



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Region 20

901 Market Street, Suite 400
San Francisco, California 94103-1735

Telephone: 415/356-5130
FAX: 415/356-5156
Website: www.nlrb.gov

November 1, 2013

WARREN BROWNER, CEO
CPMC, PACIFIC CAMPUS
2333 BUCHANAN ST
SAN FRANCISCO, CA 94115

CHRISTOPHER T. SCANLAN, ATTORNEY
ARNOLD & PORTER LLP
3 EMBARCADERO CTR FL 10
SAN FRANCISCO, CA 94111-4078

M. JANE LAWHON, LEGAL COUNSEL
CNA / NNU
CNA / NNU LEGAL DEPARTMENT
2000 FRANKLIN STREET
OAKLAND, CA 94612-2908

ROY HONG
CNA/NUU
225 W BROADWAY STE 500
GLENDALE, CA 91204-1331

Re: CPMC, Pacific Campus
Case 20-RC-112656

Gentlepersons:

Enclosed please find a Decision and Direction of Election in the above-entitled case. In a subsequent mailing you will receive copies of the Notice of Election. Upon receipt of these Notices, please post these Notices immediately in a conspicuous place or places, easily accessible to all employees involved. Pursuant to Board Rule 103.20, these Notices must be posted at least 3 full working days prior to 12:01 a.m. of the day of the election.

Very truly yours,

Joseph F. Frankl
Regional Director

Enclosure

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

SUTTER WEST BAY HOSPITALS d/b/a
CALIFORNIA PACIFIC MEDICAL CENTER

Employer

and

Case 20-RC-112656

CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES UNITED (CNA/NNU)

Petitioner

DECISION AND DIRECTION OF ELECTION

Sutter West Bay Hospitals d/b/a California Pacific Medical Center (Employer) operates four acute care hospital facilities in San Francisco, California, called the Pacific, California, Davies, and St. Luke's campuses. By its petition, California Nurses Association/National Nurses United (CNA/NNU) seeks to represent the Employer's registered nurses (RNs) at the Pacific campus in the following bargaining unit:

All full-time and regular part-time and per diem registered nurses employed by the Employer at its 2333 Buchanan Street, San Francisco, California facility; excluding all other employees, confidential employees, physicians, employees of outside registries and other agencies supplying labor to the Employer, already represented employees, managerial employees, guards and supervisors within the meaning of the Act.

There are approximately 740 RNs in the petitioned-for unit comprised of staff nurses I, II and III (including charge nurses),¹ and RN positions included by the parties' stipulations at the hearing, which are addressed below. The Employer contends that

¹ No party disputes the inclusion of the staff nurses or charge nurses in the unit.

the petitioned-for unit is inappropriate and that the only appropriate unit is one which includes RNs at both the Pacific and Davies' campuses. The unit urged by the Employer is comprised of about 1110 employees. The parties also dispute the unit placement of employees in several job classifications.

After careful consideration of the record, applicable case law, and the parties' positions, and for the reasons set forth below, I have concluded that the petitioned-for unit at the Pacific campus is an appropriate unit for collective-bargaining purposes with the inclusion of the stipulated classifications and modifications I am making herein. My unit placement decisions are addressed in a separate section of this decision below.

A. UNIT STIPULATIONS

The parties stipulated, and I find, that the employees in the following classifications are properly included in the unit: IPM coordinator, transplant coordinator and ophthalmology nurse.

The parties stipulated, and I find, that the employees in the following classifications are properly excluded from the unit: QDS managing consultant, infection control coordinator, quality improvement coordinator, transfer center coordinator, physician liaison, and quality data abstractor.²

The parties entered into a post-hearing stipulation and clarification of issues by email dated October 28, 2013, which I attach to the record as Board Exhibit 3. Pursuant to their stipulation, I find that the following locations are properly included in the unit description because, *inter alia*, some staff RNs work at these San Francisco locations: Main Pacific campus (2333 Buchanan); Department of Transplantation (2340 Clay); Stanford Building (2351 Clay); Psych Unit (2323 Sacramento); Cardiac Rehab Unit (2360 Clay); and Diagnostic Center (2100 Webster).³

² The parties stipulated, and I find, that each of the positions stipulated to be included in the unit requires an RN license and provides direct patient care to patients at the Pacific campus. The parties further stipulated, and I find, that the excluded employees are RNs, but do not perform patient care and/or interact with other petitioned-for unit employees, and the transfer center coordinator also works at a facility outside of San Francisco.

³ By their stipulation, the parties further agreed that the following locations should be excluded from the unit description: Transfer Center (633 Folsom, which is the location of withdrawn Transfer Center Coordinators); 2330 Clay (location of withdrawn Quality Data Abstractors and Quality Improvement

B. FACTS

The Employer operates four acute care hospital campuses in San Francisco, called the Pacific, California, Davies and St. Luke's campuses.⁴ The petitioned-for Pacific campus is located about two miles from the Davies' campus. All campuses have their own separate operating rooms, ICUs, emergency departments, cafeterias and parking facilities. A shuttle bus transports patients and staff between campuses.

Bargaining History. There is no history of collective bargaining for RNs at the Pacific or Davies' campuses. As of 2013, Petitioner represents RNs employed at the California and St. Luke's campuses under a single collective-bargaining agreement. Prior to 2013, RNs at these two campuses were represented by Petitioner under separate collective-bargaining agreements for many years. The National Union of Healthcare Workers (NUHW) currently represents a unit of technical and service employees at both the Pacific and Davies' campuses. SEIU-UHW represents a similar unit at the St. Luke's campus. Operating Engineers Local 39 and Teamsters Local 65 each have single collective-bargaining agreements covering employees at all four of the Employer's San Francisco campuses.

Job Descriptions, Skills & Functions. RNs at the Pacific campus have the same job descriptions as do RNs working at the Davies' and other campuses of the Employer working within the same classifications. RNs at the Pacific campus also have the same licensing, educational requirements and job functions as do RNs at all other campuses within the same classifications.

Wages, Benefits & Other Working Conditions. RNs employed within the same classifications at the Pacific and Davies' campuses have the same wage scale and receive the same fringe benefits. RNs employed at the California and St. Luke's

Coordinators); 2200 Webster (location of withdrawn Physician Liaisons) and they clarified locations which were still disputed and the bases for such disputes. Addresses excluded by the parties' stipulation are not set forth in the unit I find appropriate because the job classifications of the employees who work at those locations are already voting subject to challenge or excluded from the unit by their job titles.

⁴ These four campuses are referred collectively to as "CPMC" in the record.

campuses have different wage scales and benefits under the terms of Petitioner's collective-bargaining agreement with the Employer covering them. RNs at both the Pacific and Davies' campuses work eight and 12 hour shifts as determined by the vote of RNs in each unit.

Centralization of Management & Administrative Functions. As in *Sutter West Bay Hospitals d/b/a California Pacific Medical Center*, 357 NLRB No. 21 (July 29, 2011), a case involving the Employer, the record herein shows centralization of many management and administrative functions across all four campuses. Higher level management and decision-making involving labor relations are concentrated in the hands of high level managers such as Linda Isaacs, the Vice President of Human Resources for the Sutter West Bay Region.⁵ There is a central human resources department that covers all Sutter West Bay facilities and a human resources group under Isaacs oversees human resources functions for all San Francisco campuses. Individual campuses do not have separate human resources departments. Overall authority over the RNs at the Pacific campus, as well as at other San Francisco campuses, is in the hands of Chief Nursing Executive Diana Karner. Reporting to Karner are several vice presidents, directors and managers who oversee nursing areas on all or multiple campuses.

Further, as in the above-cited Board case, the record shows centralization of many administrative functions, including human resources, payroll, budgeting, information technology, accounting, timekeeping, electronic patient care records, risk management, incident reporting, and safety and security systems.

Common Overall Policies. Employees at all four campuses, including RNs, are subject to uniform labor policies and procedures contained in the same employee handbook, except to the extent such policies are supplanted by the terms of collective-bargaining agreements, such as the agreement between Petitioner and the Employer covering RNs on the California and St. Luke's campuses. These uniform policies and

⁵ The "Sutter West Bay Region" of the Employer includes other hospitals in the Bay Area in addition to the four San Francisco campuses referenced in this decision.

procedures include, *inter alia*, those concerning hiring, disciplining, granting time off, grievance processing and temporary transfers/floating.

Local Autonomy. The Pacific campus has its own chief administrative officer and other local managers and supervisors who handle the daily direction and supervision of employees, including RNs, at that campus. Other campuses have similar local management structures. The petitioned-for RNs at the Pacific campus report to unit supervisors, who in turn report to unit managers, who in turn report to the director of nursing at that campus. These supervisors, managers and the director of nursing do not supervise RNs at any other campuses with certain exceptions, involving areas such as emergency departments, Intensive Care Units (ICUs), dialysis, and acute rehab psychiatry, where management is shared between campuses. Local management at the Pacific campus handles hiring, disciplining, evaluations, granting time off and temporary transfer decisions for the petitioned-for RNs. RNs who work on the Davies' campus, as well as at other campuses, have similar structures of separate onsite management with similar exceptions.

Employee Interchange, Transfer and Contact. Temporary transfers/floating between campuses by RNs is voluntary. Included in the record is a written policy and procedure regarding temporary transfers/floating. The policy states that “[f]loating may occur based on patient care needs and staff competency . . . at the discretion of the manager and/or house supervisor in accordance with any contractual obligation.” The policy indicates that critical care RNs from the Pacific campus may float to the Davies' emergency department and medical-surgical (med-surg) department; and that ICU/TICU RNs from the Davies' campus may float to the Pacific campus MS ICU/CCU and med-surg departments.⁶

During 2012 and 2013, temporary interchange between RNs at the Pacific and Davies' campuses has involved less than 10% of the RNs at both campuses and less than 2% of overall hours worked during the same period.

⁶ ICU refers to intensive care unit; TICU refers to a transitional (step-down) intensive care unit; MS ICU refers to medical-surgical intensive care, and CCU refers to critical care unit.

Eight Pacific campus RNs testified to having had little or no contact with Davies' RNs during their employment of several years. Each RN testified that she had never temporarily transferred to work at the Davies' campus and had known of no (or at most only a few) Pacific campus RNs who had temporarily transferred to the Davies' campus or Davies' campus RNs who had temporarily transferred to the Pacific campus. They had never been informed by the Employer and were unaware of the Employer's temporary transfer/floating policy described above, and their managers had not encouraged them to temporarily transfer to the Davies' campus even during periods when they had been laid off because of low patient census. The record indicates that when an RN from the Pacific or Davies' campus wants to temporarily transfer to the other campus, he or she must interview with the manager at that campus for permission to do so.

The record shows that there is a small group of RNs who work more routinely in several departments at both the Pacific and Davies' campuses, and have a higher incidence of temporary interchange than do most other RNs at the Pacific campus. These include about 16 Pacific campus RNs who routinely work in the dialysis departments on both campuses; three Pacific campus RNs who routinely work in the non-invasive cardiology departments on both campuses; 14 Pacific campus RNs who work in the Gastroenterology (GI) lab at Davies'; and three Pacific campus RNs who work in the interventional radiology department at Davies' on an as needed/emergency basis.⁷

Permanent Transfers. About ten RNs permanently transferred from the Pacific campus to the Davies' campus and no Davies' RNs permanently transferred to the Pacific campus during the year preceding the hearing.

Contact. RNs at the Pacific campus interact with each other on a daily basis in performing their jobs and during onsite staff meetings, orientations and trainings. The

⁷ The record shows there are about two of 12 nurse practitioner RNs, whose disputed unit placement is discussed below, who work at the Pacific campus but also fill in for nurse practitioner RNs at the Davies' campus when those nurses are absent due to illness or vacation, and there is a nurse practitioner RN at the Davies' campus (one of three) who works half-time filling in for nurse practitioners at the Pacific campus.

Employer also holds joint hospital and nursing orientations, trainings and councils, attended by RNs from multiple campuses. A shuttle bus is available to transport staff between campuses. However, the testimony by several RNs from the Pacific campus is that they have rarely had contact with RNs from the Davies' campus.

Functional Integration. The record shows that although there are some specialized procedures not provided at all Employer campuses,⁸ the Pacific' campus has its own operating rooms, emergency room, intensive care, inpatient and outpatient facilities and services, as well as its own cafeteria and parking lot.

Extent of Organization. Petitioner is unwilling to proceed to an election in a unit combining RNs at the Pacific and Davies' campuses. No other labor organization seeks to represent the RNs.

C. ANALYSIS: UNIT SCOPE

As indicated above, Petitioner seeks to represent a unit of RNs only at the Employer's Pacific campus and the Employer argues that the only appropriate unit is a unit of RNs at both the Pacific and Davies' campuses.

It is well-settled that a petitioned-for single facility unit is presumptively appropriate and this presumption applies in the health care industry. See *Sutter West Bay Hospitals d/b/a California Pacific Medical Center (CPMC)*, 357 NLRB No. 21 (2011);⁹ *Children's Hospital of San Francisco*, 312 NLRB 920 (1993) enf. sub. nom. *California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1996); *Manor Healthcare*, 285 NLRB 224, 225 (1987). The party opposing such a unit has a "heavy burden of overcoming the presumption." *Mercy Sacramento Hospital*, 344 NLRB 790,

⁸ For example, cardiac cath and GI procedures are performed at the Pacific, but not the Davies' campus, and care involving stroke patients is mostly provided at the Davies' campus.

⁹ *CPMC, supra*, and *Children's Hospital of San Francisco, supra*, respectively involved the Employer and its predecessor facilities. In *CPMC* the Board found that a separate petitioned-for unit of technical, service and clerical employees at the Employer's St. Luke's campus was an appropriate unit and did not have to be included in a single unit with employees of the Employer's other three campuses. In *Children's Hospital of San Francisco, supra*, the Employer refused to recognize and bargain with Petitioner in a unit of RNs at Children's Hospital (currently the California campus of the Employer), after the 1991 merger of Children's Hospital with Pacific Presbyterian Hospital (currently the Pacific campus of the Employer). In that case, the Board concluded that the separate identity of the certified nurse assistant unit at Children's Hospital had not been destroyed by the merger of Children's Hospital with Pacific Presbyterian, and the Board found the Employer in violation of the Act, a decision enforced by the Ninth Circuit.

790 (2005). To do so, a party “must demonstrate integration so substantial as to negate the separate identity” of the petitioned-for unit. *Id.*; See also *D & L Transportation*, 324 NLRB 160 (1997).

The Board considers the following factors to determine whether the single-facility presumption has been rebutted: (1) geographic proximity; (2) centralized control over daily operations, labor relations, and supervision, including extent of local autonomy; (3) degree of employee interchange, transfer and contact; (4) functional interchange; (5) similarity of skills, functions and working conditions; and (6) bargaining history. See *CPMC, supra*. The Board considers interchange and supervision to be particularly significant factors in determining whether the presumption as been rebutted. *Id.*, *D & L Transportation, supra*. The Board has also long considered the extent of organization in making unit determinations, although it is not a controlling factor in such decision-making. See *Specialty Healthcare*, 357 NLRB No. 83 slip op at 8-9 (Aug. 26, 2011),¹⁰ and cases cited therein. In making unit determinations involving acute health care hospitals, the Board is also mindful of avoiding undue proliferation of units and/or an increased risk of work disruption or other adverse effects upon patient care should a labor dispute arise. *CPMC, supra; D & L Transportation, supra*.

In the instant case, no party disputes that an RN unit is appropriate under the Board’s Health Care Rules or that the petitioned-for RNs at the Pacific campus share a community of interest with each other. Nor can it be disputed that the Pacific campus is geographically separated from the Davies’ campus by about two miles and is a separate, full-service medical facility.

Further, onsite managers possess substantial local autonomy over RNs at the Pacific campus, as shown by the several layers of separate onsite supervision and management over RNs with authority to decide day-to-day matters involving hiring, disciplining, scheduling, floating, and other terms and conditions of employment. This substantial local autonomy diminishes the significance of the high degree of

¹⁰ I note that the *Specialty Healthcare, supra*, standard is not being applied herein as this case involves an acute care hospital, which is exempted from that ruling. *Id.* at 14. Rather, my citation refers only to the Board’s historical consideration of extent of organization in making unit determinations.

centralization of upper management and administrative functions shown in the record as it did in *CPMC, supra, slip op at 2*. In that case, the Board, in addressing the same issue with regard to the Employer, stated: “The Board . . . has long recognized that the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single location presumption.”

Another compelling factor supporting a Pacific campus unit is the lack of significant temporary interchange, permanent transfers or contact between RNs at the Pacific and Davies’ campuses. Temporary interchange is voluntary and minimal— involving less than 10% of the total number of RNs at both campuses and amounting to less than two percent of overall hours worked by RNs on both campuses during 2012 and 2013. Evidence regarding permanent transfers is similarly insignificant with only ten out of approximately 740 RNs at the Pacific campus permanently transferring to the Davies’ campus and no Davies’ RNs permanently transferring to the Pacific campus during the past year. Further, testimony by several RNs from the Pacific campus shows that they rarely come into contact with RNs from the Davies’ campus. While the record shows there are a small number of RNs who work more frequently in departments common to both campuses, and some common orientations and trainings, overall this factor strongly supports application of the single-facility presumption.

With regard to functional integration, although the record shows that the Employer has to some extent integrated its patient care and nursing services and provides certain types of specialized care only at particular campuses, the Pacific campus is plainly a full-service hospital, which provides a wide range of patient care.

Further, there is no history of collective-bargaining involving RNs at the Pacific campus. Although Petitioner recently began representing RNs at two of the Employer’s campuses (California and St. Luke’s) under a single contract, for many years it had represented RNs at each of these campuses under separate contracts. As in *CPMC, supra, slip op at 1*, the short history of the recent single contract covering two campuses diminishes its significance given the much longer history of separate contracts.

I have also considered that Petitioner has indicated its unwillingness to represent RNs in a combined unit and no other labor organization seeks to represent them. As indicated above, while this is not a controlling factor in making my decision, it is a relevant consideration. See *Specialty Healthcare, supra*, and cases cited therein.

Finally, I conclude that a separate unit of RNs at the Pacific campus would not jeopardize the delivery of health care or create an increased risk of work disruption within the Employer's system or risk an undue proliferation of units. To the contrary, Petitioner already represents RNs at two of the Employer's four campuses in San Francisco, and the Employer already has collective-bargaining agreements with several other unions with units that vary in scope.

Although certain factors lend support to the appropriateness of the combined unit urged by the Employer, including that RNs at both campuses have the same qualifications, licenses and job duties; share common wage rates and benefits; are subject to common Employer policies; and have common overall management, I do not find that such factors are sufficient to overcome the presumption of the appropriateness of a single-facility unit given the evidence showing substantial local autonomy, lack of significant interchange, the geographic separation of the Pacific campus; lack of bargaining history, and extent of organization—all of which strongly support a Pacific campus RN unit.

In sum, the Employer has failed to establish that integration between the RNs at the two campuses is so substantial as to negate the separate identity of the petitioned-for unit of RNs at the Pacific campus, and I find that the petitioned-for unit set forth below, as modified herein, is an appropriate unit for collective-bargaining purposes.

D. UNIT PLACEMENT ISSUES

The Employer argues that employees in several classifications should be included in the unit and Petitioner takes a contrary view. Although the Healthcare Rule found RN units to be appropriate units, it left the issue of the unit placement of positions in an RN unit to a case-by-case determination. 29 CFR Part 103, 54 Fed. Reg. No 76, pp. 16347-48, 284 NLRB at 1579 approved by the Supreme Court in *American Hospital Assn v. NLRB*, 499 US 606 (1991). See *Salem Hospital*, 333 NLRB 560 (2001). Thus,

Rulemaking does not, *per se*, preclude an analysis of community of interest factors in determining unit placement. *Id.* See also, *Avanti Health System LLC*, 357 NLRB No. 129 (Dec. 12, 2011). However, I note that in issuing the Rule, the Board found that the eight units enumerated were the only appropriate units in an acute care hospital absent extraordinary circumstances, such as the existence of nonconforming preexisting units. Accordingly, in determining the unit placement of the disputed positions herein, I am mindful of the fact that if these positions are RNs, are employed at the Pacific campus, and otherwise share a community of interest with the petitioned-for RNs, they should be included in the unit.

I have reviewed the parties' stipulations and other evidence in the record with regard to the disputed classifications and have determined that the following positions will be voted subject to challenge: case manager education coordinator,¹¹ child life nurse practitioners,¹² employee health nurse practitioners and/or occupational health nurse practitioners,¹³ elder life nurse specialists,¹⁴ pre-registration nurses,¹⁵ clinical nurse specialists,¹⁶ clinical education specialists,¹⁷ clinical program coordinators,¹⁸ risk

¹¹ The record indicates there is one employee in this job classification, whose office is at the Pacific campus but spends 98% of her time working at all four campuses.

¹² This classification is also known as pediatric nurse practitioners. The record indicates there are two employees in this classification. They work at 1625 Van Ness Avenue, and the parties dispute whether this location is part of the Pacific campus.

¹³ The record indicates there are three employees in these two job classifications. The parties stipulated that these employees work at the Davies' campus, and it is unclear from the record whether this is intended to mean they work a portion, most or all of their time there.

¹⁴ The record indicates there is only one employee in this job classification and is insufficient to enable me to determine whether this employee has a sufficient connection to the Pacific campus to be included in the unit.

¹⁵ The record indicates there are about 20 pre-registration nurses who work at the pre-registration and learning center at 1825 Sacramento Street. The parties dispute whether this center is part of the Pacific campus.

¹⁶ The record indicates there are 11 employees in this job classification, including one or two currently vacant positions. One works only at the Pacific campus, two regularly perform duties only at the California campus; one regularly performs duties at both the Pacific and Davies' campuses; and six regularly perform duties at the Pacific, Davies' and St. Luke's campuses.

¹⁷ The record indicates there are 11 employees in this job classification, five of which receive benefits and six of which are per diem. Of the five benefited positions, one regularly performs duties at the Pacific, Davies' and St. Luke's campuses; one regularly performs duties only at the Davies' campus; two regularly perform duties only at the California campuses; and one regularly performs duties only at the St. Luke's campuses. The six per diem employees regularly perform duties at all four campuses.

management coordinators,¹⁹ and nurse educator and dietetic/diabetic educator.²⁰ My reasons for voting employees in these classifications subject to challenge are basically the same, namely that while these positions are required to be licensed RNs and appear to be involved in providing patient care and have contact with other RNs, the record is not sufficient to enable me to make a determination as to whether they have a sufficient community of interest/connection with RNs at the Pacific campus to support their inclusion in the petitioned-for unit at that facility. The record is unclear to what extent the employees in these classifications perform their duties at locations or campuses other than the Pacific campus. Accordingly, I am directing that they vote subject to challenge.

I have decided to include in the unit employees in the following classifications: acute care nurse practitioners, electrophysiology nurse practitioner, palliative care nurse practitioners, RN case managers, and emergency department RN case managers, for the reasons discussed below:

Nurse Practitioners

There are about 22 nurse practitioners in five job classifications whose unit placement is disputed by the parties. Of those, I am including in the unit 15 acute care nurse practitioners (ACNPs), one electrophysiology nurse practitioner and one palliative care nurse practitioner. The remaining nurse practitioner job classifications may vote subject to challenge as discussed above.²¹

1. Acute Care Nurse Practitioners (ACNPs)

The Employer seeks the inclusion of 15 ACNPs in the unit and Petitioner takes a

¹⁸ The record indicates there are three employees in this job classification, one of whom regularly performs duties only at the Pacific campus while two regularly perform duties at both the Pacific and Davies' campuses.

¹⁹ The record indicates there is one employee in this job classification that regularly performs duties at all four campuses.

²⁰ The record indicates there are five nurse educator positions. Three regularly perform their duties at the Pacific and Davies' campuses, and two regularly perform their duties only at the California campus. The parties stipulated into evidence a job description titled "Certified Diabetes Educator," as the job description for the disputed positions of nurse educator and "dietetic/diabetic educator."

²¹ They are employee health and/or occupational health nurse practitioners and child life (pediatric) nurse practitioners, who are being voted subject to challenge.

contrary position. ACNPs typically work across multiple campuses but there are about 12 ACNPs who spend the vast majority of their work time at the Pacific campus. Two of these 12 Pacific campus ACNPs also fill in for ACNPs on the Davies' campus. There are also three ACNPs at the Davies' campus, one of whom works half-time at the Pacific campus. All ACNPs are required to be RNs and also to be licensed as ACNPs. Because of their higher level of training, skills and licensure, ACNPs are authorized to write orders for and/or perform numerous medical procedures. Staff RNs do not possess similar authority. The ACNPs work on an inter-disciplinary team mostly in the ICU. The team includes, *inter alia*, a supervising physician and petitioned-for RNs. On a daily basis, ACNPs work with and provide guidance to the petitioned-for RNs in caring for acute care/high-risk patients in the ICU. Both the ACNPs and the other RNs in the ICU work under the supervision of the Clinical Manager for Critical Care, Jonathan Judy Del Rosario, and an administrative manager.

Analysis: Nurse practitioners are generally included in RN units if they are required to be RNs. See *Rockridge Medical Care Center*, 221 NLRB 560, 561 (1975); "Health Care Unit Placement Issues," GC Memorandum 91-4, issued June 5, 1991 (nurse practitioner RNs with additional education and training who have the authority, subject to review by physician, to diagnose patients and prescribe medicine, have generally been included in RN units (citing *Rockridge*). See also *McLean Hospital Corp.*, 311 NLRB 1100, 1103 (1993) (nurse practitioners properly included in RN unit).

Petitioner argues that the ACNPs should be excluded because they have the additional training, license and authority of nurse practitioners and are authorized to order and perform many procedures and prescribe and administer medications, which the petitioned-for RNs are not authorized to do. I decline to exclude the ACNPs from the unit on this basis, given that the 12 ACNPs work almost exclusively on the Pacific campus; are required to be RNs; provide direct patient care; and interact on a daily basis with patients, the petitioned-for RNs and with other medical staff. Accordingly, I

find that the ACNPs employed at the Pacific campus are properly included in the unit.²²

2. Electrophysiology Nurse Practitioner

There is one electrophysiology nurse practitioner who reports to the director of cardiac electrophysiology (EP) services. The position requires a current Master's Degree in nursing with current RN licensure and certification as an acute care nurse practitioner. The position provides direct patient care, including taking patient histories, doing physical exams, ordering and interpreting diagnostic tests, and providing medical treatment to adult cardiac patients with such conditions as arrhythmias, congestive heart failure, and hypertension. The position has primary contacts with patients and their families as well as with physicians and nursing staff. According to the testimony of the Chief Administrative Officer at the Pacific campus, and Vice President of Operations, Hamila Kownacki, this position works only at the Pacific campus and comes into regular contact with other staff RNs working in the electrophysiology (EP)/cath lab and recovery room there.

Analysis. This position provides direct patient care and works only at the Pacific campus and has frequent contact with staff RNs in the petitioned-for unit. For similar reasons as those for inclusion of the ACNPs, I reject Petitioner's arguments for exclusion and include this position in the unit based on such evidence.

3. Palliative Care Nurse Practitioner

The Employer has one palliative care nurse practitioner who is required to be an RN and who works on the palliative care team. The position reports directly to the chief administrative officer of the Davies' campus, Mary Lanier, who is also the Vice President of Neurosciences and Post-Acute Services. The office for palliative care is located at the Pacific campus, but the palliative care nurse practitioner works at both the Pacific and Davies' campuses. The duties include assessing and providing consultation and support to patients, their families, and to the medical team, including staff doctors and RNs. The record does not include a job description for this position.

²² The ACNP from the Davies' campus who works half time at the Pacific campus will be allowed to vote subject to challenge because the record does not include sufficient evidence from which to determine whether this ACNP should be included in the RN unit at the Pacific campus.

Analysis. The evidence in the record supports the inclusion of this position in the unit since the palliative care nurse must be an RN; provides patient care at the Pacific campus; has an office at that campus; and is in regular contact with petitioned-for RNs. I reject Petitioner's arguments for its exclusion. Accordingly, the palliative care nurse is included in the unit.

RN Case Managers

About six RN case managers work on the Pacific campus and rarely work at other campuses.²³ RN case managers are required to be RNs and to have national case management certifications. They are in the case management department and report to the supervisor, manager or director of case management. Their duties include care coordination, handling the transition of patients from acute to lower level care, utilization management and discharge planning. Most of their work time is spent in contact with patients, and they are in frequent contact with other medical staff, including RNs in the petitioned-for unit. The record does not show whether or how their pay and benefits differ from those of the petitioned-for RNs.

Analysis. The Employer seeks the inclusion of the RN case managers in the unit. Petitioner argues they should be excluded because they are not required by their job description to be licensed RNs; are required to have national case management certifications unlike the petitioned-for RNs; do not perform the same type of patient assessments as do petitioned-for RNs; work at all Employer's hospitals and not just the four San Francisco campuses; and report to managers not affiliated with the Pacific campus or with any single campus of the Employer. Petitioner also asserts that it does not represent RN case managers at any other Employer facility and would be placed in an anomalous position if it were required to represent RN case managers at the Pacific campus, particularly given that these employees float to other campuses.

The Board generally includes positions in RN units which perform utilization review and discharge planning functions, if an employer requires or effectively requires

²³ These six RN case managers are out of a total of about 60 to 80 RN case managers who work at Sutter West Bay Hospitals; that is, they work not only at the four San Francisco campuses, but also at Employer medical facilities located in Novato and Santa Rosa, California. About 28 of these 60 to 80 RN case managers work at the four campuses in San Francisco.

RN licensing for the job. See *Avanti Health System LLC*, 357 NLRB No. 129 (2011); *Salem Hospital*, 333 NLRB 560 (2001); *Pocono Medical Center*, 305 NLRB 398 (1991); *Middletown Hospital Association*, 282 NLRB 541, 578 (1986); *Frederick Memorial Hospital*, 254 NLRB 36, 39 (1981), enf. denied 691 F.2d 191 (4th Cir. 1982); and *Trustees of Noble Hospital*, 218 NLRB 1441, 1444-1445 (1975). In cases where RN licensing is not required by the employer, the Board generally excludes such positions from RN units. *Salem Hospital*, *supra*; *Charter Hospital of Orlando South*, 313 NLRB 951, 954 (1994); *Ralph K. Davies Medical Center*, 256 NLRB 1113, 1117 (1981); *Addison-Gilbert Hospital*, 253 NLRB 1010, 1011-1012 (1981).

In the instant case, the RN case managers are required to be licensed RNs and they perform utilization review/discharge planning type functions. Thus, under applicable case law, they are generally to be included in RN units. Although the job description for the RN case manager does not expressly require that the person in this position be a licensed RN, based on language in the job description as well as testimony in the record, an RN license is plainly required for the position.²⁴

I reject Petitioner's argument that because RN case managers must possess a certification not required of petitioned-for RNs, they should be excluded from the unit. Likewise, I reject the contention that they should be excluded because RN case managers do not perform precisely the same type of patient assessment as do petitioned-for RNs. Nor do I find that the separate administrative and supervisory structure over the RN case managers compels their exclusion from the unit, given that they work side-by-side with the petitioned-for RNs. For the same reason, I reject Petitioner's argument that I should exclude the RN case managers because it would

²⁴ The job description states that the RN case manager has "the freedom to act within the scope of position responsibilities, guidelines and California RN licensure." Regional Vice President for Care Coordination, Eileen Kahn, also testified that the RN licensure requirement was inadvertently omitted from the job description; that RN case managers are required to be licensed RNs; that the certification required for the position, as set forth in the job description, can only be obtained by a licensed RN; and that the Employer has never hired any RN case managers who were not licensed RNs.

place Petitioner in the anomalous position of representing them only at the Pacific campus and not at the two other campuses covered by its contract.

Accordingly, because RN case managers must have an RN license to hold this position, and they share a community of interest with the petitioned-for RNs, the RN case managers employed at the Pacific campus are included in the unit.

Emergency Department RN Case Managers

There are four or five emergency department RN case managers who physically work only at the Pacific campus, including one per diem emergency department RN case manager.²⁵ This position is in the care coordination department and reports to the care coordination supervisor or manager. Requirements for the position include an RN license; a national certification in case management; a B.S. degree in nursing or a related health field; and a minimum of three years experience in acute medical surgical or critical care and experience with clinical assessment of patients with complex medical, emotional and social needs. Emergency department RN case managers collaborate with the emergency department physician and staff RNs to identify the admission status of patients and their case management needs, to ensure that regulatory requirements are met to establish the patient's Medicare and/or MediCal eligibility, and to assess post-care needs. The job description indicates, and the testimony in the record supports, that the emergency department case managers spend most of their time interacting with patients and have frequent contact with patients, families, physicians, and the petitioned-for RNs. The record does not show whether the wages, fringe benefits and other terms and conditions of employment of these employees differ from those in the petitioned-for unit.

Analysis: The Employer seeks the inclusion and Petitioner seeks the exclusion of this position from the unit for the same reasons as cited above with regard to the RN case managers. The case law cited above is likewise applicable to these employees, as are my reasons for rejecting Petitioner's arguments. Accordingly, I find that

²⁵ The emergency department RN case managers at the Pacific campus cover emergency departments at some of the other campuses by telephone, including the Davies' campus, after the shifts of RN case managers at those facilities have ended. However, there is no evidence that they physically work in the emergency departments of other campuses.

emergency department RN case managers employed at the Pacific campus are properly included in the unit given that they are required to be RNs; work almost exclusively on the Pacific campus; provide direct patient care; and interact on a daily basis with patients and staff nurses in the petitioned-for unit.

E. CONCLUSIONS AND FINDINGS

Based on the record, I conclude and find as follows:

- 1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2) The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in the business of operating an acute care hospital, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3) The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act.
- 4) The parties stipulated, and I find, that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- 5) The following employees of the Employer constitute an appropriate unit for the purposes of collective-bargaining within the meaning of the Act:

All full-time and regular part-time and per diem registered nurses, **including** staff nurse I, staff nurse II, staff nurse III, charge nurses, IPM coordinators, transplant coordinators, ophthalmology nurses, RN case managers, emergency department RN case managers, acute care nurse practitioners, electrophysiology nurse practitioner, and palliative care nurse practitioners, employed by the Employer at its facilities located at 2333 Buchanan (main Pacific campus), 2340 Clay (Department of Transplantation), 2351 Clay (Stanford Building), 2323 Sacramento (Psych Unit), 2360 Clay (Cardiac Rehab Unit), and at 2100 Webster (Diagnostic Center), San Francisco, California; **excluding** physicians, QDS managing consultants, infection control coordinators, quality improvement coordinators, transfer center coordinators, physician liaisons, quality data abstractors, employees of outside registries and other agencies supplying labor to the Employer, already represented employees, confidential employees, managerial employees, and guards and supervisors within the

meaning of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the California Nurses Association/National Nurses United (CNA/NNU) or by no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility²⁶

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

²⁶ The parties have stipulated, and I find, that the *Davison-Paxon* eligibility formula will be utilized to determine voter eligibility. Under this formula, "an employee is deemed to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours of work per week for the last quarter prior to the eligibility date." See *Davison-Paxon Company*, 185 NLRB 21, 23-24 (1970).

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, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **November 8, 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,²⁷ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing,

²⁷ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 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 employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **November 15, 2013**. The request may be filed electronically through the Agency's web site, www.nlr.gov,²⁸ but may not be filed by facsimile.

DATED AT San Francisco, California, this 1st day of November 2013.



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

²⁸ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.