Employer's position with
13 respect to professional employees again? I'm sorry if I got
14 them confused.
15 MR. PAETKAU: With regard to professional employees, the
16 charge nurses, the nurse practitioner, the pharmacist.
17 HEARING OFFICER PFEIFER: Okay. That's it?
18 MR. SIEGEL: Physician's assistant; did you also --
19 MR. PAETKAU: Physician's assistant, but there is -- if
20 that's included in the unit, there's not a -- that also would
21 be considered to be a professional.
22 HEARING OFFICER PFEIFER: And would the same hold true for
23 the staff RN or the RN on-call?
24 MR. PAETKAU: Yes. I was just referring to them as charge
25 nurses.

1 HEARING OFFICER PFEIFER: Oh, okay. Okay.

2 MR. PAETKAU: So all the nurses, including the nurse

3 practitioner, the physician assistant and the pharmacist.

4 HEARING OFFICER PFEIFER: Right, but not the nutritionist.

5 MR. PAETKAU: Not the nutritionist.

6 HEARING OFFICER PFEIFER: And then it's my understanding

7 that the Intervenor's position is that there are no

8 professional employees in the current bargaining unit that

9 we're discussing. To go back a little bit, with respect to

10 supervisory status, otherwise, aside from the charge nurse

11 issue, the Intervenor's position was that there are no -- took

12 no position on supervisory status. I think that's pretty much

13 it. Yes. Okay.

14 So in terms of the total number of employees in the unit

15 sought, it's my understanding that that is around 52, 53. 52

16 employees; is that correct?

17 MR. SIEGEL: Approximately.

18 MR. PAETKAU: Yes.

19 HEARING OFFICER PFEIFER: Approximately. Okay. That's

20 the Petitioner, Mr. Siegel.

21 Mr. Paetkau?

22 MR. PAETKAU: Yeah, I think it's 52, Your Honor.

23 HEARING OFFICER PFEIFER: Mr. Gottesman?

24 MR. GOTTESMAN: Thank you.

25 HEARING OFFICER PFEIFER: Yeah, I know.

1 MR. GOTTESMAN: We have no reason to doubt that.
2 HEARING OFFICER PFEIFER: Okay. In terms of disputed
3 categories with respect to supervisory status, it's my
4 understanding that there are five -- around five charge nurses
5 and one pharmacist in charge.
6 Is that correct, so far as the Petitioner knows?
7 MR. SIEGEL: We don't know.
8 HEARING OFFICER PFEIFER: Okay.
9 MR. SIEGEL: I mean, I'm not taking a position how many
10 there are, apparently.
11 MR. PAETKAU: That was our best estimate, five charge
12 nurse, one pharmacist in charge.
13 HEARING OFFICER PFEIFER: Mr. Gottesman?
14 MR. GOTTESMAN: That sounds fair.
15 HEARING OFFICER PFEIFER: Okay. At this point do the
16 parties wish to provide any further witnesses or evidence for
17 the record? Let the record reflect there --
18 MR. PAETKAU: Subject to my statement earlier that if it
19 makes a difference in terms of the charge nurses' or the
20 pharmacist in charge's supervisory duties, I would reserve the
21 right to call live witnesses. I don't think it's necessary,
22 based on the job descriptions and the testimony by Ms. Hucke
23 today, but if necessary.
24 HEARING OFFICER PFEIFER: Okay. Otherwise, Mr. Siegel?
25 MR. SIEGEL: No, we do not think there is further evidence

1 that we will present.

2 HEARING OFFICER PFEIFER: Mr. Gottesman?

3 MR. GOTTESMAN: No, but we do note that job descriptions

4 are not

5 dispositive.

6 HEARING OFFICER PFEIFER: Mr. Friant, can you give us an

7 estimated length of the transcript?

8 MR. FRIANT: Approximately 170 pages.

9 HEARING OFFICER PFEIFER: All right. Thank you. So with

10 respect to briefs, the parties have seven days from when the

11 hearing closes, which is today, to provide briefs. And let's

12 see. Okay. Mr. Friant, can you tell us the thing about the

13 transcript and expedited means something the other than

14 whatever. What is that and how does that go?

15 MR. FRIANT: This is an R-case proceeding and the

16 transcript by a contract with the reporting firm is in three

17 days. If you wish to purchase a transcript, it will be

18 available to you within three days.

19 HEARING OFFICER PFEIFER: Okay. Is there something about

20 if you ask for the expedited, though, it actually takes longer?

21 MR. FRIANT: With an R-case it's also expedited because

22 the contract calls for a three-day turnaround.

23 HEARING OFFICER PFEIFER: Okay. All right.

24 MR. FRIANT: A C-case is different, but we're not hearing

25 a C-case today.

1 HEARING OFFICER PFEIFER: So it's my understanding that
2 you guys don't need to request an expedited copy. It's
3 provided, I guess, pursuant to the type of hearing we're doing.
4 Okay.
5 If there's nothing further, the hearing will be closed.
6 All right. The hearing is closed. Thanks, everyone. Off the
7 record.
8 **(Whereupon, the hearing in the above-entitled matter was closed**
9 **at 3:58 p.m.)**
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1 **C E R T I F I C A T I O N**

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 20, Case 20-RC-
4 085529, Mission Neighborhood Health Center and National Union
5 of Healthcare Workers and Service Employees International Union
6 United Healthcare Workers West, at the National Labor Relations
7 Board, Region 20, 901 Market Street, Suite 900, E.V.S. Robbins
8 Courtroom, Room 306, San Francisco, California 94103, on
9 Thursday, July 26, 2012, at 11:44 a.m., was held according to
10 the record, and that this is the original, complete, and true
11 and accurate transcript that has been compared to the reporting
12 or recording, accomplished at the hearing, that the exhibit
13 files have been checked for completeness and no exhibits
14 received in evidence or in the rejected exhibit files are
15 missing.
16
17
18
19 RICHARD A. FRIANT
20 Official Reporter
21
22
23
24
25

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