UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FRED & HARRIETT TAYLOR HEALTH CENTER,

Employer,

Case No. 3-RC-115208

v.

1199 SEIU UNITED HEALTHCARE WORKERS EAST,

Petitioner.

EMPLOYER'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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PRELIMINARY STATEMENT

Pursuant to Section 102.67 of the Board's Rules and Regulations, Ira Davenport Memorial Hospital, Inc., the correct legal name of the Employer in the above-referenced case, requests review of the Acting Regional Director's Decision and Direction of Election, dated November 29, 2013 (referred to as the "ARD Decision"). Review is requested pursuant to 102.67(c)(2) on the basis that the ARD Decision on substantial factual issues is clearly erroneous on the record, and pursuant to Section 102.67(c)(1) on the basis that the Acting Regional Director departed from Board precedent by (1) finding one wing of a healthcare facility in a physically connected building to be a "single" facility, and (2) refusing to apply the Board's Health Care Rule for acute-care facilities.

STATEMENT OF FACTS

The Petition lists "Fred & Harriett Taylor Health Center" as the Employer in this case. The undisputed evidence at the hearing establishes, however, that Ira Davenport Memorial Hospital, Inc. ("IDMH") is the correct legal name of the Employer. IDMH is a single 501(c)(3) not-for-profit corporate entity under the laws of New York State which operates a healthcare facility consisting primarily of a 38-bed licensed Acute Care Facility ("ACF") providing inpatient and outpatient medical and surgical services to patients who are admitted on a short-term basis, along with a 120-bed licensed Skilled Nursing Facility ("SNF") providing residential long-term care and rehabilitation services to patients who are admitted on a long-term basis. (Tr. pp. 21, 29, 34-40, Employer Exs. 1-6). IDMH also houses a number of ancillary departments that support both patient care units, which are described in more detail below.

IDMH has operated an ACF serving residents of the greater Bath, New York area for over 100 years. IDMH's present building was constructed in 1960, and the original portion of

the building was shaped like the letter "L", with the long side facing mostly East and the short side on the South end. (Tr. pp. 19, 29, 51-52, 57-59, 68, 79, Employer Exs. 13-14). IDMH added another wing to the building in 1989 for the purpose of operating an attached SNF; the SNF wing is also shaped like the letter "L", with the long side facing mostly West, the short side on the North end, and it is physically attached to the original building at both ends, thus forming a single rectangular-shaped building with an interior courtyard. (*Id.*). Floor plans and numerous photographs presented at the hearing establish that IDMH is a single building. (Employer Exs. 13-14).

The SNF is known as the Fred & Harriet Taylor Health Center ("Taylor Health Center"), in recognition of donors who helped establish the SNF. However, IDMH has never operated a stand-alone SNF, and the Taylor Health Center has never been a separate corporate entity; rather, the Taylor Health Center consists of a hospital-based SNF as determined by the Office of Health Systems Management of the New York State Department of Health, and functions as one of several Departments within IDMH's overall health care facility located at 7571 State Route 54 in Bath. (Employer Exs. 1-7, 11-12, 25).

Specifically, in a rate appeal letter from IDMH's CEO James Watson to the Division of Medicaid and State Operations requesting that SNF at IDMH be recognized as a hospital-based SNF rather than a freestanding SNF for Medicaid purposes, the Division of Health Care Financing's Bureau of Long Term Care financing found:

> Fred and Harriett Taylor Health Center is a 122-bed voluntary residential health care facility which is located in Steuben County. The nursing home is directly connected to Ira Davenport Memorial Hospital and share[s] major infrastructure (electrical, plumbing, and HVAC) and support (dietary, maintenance/housekeeping, security, program and therapy) services. The nursing home and the hospital have common governance. The hospital CEO oversees the entire nursing home and hospital operations. The provider has indicated that while required by the Department to report costs as separate entities, the nursing home has no separate identity from the hospital. All costs are allocated to the nursing facility as if it were a hospital-based facility.
>
> The Department has reviewed the provider's request in conjunction with Part 86-2.10(1)(13)(ii) which sets forth the criteria for evaluating hospital-based designations and has determined that this provider is to be considered hospital-based, effective January 1, 2008.

(Employer Exs. 11-12).

Additionally, numerous other factors establish the integration between Departments at IDMH. For example, W-2s for 2012 comparing employees who work in the Taylor SNF Department and other departments within IDMH show the same Employer I.D. number and list the name of the Employer as Ira Davenport. (Tr. pp. 89-93; Employer Ex. 25). All employees are issued the same Employee I.D. badge to swipe into IDMH's electronic timekeeping system and gain entrance to any locked exterior doors and any interior doors between patient care units, regardless of whether they work on the acute side, long-term care side, or in one of the ancillary departments serving all patient care units. (Tr. pp. 97, 163; Employer Ex. 27). The same orientation packet and materials are given to all new employees of IDMH regardless of whether they are hired to work on the acute side, the long-term care side, or in one of the ancillary Departments serving all patient care units. (Tr. pp. 93-95; Employer Ex. 26).

At the hearing, IDMH also submitted a complete list of all employees of IDMH, alphabetical by employee last name, including job classification and Department. The list

includes all employees, regardless of whether they work on the acute-side, the long-term care side, or in one of the ancillary Departments serving all patient care units. (Tr. pp. 98-99; Employer Ex. 29). IDMH also submitted a unified Seniority List of all IDMH employees listed by their date of hire with the organization, regardless of which Department they work in. (Employer Ex. 31). IDMH recognizes all periods of service as seniority for benefit purposes and for all other purposes, regardless of which side of the building the employee works in, and regardless of whether the employee has some service in the ACF and some service in the SNF or vice versa. (Tr. pp. 99-100; Employer Ex. 31).

IDMH also submitted examples of recent employment ads placed by IDMH for positions on both the acute side and the long-term care side, and which reflect the fact that all such positions are for employment with a single common employer, not two separate employers. (Tr. pp. 181-183; Employer Ex. 33). The record evidence establishes that all job opportunities throughout the building are posted online and on a single bulletin board located directly outside the Human Resources office which happens to be located on the same side of the building as the ACF but which also serves all employees who work in the SNF, and that such vacancies are open to any qualified internal applicants regardless of which Department they work in or which Department has the vacancy. (Tr. pp. 144-146). IDMH uses the same Internal Application form for employees in the SNF and for employees in the ACF to apply for transfer to another position anywhere in the organization. (Employer Ex. 34).

IDMH also submitted examples of employee interchange between the ACF and the SNF, including LPN Virginia Alvord who recently transferred from a position in the ACF to a position in the SNF; CNA Helen Barone who transferred from the ACF to the Adult Day Care Unit located in the Taylor wing; April Beasley who was a CNA in the SNF before becoming an LPN

and transferring to the Medical/Surgical Unit in the ACF; LPN Judy Cudoni who transferred from the ACF to the Adult Day Care Unit located in the Taylor wing; Diana Phillipson who started as a CNA in the SNF, then transferred to the OB Unit in the ACF, before returning to the SNF as a Per Diem employee and later as the Director of Nursing; and Magan Stalbird who transferred from an LPN position in the SNF to an LPN position on the Medical/Surgical Unit in the ACF. (Tr. pp. 183-187; Employer Exs. 34-36). Currently there are two employees with regular positions on the acute side who also work on a Per Diem basis on the long-term care side, LPN April Beasley and LPN Megan Stalbird. (Tr. pp. 185-188).

The undisputed evidence also establishes that there is a great deal of functional integration between the ACF and the SNF, and frequent interaction between employees who work in the SNF and employees from other Departments throughout the Hospital. Blood draws from residents on the SNF are delivered to the Laboratory on the acute side for analysis. When SNF staff have difficulty with blood draws, Phlebotomists from the ACF go to the SNF to perform the blood draws. (Tr. pp. 166, 260-261). Residents on the SNF who need x-rays are transported by SNF staff to the Radiology Department in the ACF for x-rays; and for those residents who cannot be easily transported, there is a mobile x-ray unit that Radiology Technicians can use to travel to the SNF and obtain the x-ray on that Unit. (Tr. pp. 166-167). SNF residents who have difficulty breathing in their sleep use CPAP machines that are serviced by employees from Cardiopulmonary Services (a/k/a Respiratory Therapy) from the ACF. (Tr. pp. 167-168). Respiratory Therapists also perform EKGs on the SNF. (Tr. p. 264). Infection Control employees from the acute side make rounds on the SNF side. (Tr. pp. 169-170). Dietary employees transport food from the kitchen, which is located on the acute side of the building, to resident dining halls and resident rooms in the SNF. (Tr. pp. 170-171, 269). The two Diet

Technicians who belong to the Food and Nutritional Services Department have their offices located within the Taylor wing, and one is dedicated to performing meal planning and related Diet Tech services to residents on the SNF. (Tr. pp. 171-172, 270). Laundry workers transport clean and soiled laundry back and forth between the acute side and the long-term care side on a continual daily basis. (Tr. pp. 172-174). Two members of the Social Work Department are located within the Taylor wing. (Tr. p. 174). Maintenance employees perform work orders throughout the building and come to the SNF on a daily basis. (Tr. pp. 175, 275-276). Three members of the Housekeeping Department are dedicated to the SNF, and there are three housekeeping closets located on the SNF. (Tr. pp. 175-176). Materials Management personnel deliver supplies as well as mail to all Departments and all Units. (Tr. pp. 177-178). SNF staff members transport residents to the ACF for infusions on a regular basis. (Tr. p. 265). Rehabilitation Aides come to the SNF to provide rehab services to the residents. (Tr., pp. 267-268).

The following additional facts are also undisputed:

- There is a single President and Chief Operating Officer over all employees including ACF and SNF employees. (Tr. p. 15).
- The IDMH President & COO is also the licensed Administrator for the SNF. *(Id.)*
- There is a single common Human Resources Department Manager responsible for employee relations and labor relations with respect to all employees including ACF and SNF employees. (Tr. pp. 32, 142-144, 163).
- There is a single Human Resources Department serving all employees including ACF and SNF employees. (Tr. p. 97, 142-144, 163).
- The Medical Records Department handles medical information for all ACF patients and SNF residents. (Tr. p. 178).

- The Payroll function is the same for all employees including ACF and SNF employees. (Tr. pp. 154-156, 210-211).

- RN Supervisors from the ACF cover for RN Supervisors on the SNF by filling gaps in their schedule on a regular weekly basis. (Tr. pp. 252-255).

- A single Food & Nutrition Department serves all employees and all patients and residents including those on the ACF and those on the SNF. (Tr. pp. 32, 170-171).

- There is a single cafeteria serving all employees including ACF and SNF employees. (Tr. p. 72).

- There is a single Laboratory supporting both the ACF and SNF. (Tr. p. 69).

- A single Laundry Department supports both the ACF and SNF. (Tr. pp. 32, 172-174).

- There is a single Quality Management Services Department supporting the ACF and SNF. (Tr. pp. 33-34).

- The Social Work Department supports both the ACF and SNF. (Tr. pp. 174-175).

- There is a single Receiving and Supply Room serving both the ACF and SNF (Materials Management). (Tr. pp. 33, 66-67)

- There is a single Environmental Services Department for both the ACF and SNF (Maintenance). (*Id.*; Tr. pp. 175-176).

- The Administration Department covers both the ACF and SNF (Accounting, Business Office) (Tr. p. 33).

- The Education Department serves both ACF employees and SNF employees, and there are common classrooms utilized by all employees. (Tr. pp. 33, 69-70).

- A single Information Technology (IT) Department supports both the ACF and SNF. (Tr. pp. 68-69).

- The Pharmacy that dispenses all medications to the ACF also dispenses some medications to the SNF. (Tr. p. 169).

- There is a single Foundation that fundraises for both the ACF and SNF. (Tr. p. 24).

- There are two parking lots for employees both of which are open to all employees including ACF and SNF employees, and both of which are directly adjacent to one another. (Tr. pp. 29-30, 58).

- The Activities Department is physically located on the Taylor wing; 2 of the 4 Activities Aides are also CNAs who assist the SNF CNAs as needed; and all of the Activities Aides transport residents, feed residents and perform other duties that are very similar to the CNAs. (Tr. pp. 204-205).

- The Adult Day Care unit is physically located on the Taylor wing and the staff consists of 1 LPN and 2 CNAs whose duties are very similar to the duties of the SNF employees, and who are in frequent daily contact with the SNF employees. (Tr. pp., 205-208).

The undisputed evidence also establishes the following with respect to patient admissions and average length of stay for the ACF and SNF Units during 2012 and the first three quarters of 2013:

	Acute Care Unit	Long-Term Care Unit (Taylor)
Average Length of Stay:	3.2 days 1/12-12/12 4.0 days 1/13-9/13	Over 100 days Over 100 days
Total Admissions:	523 1/12-12/12 384 1/13-9/13	150 1/12-12/12 109 1/13-9/13

(Tr. pp. 153-54; Employer Exhibits 7, 8 and 9). This data establishes that over the most recent 21-month period (January 2012 through September 2013), **77.8%** of all patients admitted to Ira Davenport Memorial Hospital, Inc. were admitted to patient care units with an average Length of Stay of far less than 30 days (between 3.2 and 4.0 days), and **22.2%** of patients have been admitted to patient care units with an average Length of Stay of far more than 30 days (over 100 days).

THE PETITION AND THE HEARING

A representation hearing was held on November 5-6, 2013 to determine whether the Union's petitioned-for unit consisting of all Certified Nursing Assistants ("CNAs") and Licensed Practical Nurses ("LPNs") employed within the Taylor Health Center was appropriate. IDMH contended at the hearing, as it does herein, that the Taylor Health Center cannot be considered a stand-alone single facility; but rather, the appropriate "single facility" must be the entire IDMH building. Moreover, IDMH further contended that because IDMH is primarily an acute-care single facility, the Board's Health Care Rule for acute-care facilities ("Health Care Rule" or "Rule") should apply, and the only appropriate unit is a combined unit of IDMH's service and maintenance employees, and a combined unit of IDMH's technical employees.

The Union contends that the Taylor Health Center alone should be considered a single facility; that is not an acute care facility under the Health Care Rule; and that the Employer has failed to rebut the Board's single-facility presumption.

THE ARD DECISION

In his decision, the Acting Regional Director wholly disregards all of the undisputed factual evidence establishing that the Taylor SNF Unit is merely one wing of IDMH's single contiguous building, and that IDMH – inclusive of the Taylor SNF Unit – is a single corporate entity and a single employer. In a shockingly dishonest and lawless approach apparently designed to misrepresent the true undisputed facts, the Acting Regional Director arbitrarily defined the "Employer" as the Taylor Unit, and then proceeded to treat the fictional Taylor-only "Employer" and IDMH as though they are two separate facilities for purposes of applying the Board's single-facility presumption. (ARD Decision, p.1 fn.1). In doing so, the Acting Regional Director utterly ignored that fact that Taylor is merely a subpart of IDMH that is physically

housed in one building along with the other subparts of IDMH. The evidence supporting these facts is not only overwhelming; it is entirely uncontroverted. Yet, the Acting Regional Director simply ignored this evidence, including numerous photographs, corporate bylaws, the New York State Department of Health's designation of Taylor as a hospital-based SNF, etc. The Board's single-facility unit versus multi-facility unit analysis only applies in cases where a common employer maintains operations at multiple locations. Here, there is only one Employer and there is only ONE location. Thus, the entire single versus multi-facility analysis is nothing more than a glaring red herring. In a decision that is utterly devoid of any factual basis or legal reasoning, the Acting Regional Director relied on the deceptive use of defined terms by characterizing Taylor as the "Employer", and then proceeding to refer to the erroneously-defined "Employer" and IDMH as though they are separate entities, which they are not; and/or as though they are separate employers, which they are not; and/or as though they maintain operations in physically separate locations, which they do not. After completely ignoring the most fundamental core facts that IDMH and Taylor are one-and-the-same Employer operating in one-and-the-same location, the Acting Regional Director built his entire opinion on his erroneous conclusory assertion that this case is about multiple facilities. The complete failure by the Acting Regional Director to address the real facts of this case is breathtaking.

After making the bald assertion that the Taylor SNF "is a single facility" (ARD Decision, pp. 2, 15), an assertion that is not only unsupported by substantial evidence in the record, but is actually contradicted by overwhelming and undisputed evidence, the Acting Regional Director proceeded to analyze whether "IDMH" (as improperly defined to be something distinct from the Taylor Unit) had rebutted the single-facility presumption. This case

has NOTHING to do with the single-facility presumption because IDMH/Taylor IS a single facility.

After devoting most of his lengthy and purportedly well-reasoned analysis to a blatant red herring, the Acting Regional Director went on to state that "assuming arguendo that the [Taylor Health Center] and IDMH jointly constituted a single facility, I would nonetheless find that the [Board's longstanding Health Care] Rule does not apply." (ARD Decision, p. 16). However, in making this finding, the Acting Regional Director wholly ignored the language and purpose of the Health Care Rule, and cited to inapposite Board law to support his conclusions.

IDMH therefore respectfully requests a review of these glaring errors in the ARD Decision, and requests an Order finding that the only appropriate unit pursuant to the Board's Health Care Rule is a combined unit of IDMH's service and maintenance employees (inclusive of employees working in both wings of the Employer's building), and a combined unit of IDMH's technical employees (inclusive of employees working in both wings of the Employer's building).

ARGUMENT

I. THE ACTING REGIONAL DIRECTOR'S FINDING THAT THE TAYLOR HEALTH CENTER IS A SINGLE FACILITY IS INCONSISTENT WITH BOARD LAW AND THE UNDISPUETD FACTUAL EVIDENCE IN THE RECORD

In his decision, the Acting Regional Director simply ignored the factual evidence, including numerous photographs, corporate bylaws, the New York State Department of Health's designation of Taylor as a hospital-based SNF, etc., in finding the Taylor Health Center to be a separate single facility. The Taylor Health Center is a Department within IDMH and shares major infrastructure (electrical, plumbing, and HVAC) and support services (dietary, human

resources, maintenance, safety and security program, and therapy), and has no separate identity from IDMH.

In contrast to the overwhelming evidence of integration as set forth in the foregoing Statement of Facts, the Acting Regional Director fails to cite to any evidence established at the hearing or to any Board law to support his one sentence finding that the Taylor Health Center is a single facility, an erroneous finding upon which his entire opinion is built. (ARD Decision, pp. 2, 15).

The Acting Regional Director's only acknowledgment that the Taylor Health Center is in the same physical building as IDMH occurs after he presumes Taylor Health Center to be an appropriate single facility:

> IDMH and the [the Taylor Health Center] are physically attached, with the structure resembling a courtyard located in the middle. IDMH occupies the South and East portions of the structure, and the Employer occupies the North and West portions of the structure. Staff members can travel from the [Taylor Health Center] to IDMH without leaving the building. Based on the above, the close geographical proximity of the two weighs against the single facility presumption. *See, e.g, Fisher Controls Co.*, 192 NLRB 514 (1971).

(ARD Decision, p. 14).[1]

The case cited by the Acting Regional Director did not involve a single-facility petition and is inapposite to the issue of whether physicallyconnected facilities may be considered separate facilities under Board law. Instead, *Fisher Controls* involved a petition for a multi-facility unit and was decided based on the Board's longstanding policy that "absent agreement between the parties, the Board does not join office and plant clerical employees in a single unit."

[1] To say that different hallways of the same building are in "close geographic proximity" to one another highlights the absolute absurdity of the Acting Regional Director's analysis given the photographic and other undisputed evidence in the record showing that they are actually part of a single building occupying the same geographic space.

Id. at 515, *citing Weyerhauser Co.*, 173 NLRB 1170, 1171 (1968); *Vulcanized Rubber and Plastics Company, Inc.,* 129 NLRB 1256 (1961); *The Rudolph Wurlitzer Co.*, 117 NLRB 6 (1957); *.see also The Kroger Co.*, 204 NLRB 1055 (1973).

Specifically, in *Fisher Controls*, the union petitioned to represent a single unit of office and plant clerical employees at (1) the Employer's main office building on Center Street; (2) its plant and office building on Center Street (which was connected by a tunnel with the main office building); and (3) a machining plant and offices located at a facility not attached in any way to these other facilities on a different street. *Id.* at 514.

Nowhere in the *Fisher* decision does the Board apply or mention the single-facility presumption or evaluate the appropriateness of the unit based on the geographic proximity between the locations. Instead, the case was decided based on the Board's longstanding policy regarding office and plant clericals noted above. The fact that there may have been a tunnel connecting the two separate facilities in *Fisher*, which is still clearly distinguishable from the physically connected building at issue here, is simply irrelevant.[2]

In fact, in the only reported decision of which counsel is aware where the issue of whether an underground tunnel connecting two healthcare facilities should be considered one single facility, the Board approved the Regional Director's dismissal of a petition finding that a nursing home attached to the Employer's main hospital campus by an underground tunnel should not be considered a separate facility. *See Brattleboro Retreat*, 310 NLRB 615, 618 (1993). In that case, the nursing home was a 117-bed long-term care facility connected to the main campus facility by an underground tunnel. There, the Regional Director found that "***a necessary predicate to an analysis of appropriate units of a multi-facility employer is the existence of***

[2] The Acting Regional Director's reliance on this case illustrates how far his decision strayed from the actual facts in the record and the law governing the actual issues in this case.

more than one facility. In this case, I find that there is only one 'facility.'" *Id.* at 619 (emphasis added).

Based on a generous reading of the Acting Regional Director's decision, *Fisher Controls* is the sole Board precedent he has cited in support of his dubious position that separate wings in a physically connected building may be considered to be separate facilities.

In contrast, in *Child's Hospital*, the Board expressly found that three separately incorporated operations (a hospital, nursing home, and service center) constituted a single facility where the operations were contiguous (in a single building), and there was considerable integration of operations (including admissions and lab work). 307 NLRB 90, 91-92 (1992).

It is clear that in making this single-facility finding, the Acting Regional Director ignored the record evidence and Board precedent. The Acting Regional Director's erroneous finding was then used as the basis for his presumption that the Taylor Health Center constituted an appropriate single facility, and his ultimate finding that the Health Care Rule could not apply to IDMH. Based on this clear error of law and fact, the Board should reverse the ARD Decision.

II. THE ACTING REGIONAL DIRECTOR FAILED TO PROPERLY APPLY THE BOARD'S HEALTH CARE RULE TO THE UNDISPUTED FACTS OF THIS CASE

By finding Taylor Health Center to be a stand-alone separate nursing home facility, the Acting Regional Director erroneously found that the Health Care Rule could not apply because it excludes from coverage "facilities that are primarily nursing homes." (ARD Decision, p. 16). As discussed above, this stand-alone facility finding is unsupported by any factual evidence presented at the hearing and contravenes Board precedent. When properly viewed as one single healthcare facility, IDMH meets the definition of an "acute care" hospital set forth in the Board's

Health Care Rule, and therefore the only appropriate unit here is a combined unit of IDMH's service and maintenance employees (inclusive of employees working in both wings of the Employer's building), and a combined unit of IDMH's technical employees (inclusive of employees working in all Departments within the Employer's building).

The Health Care Rule which was approved by the Supreme Court in *American Hospital Assn. v. NLRB, 499 U.S. 606 (1991),* provides that, except in "extraordinary circumstances" or where there are existing nonconforming units, the following units are appropriate in an acute-care hospital: (1) all registered nurses; (2) all physicians; (3) all professionals except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; and (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

In the Rule, the Board defines an "acute-care hospital" as either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50 percent of all patients are admitted to units where the average length of patient stay is less than 30 days. The definition includes hospitals operating as acute-care facilities even if those hospitals offer additional services such as long-term care, outpatient care, psychiatric care, or rehabilitative care, but excludes facilities that are primarily nursing homes, psychiatric hospitals, or rehabilitation hospitals. 29 CFR § 103.30(f)(2).

The Acting Regional Director's finding that IDMH is not an acute-care facility is clearly erroneous based on the explicit and specific guidelines set forth in the Board's Rule, and the undisputed facts about patient admissions to IDMH's Acute Care Unit versus its Long-Term Care Unit. The Board's Rule specifically defines an "acute-care hospital" as a facility in which

over 50 percent of all patients are admitted to units where the average length of patient stay is less than 30 days, and this definition expressly includes facilities that offer additional services such as long-term care. 29 CFR § 103.30(f)(2). As set forth above, the following relevant facts concerning IDMH are undisputed:

	Acute Care Unit	Long-Term Care Unit (Taylor)
Average Length of Stay:	3.2 days 1/12-12/12 4.0 days 1/13-9/13	Over 100 days Over 100 days
Total Admissions:	523 1/12-12/12 384 1/13-9/13	150 1/12-12/12 109 1/13-9/13

During 2012 and three quarters of 2013, **77.8%** of all patients admitted to Ira Davenport Memorial Hospital, Inc. were admitted to patient care units with an average length of stay of far less than 30 days (between 3.2 and 4.0 days), and **22.2%** of patients were admitted to patient care units with an average length of stay of far more than 30 days (over 100 days). Therefore, by definition under the Board's Rule, IDMH is an acute care hospital; and by definition under the Board's Rule, IDMH cannot be deemed to be primarily a nursing home in light of this data. On the contrary, the admissions data – which is the very data that the Board deems most relevant to this analysis under its Rule – proves beyond argument that IDMH is primarily a small acute care hospital which serves a much heavier volume of acute care patients than its stagnant population of long-term care residents, notwithstanding the greater number of long-term care beds.

The ARD Decision turns the Board's Rule on its head and is inconsistent with Board precedent. The facts in this case are strikingly similar to the facts in another case in Region Three involving a hospital with 20 acute care beds and an attached 120-bed nursing home. In *Child's Hospital*, the Board found that the employer, which included three separately incorporated entities (hospital, nursing home, and support services) in one physical building, clearly met the literal definition of an acute care hospital under Section 103.30(f)(2), holding that "the Board, in devising the Rules, specifically considered and rejected [the] argument that … an 'amalgam type of institution,' which includes a nursing home … and support services should be excluded from coverage of the Rule." 310 NLRB 560, 561-562 (1993).

In his decision, the Acting Regional Director further opined that "assuming arguendo" that the Employer's ACF and SNF jointly constituted a single facility (which they do, but somehow inexplicably the Acting Regional Director must have overlooked the floor plans and photographs) (see Employer Exs. 13 and 14), he would still find that the Health Care Rule did not apply. He bases this on evidence regarding the number of resident days in the Long-Term Care Unit compared to the number of patient days in the Acute Care Unit, and the number of SNF beds generally in use compared to the number of ACF beds generally in use. (ARD Decision, p. 16). However, the Acting Regional Director fails to provide any support for his use of these criteria, and his reliance on these criteria directly contradicts the plain language of the Health Care Rule.[3] One can only conclude that after somehow inexplicably overlooking the floor plans and photographs showing that IDMH's ACF and SNF are jointly housed in the same

[3] Although the Acting Regional Director cites *Child's Hospital*, 307 NLRB at 90, n. 14, and *Specialty Hospital of Washington-Hadley*, 357 NLRB No. 77 (2011), neither of these cases reached the issue of how to appropriately calculate patient and admissions data.

building, the Acting Regional Director then somehow inexplicably failed to read the Board's own Rule on Health Care Units.[4]

CONCLUSION

For all of the reasons set forth above, the Employer respectfully requests that the Board grant its Request for Review and direct the Regional Director to apply the clear terms of the Board's Health Care Rule for unit determination in this case.

Dated: December 13, 2013

Respectfully Submitted,
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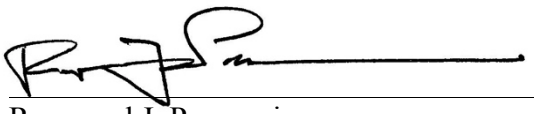
[4] Moreover, the Acting Regional Director's misguided reliance on the decisions in *St. Lukes Health Sys.*, 340 NLRB 1171 (2003) and *VNA of Central Ill.*, 324 NLRB 55 (1997), indicate that he somehow inexplicably failed to notice that, unlike here, those cases involved facilities that were physically separate from one another.

CERTIFICATE OF SERVICE

I, Raymond J. Pascucci, certify that I served the foregoing Request for Review of the Acting Regional Director's Decision and Direction of Election on Mimi C. Satter, Esq. counsel for 1199 SEIU United Healthcare Workers East, and Paul J. Murphy, Acting Acting Regional Director of Region Three of the National Labor Relations Board, by electronic mail on December 13, 2013.

Dated: December 13, 2013



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