UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286, Petitioner, and SEATTLE CHILDREN'S, Employer.	Case No.: 19-RC-150590 EMPLOYER'S REQUEST FOR REVIEW

I. INTRODUCTION

Seattle Children's requests that the National Labor Relations Board ("NLRB" or "Board") grant this request for review, reverse the Regional Director's Decision and Direction of Election, and dismiss the instant Petition. As described below, the Region erred when it directed an election for two employees of Seattle Children's who do not form a distinct, identifiable segment of the acute care facility's residual nonconforming unit of skilled maintenance employees. The two positions at issue, the Access Control Technician Sr., ("Access Tech") and the Access Control and Radio Communications Officer ("Radio Officer"), are responsible for different work, are subject to different qualifications, and do not work together on a routine basis. Indeed, the Access Tech and the Radio Officer work as much with other unrepresented

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skilled maintenance employees as they do with each other. Accordingly, the proposed voting group is not appropriate: these two individuals do not share sufficient working conditions and interests to constitute an appropriate voting group for a self-determination election.

II. PROCEDURAL HISTORY

The procedural history reveals how the instant Petition may lead to the formation of a fractured unit of skilled maintenance employees at Seattle Children's, in contravention of Congress's admonition against the proliferation of bargaining units in acute care facilities:

- On March 31, 2015, IBEW Local 46 filed a Petition to represent the Electricians at Seattle Children's. *See* 19-RC-149232. IBEW withdrew the petition on April 7, 2015. *Id.*
- On April 9, IUOE Local 286 filed a petition to represent the "locksmiths" at Seattle Children's. *See* 19-RC-149818. IUOE withdrew the petition on April 20, 2015. *Id.*
- On April 15, 2015, IBEW Local 46 filed a Petition to represent the Electricians, Carpenters, and Painters at Seattle Children's. *See* 19-RC-150135. IBEW withdrew the petition on April 21, 2015. *Id.*

On April 21, 2015, the Union filed the instant Representation Petition seeking an election among two employees, the Access Tech and Radio Officer, who are part of a residual nonconforming unit of skilled maintenance employees at Seattle Children's. *See* Ex. A (Petition). Hearing Officer Michael J. Snyder conducted a hearing on this matter on April 30, 2015. *See* Ex. B (Transcripts, designated herein as "T __"). Regional Director Ronald K. Hooks issued a Decision and Direction of Election on May 6, 2015. *See* Ex. C (Decision). Seattle Children's seeks review and reversal of the Regional Director's Decision.

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III. FACTUAL OVERVIEW

A. The Parties

Seattle Children's is a pediatric acute care facility located in Seattle, Washington. The Union currently represents a nonconforming unit of skilled maintenance employees at Children's, comprised of Licensed Steam Engineers, Building Maintenance Technicians, Building and Plant Maintenance Technicians, and Licensed Plumbers. T 15-17. Seattle Children's also employs other skilled maintenance employees: Painters, Carpenters, Electricians, a Supervisor of Facility Operations, the Access Tech, and the Radio Officer, all of whom are currently unrepresented. T 14-15, 17-20, 28.

B. The Petition

IUOE filed this Petition for Election on April 21, 2015 for the "Access control Engineers" at Children's, and excluding "Supervisors, guards, and others defined in the act." Ex. A. The petition seeks representation of the Access Tech and the Radio Officer, and excludes the other unrepresented skilled maintenance employees. *Id.*; T 9, 14-19.

C. The Access Control Technician Sr. Works as a Locksmith

The Access Control Technician Sr. ("Access Tech") essentially performs the function of a locksmith. T 21-22, 70-71; *see also* Ex. D (Access Control Technician Sr. Job Description). The Access Tech maintains and repairs doors, locks, closures, and combination locks, and maintains the related inventory of hardware. *Id.* The "Job Summary: states:

> Maintain hospital access control and key architecture and **hardware components**. Identify long-term access control **hardware strategies** for organization including the following: **key architecture design, integrated hardware**, and access control system components. Work closely with the Safety Systems, Security Services, Information Services, Psychiatry, Facilities, and Engineering Departments to create comprehensive access levels for the Hospital's proximity card system; design and maintain an integrated access control system; **respond to and repair all**

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> **defective locks; issue new, and replace lost keys**; and **install, service and maintain door hardware** for all Hospital facilities.

See Ex. D, at p.1 (emphasis added). The Access Tech's "Primary Job Responsibilities" focus on maintaining hardware. *Id.* at p. 2. To carry out his role, the Access Tech uses basic hand tools related to physical manipulation of doors and locks. T 23. His workspace consists of a shop area in the "Ocean 7" garage on the main hospital campus. T 23. When performing his locksmith duties, the Access Tech partners on jobs with Carpenters, Painters, and Building Maintenance Technicians at Children's. T 26-27, 73, 75, 78-79. Access Tech Raul Quezada testified about those working relationships:

> My work is just -- I mean, it's a part of the whole puzzle. I mean, I got electricity that goes out to power supplies. You got carpentry, cabinetry that breaks that you need to -- painters to, you know, re-grout or refinish areas where I've installed new doors, doors that get scratched. You go to the BMTs. They are a hand -- you know, they give me a hand with stuff. (T 73:11-17.)
>
> . . .
>
> So I'll coordinate with [the Painters], bring them doors and have them paint it to the facility's colors. And what that does is keeps the odor down within our facility, so we paint it in a paint booth, get it ready to go and then we go out. And then I'll -- at times, I'll use a carpenter to help me hang the door, because they're available or you know, it's something that they can help me with because they are, you know, doing small jobs and they're accustomed to removing door frames, hanging doors. (T 79:4-12)

In contrast, the Access Tech does not partner with the Radio Officer on projects: "we haven't had any projects where we actually work together." T 85:15-16.[1]

The Access Tech position requires a "High School Diploma or equivalent." T 22; Ex. D. The Access Tech cannot perform radio-related responsibilities for which a license or specialized knowledge is required – i.e., anything beyond basic triage in an emergency. T 37, 102. While not at work, the Access Tech is always on call, carries a pager, and receives on call and callback

[1] In his testimony, the Access Tech at times refers to the Radio Officer as the "Radio Specialist." *See e.g.*, T 88:1.

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premiums. T 24-25. When the Access Tech is on vacation, various employees may attempt to cover his tasks, including Building Maintenance Technicians and at times the Radio Officer, otherwise the duties are hired out to a vendor. T 36-37.

D. The Access Control and Radio Communications Officer Manages Radio Systems, FCC Compliance, and Supports Emergency Response Teams

The Access Control and Radio Communications Officer ("Radio Officer") focuses on radio-related responsibilities, computer programming of proximity cards (badges), and emergency response. T 28-29, 31, 33, 94-95, 120-121; *see also* Ex. E (Access Control and Radio Communications Officer Job Description).[2]

The Radio Officer's tasks range from physical maintenance to strategic emergency planning and ensuring compliance with FCC radio regulations. *Id.* The "Job Summary" states:

> Administer Access Control security and **radio communication device systems**, including access levels and system changes. Work closely with the Safety Systems, Information Services, Security Services, Psychiatric, Facilities, and Engineering Departments to fulfill responsibilities. **Develop and oversee hospital proprietary radio communication systems and amateur radio program, including the development of long-term radio communication and amateur operator procedures and strategies for the organization. Expand radio systems with facility growth to ensure multi-facility coverage that meets operational and safety objectives. Administer licenses and frequencies in compliance with the FCC. Respond to emergency situations and support system operations.**

See Ex. E, at p. 1 (emphasis added). The "Primary Job Responsibilities" focus on radio maintenance, regulatory compliance, and emergency response. *See Id.*, at pp. 2-3. The Radio Officer's workspace is in the Security Department on Children's main campus, and he spends

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[2] The Decision erroneously presumes that the Radio Officer spends 25% of his time on lock-related tasks without any foundation for such conclusion, indeed conceding "this last 25 percent was not specified in the record." *See* Ex. C, at p. 3. Rather, the record shows that the Radio Officer fulfills emergency response functions, provides staff training, and attends community and regional disaster meetings and conferences as a representative of Seattle Children's in addition to his radio maintenance and proximity card duties. T 33, 38, 95; Ex. E.

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75% of his time in that workspace. T 32, 105. The Radio Officer uses communications-focused tools, including a meter for radio frequencies, a receiver and a spectrum analyzer. T 35, 96. The Radio Officer partners with other unrepresented skilled maintenance employees to complete his tasks, including "[a] lot of interaction with virtually every other skilled trade in the hospital, and contractors." T 100:2-3.

In addition to maintaining and controlling custody of the physical handheld radios and chargers, the Radio Officer manages antennas on the premises: he installs, moves, or removes antennas, and establishes "exclusionaries" to keep people safe from RF waves emitted from the antennas. T 28. Because the Children's radio system uses radio waves across 20 channels, the Radio Officer works with the FCC to ensure regulatory compliance, for example to ensure that Children's does not use the same frequencies as local police. T 28, 94-95. The Radio Officer plays an important emergency response role at Children's. T 33, 95-96. He would be present during an emergency response to ensure that communications are set up and working properly between Children's and state or local responders, and part of his role involves attending conferences with city, county, and state emergency officials on behalf of Children's. T 33, 38, 95-97. The Radio Officer also has primary responsibility for maintaining Children's proximity ("prox") card access system, including granting, changing, and removing security settings. T 31, 94.

The Radio Officer position requires an Associate's Degree, and a Bachelor's Degree is preferred. *See* Ex. E. An "Amateur Radio License (General Level) through the Federal Communications Commission" is also required, meaning the Radio Officer has specialized scientific knowledge, as Radio Officer Khris Laplante explained:

> Q What did it take to get the amateur radio license?

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> A Understanding of basic physics, radio procedures, legal matters surrounding operations where you can operate in bans, what bans and where. The radio spectrum is not infinite; it's very finite and it's very easy to cause interference to other 16 services if one's not careful. So understanding these concepts.

T 98:12-18; Ex. E. Additionally, "Emergency Communications Certification through the American Radio Relay League" and "Communications Lead & Technical Certification through the Department of Homeland Security" are preferred qualifications for the Radio Officer position. *Id.* Unlike the Access Tech, the Radio Officer is not routinely "on call," but may return to work if "available" for no additional premium. T 35-36. When the Radio Officer is on vacation, his radio communications duties are hired out to a vendor on an as-needed basis, and the Security personnel serve as back-up for proximity card access work. T 37, 89.

E. All Skilled Trades

All skilled trades employees who report to Rob Olsen, Director of Building and Maintenance, including but not limited to the Access Tech and the Radio Officer, meet in a daily huddle each morning to review prior work issues and safety concerns and to preview the day's work plans. T 91, 119. Likewise, all skilled trades employees use the "TMS" system to retrieve work orders according to their respective areas of expertise. T 115. The Radio Officer and Access Tech rarely work with each other on the same project at the same time. T 99. Rather, they each work closely with other skilled trades including carpenters, painters, electricians, and building maintenance engineers. T 75-76, 102-104.

IV. ARGUMENT

Although both position titles contain the words "Access Control," the similarities between the two positions essentially end there. They perform different work: one is, for all intents and purposes, a locksmith, while the other manages radio equipment, licensure and regulatory issues, and emergency response. The positions require different qualifications and

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credentials: the Access Tech would not be qualified to perform the radio work for which the Radio Officer is responsible. The two employees also have different workspaces across the campus from each other, different responsibilities and pay with respect to being on call, take breaks in different locations, and rarely interact with each other outside full team huddles where there are other skilled maintenance employees, both represented and unrepresented. T 91. To the extent they have any similarities (such as participation in the same compensation structure and employee benefits), those are shared by many other employees at Children's. T 59. Moreover, the functional integration and work interaction of the Access Tech and Radio Officer is not materially different from their integration and interaction with other unrepresented skilled maintenance employees. Their lack of commonality and their equivalent integration with other unrepresented skilled maintenance employees demonstrate that the Access Tech and Radio Officer do not form an appropriate voting group.

A. The Petitioned-For Voting Group Does Not Comprise a Distinct, Identifiable Segment of the Acute Care Facility's Workforce Under *St. Vincent.*

The Board has long recognized the special status of acute care facilities, acknowledging that undue proliferation of bargaining units fragments the workforce and may disrupt patient care. *McLean Hospital Corporation*, 311 NLRB 1100, 1113 (1993) (recognizing "the Congressional mandate against undue proliferation of bargaining units" at acute care facilities); *see also*, Rule 103.30; GC Memoranda 91-3 at p. 8 (the Hearing Officer should take into account "the Board's concern with proliferation of units"). To prevent such undue proliferation, the Rule 103.30 was promulgated to identify eight bargaining units at acute care facilities, including "skilled maintenance."

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In *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (2011)[3], the Board ruled that an incumbent Union representing a nonconforming unit at an acute care facility "may add unrepresented employees to its existing unit, [*only*] if the employees sought to be included share a community of interest with unit employees **and** '*constitute an identifiable, distinct segment so as to constitute an appropriate voting group.*'" *St. Vincent*, *supra*, at p. 2, *quoting Warner-Lambert Co.*, 298 NLRB 993, 995 (1990) (emphasis added). The Board reasoned, "the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment." *Id.* In ruling that phlebotomists at St. Vincent formed "an identifiable, distinct segment," the Board observed that they "perform the **same distinct functions**, are in the **same distinct employee classification**, are organizationally included in the same administrative division in the hospital laboratory, **work in the same location** in the Employer's hospital, and have the same supervision." *Id.* at pp. 2-3 (emphasis added). In sum, the Board found that the group of phlebotomists "is neither an arbitrary nor a random grouping of employees." *Id.* at p. 2; *see also Rush University Medical Center*, 13-RC-139061, RD Decision and Order, at p. 3 (Dec. 10, 2014) (a petition should be dismissed when the petitioned-for "classifications do[] not constitute an appropriate voting group for a self-determination election.")

Here, the petitioned-for classifications of Access Tech and Radio Officer lack the commonality of function, classification, work location, and other characteristics identified in *St. Vincent*, and "thus cannot be characterized as an identifiable distinct segment" appropriate for a

[3] Children's believes that *St. Vincent* erroneously interpreted the NLRB's rules about bargaining units in acute care hospitals and, by permitting self-determination elections of less than a full residual unit, was wrongly decided. Nevertheless, for the purposes of this Request for Review, Children's contends only that the employees identified in the petition here do not constitute an identifiable, distinct segment. Even if *St. Vincent* were correctly decided, this petition must still be dismissed.

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self-determination election. *See also Rush, supra*, at p. 5. Rather, they perform "vastly disparate functions" that "are wholly unrelated to each other, and in no way fungible." *Id.* at p. 18. Thus, they form an "arbitrary" and "random" grouping, not of the "same distinct employee classification" and who do not work in the same location *See St. Vincent, supra.*

The different qualifications and credentials include the following:

Access Tech	**Radio Officer**
Job Summary	*Job Summary*
Maintain hospital access control and key architecture and hardware components.	X
Identify long-term access control hardware strategies	X
[R]espond to and repair all defective locks; issue new, and replace lost keys; and install, service and maintain door hardware for all Hospital facilities.	X
X	Develop and oversee hospital proprietary radio communication systems and amateur radio program . . . .
X	Administer licenses and frequencies in compliance with the FCC.
X	Respond to emergency situations and support system operations.
Required Credentials and Education	*Required Credentials and Education*
X	Amateur Radio License (General level) through the FCC
X	Associate's Degree
Knowledge, Skills, and Abilities	*Knowledge, Skills, and Abilities*
X	Advanced knowledge of radio communications systems
X	Advanced knowledge of . . . electronics, networks
X	Knowledge of specialized communications applications, including Closed Circuit Television Systems (CCTV)
X	Knowledge of electronic theory and applications
X	Advanced mechanical skills

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X	Incident Command and emergency communications skills
X	Able to develop and provide procedural training for a communications response team
Primary Responsibilities and Accountabilities	*Primary Responsibilities and Accountabilities*
Enforce, regulate, update, revise, and promote Children's key and access control program	X
Organize and maintain equipment and supplies for ongoing use and inventory	X
Provide installation, on-site coordination, and general planning for renovation and new construction of Access Control systems and projects	X
X	Coordinate and lead the C.H.A.R.G.E.R. amateur radio program, identifying HAM operators; develop emergency response protocols and procedures; develop training materials and schedule training sessions, educating staff on proper usage, best practices and troubleshooting methods; maintain records of staff completion of drill and training sessions, and monitor/document competencies; participate in disaster drills. Respond to inclement weather and assist in emergency operations.
X	Administer, maintain and repair radio system devices in compliance with the FCC; maintain licenses. Develop educational and training material for radio systems. Provide oversight and technical input for radio communications projects. . . .

The Region erroneously concluded that the Access Tech and Radio Officer form an identifiable and distinct voting group because they "are the only two positions that maintain and repair locks. This alone is initially sufficient to qualify the classifications as an identifiable and distinct segment of the workforce." Ex. C, at p. 5. This conclusion focuses on minor matters for the workforce. The Radio Officer rarely deals with locks, and other employees also assist the Access Tech. The Region's conclusion ignores record evidence demonstrating that the Radio Officer focuses on radio maintenance, FCC compliance, emergency response, and proximity card

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programming duties, and attends to physical locks only on an as-needed, fill-in basis. To salvage the Decision, the Region adds that the two positions also include "all employees primarily responsible for the maintenance and repair of the Employer's radio systems." *Id.* However, it is undisputed that just one employee carries such responsibility for the radio systems – the Radio Officer. The Access Tech may do triage of radio problems when the Radio Officer is off work, but outside vendors are called for any substantial radio issues. T 37, 89, 102. Moreover, the Region failed to explain how a group comprised of one employee responsible for locks and another responsible for radios but excluding all other unrepresented skilled maintenance employees in the same department was not arbitrary or random.

The Decision also notes that the two positions constitute the "only certified locksmiths employed by the Employer." *Id.* The fact that the Radio Officer is certified as locksmith is a historical coincidence, based on that employee's prior responsibilities. T 101. His current functions do not require that certification or skill.

Likewise, the Region erroneously ignored evidence that the Radio Officer and Access Tech work in different areas of the facility. Ex. C at 5. In finding that the "nature of work performed by skilled maintenance employees often requires them to work in one area in a building on a discrete task and then move to another area to perform some other maintenance or repair task," *Id.*, the Region overlooked the Radio Officer's testimony that he spends 75% of his worktime in his office that is housed within the Security Department. T 105. Evidence that the Access Tech and Radio Officer work in separate locations and rarely work directly together on their tasks and projects demonstrates that the petitioned-for voting group does not meet the requirements established in *St. Vincent* for a self-determination election among a subgroup residual to the nonconforming unit of skilled maintenance employees at Children's.

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In concluding that the Access Tech and Radio Officer do form an appropriate voting group, the Regional Director erroneously relied on *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). Not only does *Capital Cities* not involve an acute care facility or the attendant concerns about disruption to health care, the analysis in fact supports the conclusion that the instant Petition does not identify a distinct, identifiable segment of the workforce.

In *Capital Cities*, the petitioner sought to represent "art department" employees, either as a new stand-alone unit or by adding them to the existing unit comprised of employees in the engineering and program departments. 194 NLRB at 1129-30. Although the employer had no "art department," the Regional Director concluded that certain employees engaged in artistic functions formed an appropriate voting group for purposes of being added to the union, but not as a stand-alone unit. 194 NLRB at 1130. On review, the Board overruled the Region and dismissed the petition. *Id.* The Board reasoned that the artists "constitute and an arbitrary segment of the unrepresented employees . . . [and therefore] they do not constitute an appropriate voting group." *Id.* Notably, the Board recognized that, like the Access Tech and Radio Officer here, the petitioned-for artists had a substantial community of interest with other unrepresented employees "by reason of common supervision, work location, and integration of functions." *Id*

B. The Board's Description of a "Readily Identifiable" Group in *Specialty Healthcare* and *Neiman Marcus* Also Demonstrates that the Access Tech and Radio Officer Do Not Constitute a Distinct Voting Group.

The Region's Decision is not only inconsistent with *St. Vincent*, but also with the recent Board pronouncements defining when employees make up readily identifiable groups. Although much of this law arises in the context of determining whether a bargaining unit is appropriate, the same factors must be examined in analyzing whether a voting group for a self-determination election is sufficiently distinct. *Specialty Healthcare and Rehabilitation Center,* 357 NLRB No.

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83 (2011) uses the phrase "readily identifiable," 357 NLRB No. 83, at pp. 1, 10-11 n.25, while *St. Vincent* uses the term "identifiable, distinct segment." *St. Vincent*, *supra*, at p. 2. In either case, the proposed group must be internally consistent and externally separated.

First, for externally separated, the Board has emphasized that the employer's organizational structure provides the keystone. *The Neiman Marcus Group, Inc.*, 361 NLRB No. 11 (2014), slip op. at 3. *See also Specialty Healthcare and Rehabilitation Center*, 357 NLRB No. 83 (2011), slip op. at 9 n.19 ("[i]t is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how the employer has chosen to structure its workplace.")

Here, the Access Tech and Radio Officer are included in a department under Rob Olsen. The department contains members of the existing nonconforming unit, *but also contains skilled maintenance employees (electricians) who are neither in the existing unit nor in the petitioned-for voting group*. *See* Ex. 1; T 14-15. Accordingly, the petition seeks to cleave two members of the department from the other unrepresented employees.

Second, *Specialty Healthcare* helpfully describes the factors that make a group internally consistent: "job classifications, departments, functions, work locations, skills, or similar factors." Here, each of those factors weigh against finding that the Access Tech and Radio Officer are an identifiable distinct segment:

- They are in different job classifications;
- They are in the same department with other unrepresented skilled maintenance employees, the Electricians;
- Their functions are dramatically different;

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- They rarely, if ever, work in the same place at the same time, and their workspaces are in different parts of the hospital (one in the garage and the other in the Security office); and
- The skills for a Radio Officer are different from those required for the Access Tech, and the Access Tech cannot perform those functions.

The few and insignificant areas of overlap between the two positions cannot provide an internally consistent voting group.

V. CONCLUSION

Because the Access Tech and Radio Officer do not form a distinct identifiable voting group, the Board should grant Children's Request for Review and dismiss the Petition.

Dated at Seattle, Washington, this 18th day of May, 2015.

Respectfully submitted,

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