

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**UNITY HEALTH SYSTEM**

**Employer**

**and**

**Case 03-RC-103449**

**1199 SEIU UNITED HEALTHCARE WORKERS EAST**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Employer provides health-care services at various locations in the Rochester, New York area, including three skilled-nursing facilities, two of which are at issue in this matter. Unity Living Center (ULC) is located at the Employer's main campus in Rochester, New York. The Edna Tina Wilson Living Center (ETW) is located 9 miles north of ULC, in Greece, New York. The Employer operates a third skilled-nursing facility, the Park Ridge Living Center, in Greece, New York, located approximately 4.5 miles from ULC and ETW. Petitioner seeks to represent a unit of employees employed by the Employer at its ULC facility.

The sole issue herein involves the scope of the unit. The Employer contends that the unit should also include employees at its ETW location. (It does not seek to include the employees at the third skilled-nursing facility, Park Ridge Living Center, because the staff there follows a different patient-care philosophy and has different job titles and job descriptions than those at ULC and ETW.) As discussed below, based on the record and relevant Board law, I reject the position that the unit must include employees at its ETW location and find the petitioned-for unit is an appropriate unit.

## **Board Law**

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. This presumption applies equally in the health-care industry. *Manor Healthcare Corp.*, 285 NLRB 224 (1987); *St. Luke's Health System, Inc.*, 340 NLRB 171, 172 (2003). The party opposing the single-facility unit has the presumption of appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

The Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Heritage Park Health Care Center*, 324 NLRB 447, 451 (1997), *enfd.* 159 F.3d 1346 (2d Cir. 1998).

In its decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), the Board modified the framework to be applied when a petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest, but another party seeks a broader unit. The party seeking the broader unit must demonstrate “that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit.” Slip op. at 12-

13. The additional employees share an overwhelming community of interest only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. Slip op. at 11-12.; *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011).

Although the Board did not indicate in *Specialty Healthcare* whether it intends to apply its analytical framework in determining whether a single-facility unit or multi-facility unit is appropriate for collective bargaining, for the reasons contained herein I similarly find the single location unit appropriate under the standards set forth in that case.

### **Application of Board Law to this Case**

In reaching the conclusion that the single-facility unit is appropriate, I rely on the following analysis and record evidence.

#### ***(1) Central Control of Daily Operations and Labor Relations and Extent of Local Autonomy***

The primary focus of this factor concerns the control that facility-level management exerts over employees' day-to-day working lives. As noted in *Hilander Foods*, 348 NLRB 1200, 1203 (2006), "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board's emphasis is on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." (citations omitted).

All 5,000 employees in the Employer's health-care system are covered by the same employee handbook and Human Resources (HR) policies. The Employer has a number of centralized administrative departments, including its HR department, that are

responsible for the entire health system. ULC and ETW are grouped under the Employer's division of Unity, Aging and Community Services, which is overseen by one manager. ULC and ETW have the same management structure, job shifts, and common job titles. ULC and ETW share the same HR "partner," have the same wage scale and follow the same long-term care policies.

ULC and ETW have separate administrators, directors of nursing, and nurse managers who are responsible for the nursing units. Each job title has its own distinct direct report. Although the two facilities share support services, the individuals in charge of social work, rehabilitation services, food services, housekeeping, facilities, and engineering and maintenance services, are different for each facility.

Local facility-level managers at each facility have meaningful autonomy. The direct supervisors assign work to the employees on their shifts. ULC and ETW have separate staffing coordinators who schedule only ULC or ETW employees. An employee calls in to either the direct supervisor or staffing coordinator of his or her facility. HR manages hiring for all facilities and job vacancies are posted system-wide on the Employer's intranet and internet. HR makes an initial selection from applicants and then discusses the selections with a manager in the department of the particular facility that is seeking to hire. The interview is held in the facility seeking to hire and there is no evidence that hiring decisions are made at the centralized HR level.

First-line supervisors complete annual employee evaluations on the same online form. HR reviews the evaluations, and may ask questions of the manager, but does not change the evaluation. In addition, although the salary increases are capped at two

percent, the results of the evaluation, prepared by local managers, determine whether the employee receives the full two percent increase or less than that.

Local managers are authorized to issue verbal warnings with no involvement by HR. In addition, they recommend written and final warnings which are reviewed, but rarely overruled, by HR. A local manager can suspend an employee without consulting HR, although they are required to follow up with HR and make a “collaborative decision.” First-line supervisors cannot terminate employees on their own. They make recommendations to HR, and again, those recommendations are rarely overruled by HR. Notably, in the record there is not a single example of higher management’s involvement in the local manager’s decision-making process in evaluations and disciplines, or in rescinding the autonomous discipline issued by local management.

***(2) Similarity of Skills, Functions and Working Conditions***

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits among employees at the two facilities the Employer contends should be in the unit have some bearing on determining the appropriateness of the single-facility unit. However, as noted above, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) (“This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.”)

Evidence of functional integration is also relevant to the issue whether a single-facility unit is appropriate. Functional integration refers to when employees at two or

more facilities are closely integrated with one another functionally notwithstanding their physical separation. *We care Transportation, LLC*, 353 NLRB 65 (2008); *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, such that the employees constitute integral and indispensable parts of a single work process. *Id.* However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another.

Employees at ULC and ETW appear to treat the same approximate number of residents, have common job titles, and share identical skills and functions. The two facilities nonetheless have separate identities. ULC, unlike ETW, is a department of Unity Hospital. It is located on the main campus in an inner-city neighborhood. ULC occupies two floors of Unity Hospital along with the Hospital's traumatic brain injury, inpatient psychiatric and outpatient dialysis centers. ETW, by contrast, is a free-standing single-story facility located in a suburban setting that provides adult day-care services in addition to skilled nursing care. ETW maintains its own dietary department with dietary employees. By contrast, ULC's dietary services are integrated with the Hospital's dietary services. ULC's housekeeping manager is also the Hospital's housekeeping manager; ETW has its own housekeeping manager. ULC and ETW have different budgets. As noted above, the persons in charge of social work, rehabilitation services, food services, housekeeping, facilities, and engineering and maintenance services are different for each facility. There are a number of job titles that exist at ETW, but not ULC, such as recreation and leisure specialist.

The Employer asserts that there is functional integration between ULC and ETW by virtue of its administrative centralization and common HR department. Despite this, there is little evidence that this integration results in significant contact among employees at ULC and ETW, in true interchange, or in transfers between the facilities.

The Employer asserts that 7 ETW employees (out of a total of 101) work at ULC on a regular basis, which establishes employee contact between ETW and ULC. It is unclear whether the evidence, comprised of a three-month sample, establishes regular contact between ETW and ULC. Even assuming that the three-month sample is consistent throughout a longer time-frame, I find that level of contact (seven percent of the ETW employees) is insufficient to overcome the presumption favoring a single-facility unit, especially inasmuch as two of the seven employees worked far fewer hours at ULC. The only other example of employee contact is a one and one-half day-long new employee orientation for all employees, followed by a day of orientation at ETW for all long-term care employees. Importantly, however, employees thereafter attend four weeks of orientation at their own separate facilities where they also receive ongoing training as permanent employees. There is no evidence of telephonic or email contact among the employees at the two facilities.

I note that in the cases cited by the Employer where the Board concluded that functional integration was a factor rebutting the presumption that a single facility is appropriate, the Board also found a lack of separate local management and/or significant contact or interchange among employees at the various facilities in question. Here there is separate local management with supervisory autonomy. As explained below, there is no evidence of true interchange.

### **(3) *The Degree of Employee Interchange***

In determining whether there is sufficient employee integration to rebut the single facility presumption, the Board relies on the degree to which employees transfer between facilities, and particularly on evidence of temporary transfers. *Mercy Medical Center San Juan*, 344 NLRB 790, 793 (2005). There must be evidence that a significant portion of the workforce is involved and that the workforce is actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a 1-year period there were approximately 400 to 425 temporary employee interchanges among 3 terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. *Dayton Transport Corp.* 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met. *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra. A showing of interchange requires evidence of employees moving between one facility and another, not merely evidence of employees moving from one facility to another. See *D&L Transportation*, 324 NLRB 160,161 (1997).

Here, there is no evidence of permanent transfers between the two facilities and it is undisputed that there are no ULC employees who work at ETW. There is evidence that seven ETW employees have worked at ULC on a voluntary basis to pick up extra hours, which is not interchange as the Employer suggests. Neither ULC or ETW required or even requested that the employees work at ULC. The ETW employees who desired extra hours were required to apply for a vacant opening at ULC through the Employer's "Career Track" process, undergo an interview, and, if the employee met the qualifications, could be approved to work at ULC. There is no preference for an employee from either ETW or ULC to work at the other facility, and the facility where the employee wants to work determines whether the employee will be approved to work there. The employee could be rejected as evidenced by a ULC employee who testified that she unsuccessfully applied for work at ETW and Park Ridge Living Center through Career Track. This process, in which an employee from ETW applies for extra hours at ULC, is not evidence of interchange; rather, it is evidence of ETW employees applying as new employees for work at ULC, a different Employer facility. The evidence is also afforded less weight where, as here, it is voluntary; and is one-way, not involving the temporary movement of employees between facilities. *Red Lobster*, 300 NLRB 908, 911 (1990) (degree of interchange is diminished because it was voluntary); *D & L Transportation*, 324 NLRB at 161 (showing of interchange requires evidence of movement of employees between facilities, not merely evidence of employees moving from one facility to another). Finally, the movement is not substantial where it involves at most only seven percent of the unit over a three-month period (the only period of time in evidence). Compare, *Orkin Exterminating Company*, 258 NLRB 773 (1981)

(substantial employee interchange where 40 percent of the unit temporarily transferred in a 9-month period).

**(4) *Distance Between Locations***

The facilities in dispute here are nine miles from one another. The Board has held that a six-mile distance between locations does not, by itself, weigh in favor of a multi-facility unit. *New Britain Transportation Company*, 330 NLRB at 397. Geographic separation of facilities “gains significance where there are other factors supporting a single-facility unit.” *New Britain* at 398. Other factors, such as the lack of employee interchange and separate day-to-day supervision by separate nurse managers, weigh in favor of a single-facility unit. Therefore, geographic proximity between the facilities does not favor a multi-facility unit. See *Super Value Stores*, 283 NLRB 134 (1987) (Board held that a 10-12 mile distance between locations did not favor a finding of a multi-facility unit).

**(5) *Bargaining History***

The absence of bargaining history is a neutral factor in the analysis of whether a single-facility unit is appropriate. *Trane*, 339 NLRB 866 at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support or negate the appropriateness of the unit sought by Petitioner.

***Conclusion Regarding Single-Facility Unit***

In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the evidence, as well as weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In particular, I rely on the facts that the ULC facility has separate supervision, that facility supervisors have

significant autonomy related to the day-to-day work of employees, that there is no evidence of true interchange among facilities and minimal evidence of interaction, that while many terms and conditions of employment are the same among the two facilities, there are meaningful differences, and that the facilities are geographically separated.

Lastly, I apply the analysis set forth in *Specialty Healthcare*. Consistent with my conclusion that the unit sought by Petitioner is appropriate utilizing the five-factor test described above, I also conclude that the employees employed at the ULC location in the unit sought by Petitioner constitute a readily-identifiable group who share a community of interest. I further conclude that the Employer has not demonstrated that the employees at the Employer's ULC and ETW locations share an overwhelming community of interest. I reach these conclusions because the ULC employees are readily identifiable as they work in a geographically separate facility. The two most important factors in overcoming the single-facility presumption favor the Petitioner. ULC employees are separately supervised from the employees at ETW and there is insufficient evidence of true interchange of employees from one facility to the other. In addition, there is little interaction among the two groups of employees. Finally, while the employees at the two facilities share a number of terms and conditions of employment in common, as noted above, those terms and conditions of employment are applicable to a third location not sought by the Employer to be included in this unit. Additionally, there are some terms of employment unique to the ULC employees.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its Unity Living Center facility located at 89 Genesee Street, Rochester, New York, including recreation and leisure services assistant, CNA-CCS, CNA per diem I-LTC, CNA per diem II-LTC, CNA per diem III-LTC, executive assistant, LPN per diem I, LPN per diem II, LPN per diem III, LPN-staff nurse I, LPN-staff nurse II, physical therapy assistant, program assistant, recreation therapist I, resident services representative, resident services secretary, senior CNA, staffing coordinator, program assistant-adult daycare; excluding all RNs, activities coordinator, coordinator-recreation and leisure services, department secretary, front desk work leader, receptionist, recreation and leisure specialist and CCS, resident aide, and therapy aide, managers, guards, and all professional employees and supervisors as defined in the Act.

There are approximately 122 employees in the unit found appropriate herein.

#### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not

they wish to be represented for purposes of collective bargaining by **1199 SEIU United Healthcare Workers East**. The date, time and place of the election, will be specified in the Notice of Election which will issue shortly.

***A. Voting Eligibility***

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

***B. Employer to Submit List of Eligible Voters***

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should

have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

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

To be timely filed, the list must be received in the Regional Office on or before **May 28, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.nlr.gov](http://www.nlr.gov), by mail, by hand or courier delivery, or by facsimile transmission at 716-551-4972. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops an employer from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67(b) and 102.69(b) of the Board's Rules, this decision is final and shall have the same effect as if issued by the Board unless **after the election** a request for review is filed. In the absence of election objections or potentially determinative challenges, the request for review of the decision and direction of election must be filed within 14 days after the tally of ballots has been prepared. In a case involving election objections or potentially determinative challenges, the request for review must be filed within 14 days after the regional director's decision on challenged ballots, on objections, or on both. The Request for Review is filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The request may be filed electronically through the Agency's website but may not be filed by facsimile. To file the request for

review electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

**DATED:** May 21, 2013

/s/Rhonda P. Ley  
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