

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

DIGNITY HEALTH & ST. FRANCIS
MEMORIAL HOSPITAL; DIGNITY HEALTH
d/b/a DOMINICAN HOSPITAL

Petitioner

Cases: 20-UC-115160;
32-UC-115418¹

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, STATIONARY ENGINEERS
LOCAL NO. 39

Union

DECISION AND ORDER

The parties stipulated, and I find, that the Petitioner is comprised of two legal entities: (1) Dignity Health (Dignity), which owns and operates Dominican Hospital of Santa Cruz (Dominican), St. Mary's Medical Center of San Francisco (St. Mary's), and Sequoia Hospital of Redwood City (Sequoia); and (2) St. Francis Memorial Hospital (St. Francis), a separately incorporated entity wholly owned by Dignity that operates St. Francis in San Francisco.² By its petitions, Petitioner seeks to clarify two collective-bargaining units that the Union represents to exclude chief engineers and chief

¹ This Petition was transferred to Region 20, where I consolidated these two Petitions for the purposes of the hearing (conducted in San Francisco on October 29, 31, and November 5, 2013) and Decision. After the hearing commenced, the Union sought to transfer the entire matter to Region 32, an appeal that the Board denied on the merits in an unpublished Order dated February 5, 2014.

² Petitioner (also referred to as Employer throughout this Decision) formerly did business as Catholic Healthcare West, and I shall consider the documents introduced at hearing which bear its former name to refer to Petitioner. All four facilities at issue are in California.

biomedical engineers (CBEs) as statutory supervisors. The Union opposes Petitioner's position, arguing that chief engineers and CBEs are unit employees.

For the reasons discussed below, I find that the chief engineers at St. Francis and Sequoia are statutory supervisors, and order that those positions be excluded from the corresponding bargaining unit on that basis. The positions of chief engineer at St. Mary's and Dominican are not currently occupied and have not been occupied for some time, and there is no evidence that the Petitioner plans to fill them. In these circumstances, the existence of these positions seems more theoretical than real. In any event, the record evidence is insufficient to establish that, if and when Petitioner fills one of both positions, Petitioner will vest it or them with supervisory authority as defined in Section 2(11) of the Act. Accordingly, I decline to clarify the corresponding bargaining units to exclude chief engineers at St. Mar's and Dominican. Finally, I find that chief biomedical engineers are not statutory supervisors.

Witnesses:

The following witnesses testified during the hearing:

Kristi Abundis, Manager of Human Resources (hereafter, also HR) for Dominican;
Linda Cheema, Vice President of HR for Sequoia;
Brother George Cherrie, Vice President, Mission and Ancillary Services for St. Mary's;
Timothy Eggen, Union Business Representative;
Beate Greenwood, Interim HR Manager for St. Mary's and HR Specialist for Sequoia;
Sherie Hickman, Vice President of Operations and Chief Operating Officer for Sequoia;
Peter Leon-Guerrero, Chief Biomedical Engineer for St. Francis;
Patrick Lew, Chief Biomedical Engineer for St. Mary's;
Barbara Morrissette, Vice President of HR for St. Francis;
Ken Rosenberg, Vice President of HR for St. Mary's;
Joseph Sandoval; Chief Biomedical Engineer for Sequoia;
Jim Sperring, Chief Engineer for Sequoia.

FACTS

Labor Organization. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Collective-Bargaining History & the Bargaining Units. As of the hearing, the most recent collective-bargaining agreement (Agreement I) between Petitioner for its St. Francis, St. Mary's, and Sequoia facilities, and the Union was effective from October 1, 2010, through September 30, 2013. The most recent collective-bargaining agreement (Agreement II) between Petitioner, for its Dominican facility, and the Union was effective from July 1, 2006, through June 30, 2011. No party took the position, and no evidence was presented, that there was a collective-bargaining agreement in effect covering either bargaining unit at the time the unit clarification petitions were filed.

Under Agreement I, Petitioner recognizes the Union as the exclusive collective-bargaining representative of a unit comprised of all engineers employed at St. Francis, St. Mary's, and Sequoia, including chief engineers. In addition, under Agreement I, Petitioner has the option of selecting a "designated supervisor of the Biomedical Electronics Technicians" who would be subject to Agreement I.

Under Agreement II, the Petitioner recognizes the Union as the exclusive collective-bargaining representative of a unit of all engineers employed at Dominican, including chief engineers and lead biomedical electronics technicians.

The record establishes that historically, the employees in the job classifications under review have been included in the bargaining units.

Duties of Bargaining-Unit Employees. Employees in the bargaining units covered by Agreements I and II are responsible for all steam, electrical, refrigeration, and mechanical equipment in the named hospitals.

I shall address the chief engineer positions in alphabetical order of the facilities covered under Agreement I (Saints Francis and Mary's, and Sequoia), and then the facility covered under Agreement II (Dominican).

Job Description: Agreement I sets forth the job duties of chief engineer at St. Francis, St. Mary's and Sequoia, in pertinent part, as follows:

Assumes the responsibility and accountability for the planning, organizing, coordinating and directing all services and programs related to plant maintenance;

* * *

Plans, organizes, coordinates and directs all services and programs relating to plant maintenance, plant operations and grounds;

Develops and evaluates monthly departmental budgets, working with the Director of Facilities as needed.

In addition, Agreement I adds that the chief engineer is responsible for the "supervision of employees assigned to the operation" and is "authorized to hire and discharge or dismiss employees under his jurisdiction and supervision for just cause, subject to approval by the Employer."

Chief Engineer at St. Francis Memorial Hospital. The former chief engineer at St. Francis, Ray Reynolds, retired not long before the hearing in this matter.³ Although the record does not definitively identify his replacement, witness testimony suggests that St. Francis has undertaken to train his successor, who has filled, or is expected imminently to fill, the vacancy that Reynolds left. In the absence of evidence that Petitioner

³ Apparently Reynolds remained on Petitioner's payroll until about one week before the hearing, using accumulated leave prior to severing the employment relationship.

intended to alter the scope of chief engineer position, I have assumed that the authority that Reynolds exercised extends to his successor.

Job Description: The job duties of the chief engineer at St. Francis are set forth in Agreement I.

Hiring Authority: The record evidence indicates that Reynolds played a role in the hiring of employees. Reynolds was listed as the “hiring manager” on a job posting to fill an assistant chief engineer position. According to Barbara Morrissette, Vice President of HR for St. Francis, the designation of “hiring manager” referred to Reynolds’ authority to decide which position to fill, and to submit his choice to fill it for approval by upper management.⁴ The job posting that was admitted into evidence bore no date, and the record does not indicate how many times Reynolds submitted the name of the candidate whom he had chosen to fill a vacancy. Morrissette acknowledged that she did not have detailed knowledge about conversations that might have occurred between Reynolds and his manager, the Facilities Director, in such circumstances. She testified explicitly, however, the Facilities Director merely “validated,” and never overruled, Reynolds’ decisions about whom to hire for vacancies. She characterized such approval as a “rubber stamp.”

Authority to Discipline, Suspend, and/or Terminate Employees: Record testimony indicates that, during his tenure as chief engineer, Reynolds might have participated in the termination of one probationary employee. Morrissette asserted that Reynolds worked with an HR manager to effectuate the termination. However, she could not provide details the division of labor and responsibility between the two in making the decision to discharge the employee. No documentary evidence was presented that would shed any more light on the role Reynolds played in this or any other disciplinary decision.

⁴ On the record, Morrissette referred to Reynolds as a “manager,” and Reynolds signed as the “hiring manager” on the job posting. My inquiry into the scope of Mr. Reynolds’ authority, however, is limited to his alleged supervisory status as defined in Section 2(11) of the Act.

Evaluation of Employees: Documentary evidence shows that Reynolds completed performance reviews of other employees in the Engineering Department in 2012 and 2013. Reynolds was listed as the “reviewer” of a non-bargaining unit clerical employee, a bargaining-unit assistant chief engineer, and a bargaining-unit apprentice. According to Morrissette, the “reviewer” is the person responsible for conducting the evaluation. The reviewer completes the online evaluation form based on his or her personal assessment of the evaluated employee.

Morrissette testified that employees are typically reviewed following their first 90 days of employment, and thereafter on an annual basis. According to Morrissette, only “managers” review the performance of employees, and if an employee is deemed to have “fully met” expectations in his or her review, the employee becomes eligible for a “broad-base” bonus that the Employer grants every year.

Promotion of Employees: Documentary evidence indicated that in March 2012, Reynolds was listed as the “approver” on a “personnel action” form to promote one apprentice engineer and, consequently, increase his rate of pay. Morrissette testified that only “managers” have approval rights on personnel action forms, and that the “approver” thus takes responsibility for Petitioner in making the change. She testified that in the case of this early promotion, after HR brought Reynolds’ recommendation to her attention, she queried Reynolds about the employee’s performance and the early-promotion procedure before approving the promotion. An early promotion is an exception to personnel policy and requires final approval by a senior manager. She added, however, that had Reynolds not initiated it, the early promotion would not have occurred.

Other Terms and Conditions of Employment: Reynolds attended management meetings and had a private office. No other bargaining-unit members attend those meetings or have private offices. Just prior to his retirement, however, Mark Kleindienst, an engineer whom Morrissette described as the “heir apparent” to succeed Reynolds, began to accompany Reynolds to those meetings.

Chief Engineer at St. Mary's Medical Center. At the time of the hearing, the position of chief engineer at St. Mary's was vacant. The person who most recently occupied the job was Sam Jayme, who vacated the position in 2008.

Prior to becoming chief engineer, Jayme occupied the assistant chief engineer position and Todd Belluomini was the chief. In an effort to provide Jayme with more opportunities, in 2007, the hospital promoted Todd Belluomini to the position of Director of Facilities/Supervising Chief Engineer and promoted Jayme to the position of Chief Engineer.

Jayme resigned in 2008 and the department continued to operate with Belluomini as the Director of Facilities/Supervising Chief Engineer until his resignation in October 2013. Brother George Cherrie, St. Mary's Vice President of Mission Service and Ancillary Services, testified that the hospital did not fill the chief engineer position after Jayme resigned because of Belluomini's presence. Despite Belluomini's subsequent departure, there is no record evidence to establish that the Petitioner now intends to fill the chief engineer position. In short, the position of chief engineer at St. Mary's is not currently occupied, has not been occupied since 2008, and the evidence does not indicate that the Employer currently has any intention to fill it.

Chief Engineer at Sequoia Hospital of Redwood City. Jim Sperring currently occupies the position of chief engineer at Sequoia and reports directly to Sherie Hickman, Chief Operating Officer (COO) of the hospital. At the time of the hearing, there were twelve (12) stationary engineers in Sequoia's engineering department and their job description indicates that they report to the chief engineer.

Hiring Authority: In his capacity as Sequoia's chief engineer, Sperring plays a role in the hiring of engineers, but he cannot hire an employee for his department without outside approval. According to Sperring, if there is a vacancy in a position that is "budgeted," meaning the position is funded, he must obtain approval from COO Hickman before posting the position to be filled. On recruitment documents, the chief

engineer is listed as the “hiring manager” for engineers in the unit, but applications are submitted first to HR. After HR reviews the applications, it refers those that meet the minimum level of qualifications to Sperring for further vetting. Sperring then culls from the pool of applicants those with the best experience in the engineering field in general, and in hospital environments in particular. Sperring’s process of selecting a final applicant involves a second interview of his preferred candidate(s) by another member of the staff, such as the recruiter or assistant chief engineer, as well as consultation with Hickman about the preferred candidate’s qualifications for the job.

Ultimately, Sperring presents his final candidate for Hickman’s approval, and Hickman has never rejected his choice for hire. HR confirms before hire that the candidate meets all of the criteria for employment and passes the background check, and assists with the drafting of the offer letter.

Authority to Discipline, Suspend, and/or Terminate Employees: The record contains evidence of Sperring’s involvement in the discipline and termination of one engineer.

Sperring testified that in July 2011, an engineer in his department who had just completed his probationary period was experiencing attendance and tardiness issues. Sperring spoke with the employee in an effort to correct the issues, but after lack of improvement, he reported the problem to HR with a recommendation to terminate the employee. However, as the engineer had no prior disciplinary history, HR instead drafted a disciplinary warning in accordance with the Petitioner’s attendance and progressive-disciplinary policies. Sperring and an HR representative signed the disciplinary document and jointly presented it to the engineer.⁵

In August 2011, Sperring reported the same engineer to HR for performance issues and again recommended that he be discharged. Rather than terminate the

⁵ A copy of the written discipline is in evidence, and Sperring testified that he had signed other disciplinary notices on other occasions. Linda Cheema, Sequoia’s VP of HR, testified that HR is required to sign off on all written disciplines in all departments.

engineer, HR opted to place him on a performance-improvement plan (PIP). Witness testimony establishes that Sperring adamantly opposed HR's decision to show lenience, but HR stayed the course. After the engineer failed to meet the PIP requirements, on October 10, 2011, the Employer terminated him. HR Vice President Cheema authored and signed the termination letter, and in accordance with the Employer's standard practice, copied Sperring on it. Cheema testified that at some point in time prior to the termination, apparently after the failed PIP, Sperring "wished to terminate" the employee and that HR "reviewed the documentation" and "reviewed the situation and determined that it was appropriate to term[inate]."

Evaluation of Employees: Sperring testified that he evaluates the performance of engineers, utility engineers, and apprentice engineers. When conducting performance evaluations, Sperring uses a standard form and refers to the job descriptions that HR generated. Sperring is not involved in the decision to grant bonuses to employees, but if he determines that an employee meets or exceeds the minimum performance requirements, the employee becomes eligible to for same.

Promotion of Employees: There is no record evidence that Sperring is responsible for selecting employees for promotion.

Scheduling: The record evidence shows that Sperring decides the location and the time period for posting shift bids for engineers. In terms of the shift bidding, the chief engineer's authority is limited to validating the seniority of the most senior employee who is equally qualified vis-à-vis the other bidders. The assistant chief engineer collects the time-off requests and generates the schedule. At times, the chief engineer fields the requests if the assistant chief engineer is not available.

Working with Tools of the Trade: Sperring works with tools of the trade on occasion, when there is additional need for manpower or when there is an emergency. Although he did not provide specifics, Sperring testified that he has gone one to four weeks at a stretch without working with trade tools.

Other Terms and Conditions of Employment: Sperring is paid more than other engineers. He is also eligible to participate in the management incentive bonus program. The chief biomedical engineer is the only other member of the bargaining unit who is eligible to participate in this program.

The record establishes that the chief engineer does not have any special certifications over and above those of the engineers. The chief engineer and the assistant chief engineer have an office; the other engineers do not. The engineers wear work uniforms, but Sperring dons one only when working with tools of the trade.

In addition to his other duties, Sperring attends management meetings. No other bargaining-unit members attend such meetings.

Chief Engineer at Dominican Hospital of Santa Cruz: The record established that Petitioner has not filled the chief engineer position at Dominican since it became vacant in 2010. Currently, the stationary engineers at Dominican report to Manager of Engineering Kevin Smith. HR Manager Kristi Abundis testified that Petitioner divided the duties previously performed by the chief engineer among the stationary engineers and that Smith possesses all of the responsibilities of the former chief engineer, such as hiring, evaluating, and overseeing the stationary engineers. Although Abundis testified that the position of chief engineer still exists, there is no record evidence that the Petitioner intends to fill the position.

Chief Biomedical Engineers of Both Bargaining Units. The circumstances surrounding the four chief biomedical engineer positions (CBEs) are similar, if not identical, and I have grouped the CBEs for discussion. The record establishes that subsequent to TriMedx's assumption of management responsibilities at the four biomedical-engineering departments during 2012, the CBEs no longer exercised any supervisory authority, as defined in Section 2(11) of the Act. Thus, any record evidence of the CBEs' authority prior to TriMedx's takeover is irrelevant.

Petitioner entered into a service contract with TriMedx on January 26, 2012, covering its St. Francis, St. Mary's, Sequoia, and Dominican Hospitals, and the terms of the contract had been fully implemented at all four facilities by the time of the hearing in this matter. Section 3.10 of the service contract – "TriMedx Obligations with Respect to the Hospital Employees"- grants TriMedx sole responsibility to supervise, direct, and control hospital employees while they are performing biomedical engineering services. "Supervision" extends to evaluation and discipline of hospital employees. While TriMedx retains autonomy in its supervision and control of biomedical engineering services, the contract language itself does not resolve the CBEs' status in relation to Section 2(11). Accordingly, I turned to the witness testimony reported below:

St. Francis: St. Francis CBE Peter Leon-Guerrero testified that since TriMedx assumed control of the biomedical-engineer department, no new employees have been hired into the department; he has not disciplined any employees; and he is no longer responsible for supervising the department.

St. Mary's: At St. Mary's, Vice President of Mission and Ancillary Services Brother George Cherrie affirmed that the CBE is no longer responsible for supervising the biomedical engineering department as a result of the facility's contract with TriMedx. Specifically, the CBE no longer schedules, disciplines, hires, assigns work, grants time off, or regularly evaluates the performance of other employees.

St. Mary's CBE Patrick Lew testified that he and the other department engineer(s) were involved in the hiring of one engineer about six months prior to the hearing. They reviewed applicants' resumes, assisted with the job interviews, and "chose the best fit for the group." It is unclear from the record whether Lew recommended any candidate for hire, but Brother Cherrie carried out the remainder of the hiring process. Lew did not testify to having any experience with disciplining employees before or after TriMedx began management of the department. Lew testified to conducting a "general" performance evaluation of one employee about two to three months before the hearing. Lew explained that the TriMedx manager did not have the evaluation "in his (computer) system yet," so Lew conducted the evaluation on a one-

time basis, until the evaluation template was installed in or restored to the manager's system. It is unclear from the record what the evaluation entailed, but witness testimony suggests that it would have determined the employee's eligibility to receive an annual bonus. Lew has not evaluated any other employees since then, and neither TriMedx nor the Employer has informed Lew that he is expected to evaluate the performance of any other employee in the future.

Sequoia: With regard to hiring, CBE Joseph Sandoval testified that he assisted in the hiring of one engineer into his department in April 2013, under TriMedx's management. Sandoval and then-TriMedx Manager Kurt Rodriguez separately and/or jointly screened six or seven candidates and also interviewed a number of those candidates.⁶ Sandoval reported his individual findings to Rodriguez for consideration, as instructed, and also indicated which of the candidates he opined "would be a good fit." He testified that Rodriguez agreed with him as to some, and disagreed as to others, and that Rodriguez told him that he wanted to hire a candidate surnamed Tran. Rodriguez and Sandoval appear to have agreed that Tran was the winning candidate, but it is unclear from the record whether they reached the same conclusion separately or through deliberations. Neither is it clear whether Sandoval recommended Tran for hire. Sandoval testified that, based on Rodriguez's stated desire to hire Tran and unspecified hiring-related conversations with Petitioner Recruiter Linda Bell, Sandoval sent the following email to Bell seeking to carry out the next steps of the hiring process:

We've just interviewed a strong candidate for one of the posted Biomedical Technician positions that I'd like to hire. Can you please guide me through the next steps?

Sandoval explained that he authored the e-mail during Rodriguez's leave of absence and after several discussions with Bell. It's unclear what "next steps" were taken to approve the hiring decision and finalize the process, but Sandoval testified that

⁶ It is unclear from the record what degree of scrutiny "screening" required, but it appears to have been a preliminary review of the candidates' technical competence.

Rodriguez had numerous follow-up, pre-hire conversations with Tran to which Sandoval was not privy.

Sandoval also testified that since TriMedx took over the management of the biomedical engineering department in 2012, he has not evaluated the performance of other employees. Sandoval could not recall any disciplinary incidents in the biomedical engineering department since TriMedx took over the management of the department.

According to Sandoval, his duties as CBE to facilitate projects and the installation of new equipment, and to report any issues to the TriMedx manager, differentiate him from the other biomedical engineers. Sandoval testified that he assigns the inspection of new medical equipment to employees and bases those assignments on the individual work load of each engineer. However, Sandoval has not had the opportunity to test his authority, or lack thereof, to reprimand an employee or take other corrective action should an employee refuse such an assignment or perform poorly.

Dominican: At that time of the hearing, the CBE position at Dominican was vacant. Nonetheless, I conclude that the responsibilities and authority of that position can be gleaned from the terms of the contract with TriMedx and the testimony provided by the three CBEs in place at the other facilities.

ANALYSIS

The term "supervisor" is defined in Section **2(11)** of the Act as:

[A]ny individual having authority, in the interest of the Petitioner, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Pursuant to this definition, individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11); their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and, their authority is held "in the interest of the employer." *Oakwood Healthcare, Inc.*, 348 NLRB at 686, 687 (2006), quoting *Kentucky River Community Care*, 532 U.S. 706, 713 (2001).

Supervisory status may be shown by demonstrating that a putative supervisor has the authority either to perform a supervisory function or to effectively recommend same. See *Oakwood Healthcare, Inc.*, *supra*; *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare Center*, 348 NLRB 747 (2006).

Whether an individual is a supervisor is determined in light of the individual's actual authority, responsibility, and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). The Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C.Cir. 1971); *Chevron, USA*, 309 NLRB 59, 62 (1992). Mere conclusory statements, without such supporting evidence, are insufficient to establish supervisory authority. *Chevron, supra*; *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Although "[a] supervisor may have potential powers, ... theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers." *Oil Workers v. NLRB, supra*, 445 F.2d at 243, quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 149 (5th Cir. 1967). Accord: *Chevron USA, supra*, 309 NLRB at 62; *St. Alphonsus Hospital*, 261 NLRB 620, 630-631 (1982).

Finally, the burden to prove supervisory status is on the party asserting it. See *Oakwood, supra*; *Willamette Industries, Inc.*, 336 NLRB 743 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999).

Chief Engineers:

The evidence shows that Ray Reynolds, formerly the Chief Engineer at **St. Francis**, evaluated the performance of other employees, and on one occasion, successfully effectively recommended an early promotion for an employee. These actions affected employees' eligibility for bonuses or directly affected the corresponding employees' compensation, respectively. Record testimony suggests that the Petitioner had undertaken to groom Mr. Reynolds' successor and intended to fill the position around the time of the hearing. There is no indication that in doing so, Petitioner contemplated altering the duties carried out by Reynolds. Accordingly, I find that the supervisory authority that Reynolds exercised vested in his successor.

The record evidence establishes that **Sequoia** Chief Engineer Sperring is a supervisor within the meaning of Section 2(11) of the Act by virtue of his authority to hire employees and evaluate their respective performances. Petitioner has never rejected Sperring's recommendations for hire, and his evaluations of other employees' performance directly influenced their eligibility to receive a monetary bonus.

Section 2(11) of the Act is read in the disjunctive and possession of any one of the indicia listed therein is sufficient to establish supervisory authority. Having found that the Petitioner has vested the chief engineer positions at St. Francis and Sequoia with the authority to exercise at least one of the twelve supervisory indicia set forth in Section 2(11), I need not address the remaining indicia. Accordingly, I find that the chief engineers at St. Francis and Sequoia are statutory supervisors, and thus exclude them from the bargaining unit.

As discussed above, the chief engineer positions at **St. Mary's** and **Dominican** were vacant at the time of the hearing. Unlike the apparently brief vacancy at St. Francis, the vacancies at St. Mary's and Dominican are longstanding and, to the extent that they still exist, there is no evidence that the Petitioner intends to fill them. Given the paucity of

record evidence about these two positions, Petitioner has not met its burden to establish that they should be excluded from the respective bargaining units as supervisors.

Chief Biomedical Engineers:

The record evidence demonstrates that any supervisory authority that the CBE at each of the four facilities previously possessed has since passed to the outside contractor, TriMedx. Under its service contracts, and in practice since about May 2012, TriMedx has assumed the authority to hire, discipline, evaluate, promote, grant time off, assign work, schedule, and otherwise exercise supervision over employees.

In particular, **St. Francis** CBE Peter Leon-Guerrero testified that since TriMedx assumed control of the biomedical-engineer department, no new employees have been hired into the department; he has not disciplined any employees; and he is no longer responsible for supervising the department.

As to CBEs' authority to evaluate employees, after TriMedx began managing **St. Mary's** biomedical-engineering department, CBE Lew evaluated the performance of one employee on one occasion as the result of a temporary void in TriMedx's appraisal system. Lew has not evaluated another employee since that void was corrected, and Petitioner has not informed Lew that it expects him to evaluate employees in the future. In these circumstances, I find Lew's isolated evaluation of one employee insufficient to support a finding of supervisory status. See *Carlisle Engineered Products, Inc.*, 330 NLRB 1359 (2000) (occasional assumption of supervisory duties too insubstantial to transform what are otherwise rank-and-file employees into statutory supervisors); citing *Quality Chemical, Inc.*, 324 NLRB 328, 331 (1997).

Although **Sequoia** CBE Sandoval was involved in the screening and interviewing of, and in discussions regarding, applicants for hire in April 2013, the evidence is insufficient to establish that he made or even effectively recommended that Petitioner hire Tran, the successful candidate. Sandoval and TriMedx's Rodriguez agreed that Tran was the superior candidate, but Rodriguez independently vetted applicants, disagreed with Sandoval about the merits of some, and selected Tran for hire.

Sandoval's email to Recruiter Bell does not alter this analysis, as it is apparent that Sandoval was filling in for Rodriguez merely to move the hiring process along during Rodriguez's absence, after which Rodriguez did not involve Sandoval in subsequent discussions with Tran before Tran reported for work.

For the reasons discussed in this section, I do not find that the Petitioner has met its burden to establish that the CBEs are statutory supervisors, and I thus decline to exclude them from the bargaining units.

CONCLUSIONS AND FINDINGS

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

- 1) Petitioner is an employer as defined in Section 2(2) and 2(14) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.⁷
- 2) The Union is a labor organization within the meaning of the Act.
- 3) Chief engineers at St. Francis and Sequoia are supervisors within the meaning of Section 2(11) of the Act and are excluded from the existing bargaining unit.
- 4) The evidence regarding the chief engineer positions at St. Mary's and Dominican is insufficient to establish that they are supervisory.

⁷ In the matter considered here, Dignity Health is doing business under three hospital names and wholly owns the fourth. While the parties declined to stipulate to commerce, evidence adduced at the hearing shows that the parties recently entered into a Stipulated Election Agreement in the matter of *Dignity Health d/b/a Mercy San Juan Medical Center*, Case 20-RC-113198. In the Agreement, which I approved on October 24, 2013, the parties stipulated that Dignity Health is a not-for-profit California corporation and that, during the past twelve (12) months, in the course and conduct of its business operations, it derived gross revenue in excess of \$250,000 and purchased and received goods or services valued in excess of \$5,000 directly from points located outside the State of California. Further, I take administrative notice that the parties have repeatedly stipulated to the same commerce facts as they apply to Dignity in cases such as: 20-RC-113305 and 20-RC-079456 and in cases, 32-CA-117961 and 20-RC-088969, which involve two of the four facilities in the instant matter. In addition, I note that Sequoia COO Sherie Hickman testified that Sequoia derives gross annual revenue in excess of \$500,000. Accordingly, I find that the Petitioner is subject to the Board's jurisdiction.

5) The chief biomedical engineers at the four facilities are not statutory supervisors within the meaning of the Act.

ORDER

I hereby order that the chief engineers at Sequoia and St. Francis Hospitals are excluded from the bargaining unit covered by the collective-bargaining agreement between Petitioner's *Dignity Health, Greater Bay Area Division (St. Francis Hospital, St. Mary's Medical Center, and Sequoia Hospital)* and *International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO*, as statutory supervisors. I do not, however, exclude the chief engineer position at St. Mary's. Neither do I exclude the chief engineer position from the unit covered by the collective-bargaining agreement between Petitioner's *Dominican Santa Cruz Hospital and International Union of Operating Engineers, Stationary Local No. 39*. The chief biomedical engineers at St. Mary's, Sequoia, St. Francis, and Dominican covered by these collective-bargaining agreements shall remain included in their respective bargaining units.

DATED AT San Francisco, California, this 7th day March 2014.⁸



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
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San Francisco, CA 94103-1735

⁸ **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 March 21, 2014. The request may be filed electronically through the Agency's website at www.nlr.gov, but may not be filed by facsimile. 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. A failure to file the request for review timely will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of same posted on the website.)