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

QUEEN OF THE VALLEY MEDICAL CENTER

Employer

and **Case 20-RC-185503**

NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)

Petitioner

DECISION AND DIRECTION OF ELECTION

Queen of the Valley Medical Center (Employer) operates an acute care hospital in Napa, California. By its amended petition, National Union of Healthcare Workers (Petitioner) seeks to represent a unit consisting of all of the Employer's nonprofessional employees, including technical employees, employed at the Employer's facilities located at 1000 Trancas Street, 980 Trancas Street, 3448 Villa Lane, and 3421 Villa Lane in Napa, California; but excluding all other employees, skilled maintenance employees, business office clerical employees, confidential employees, guards and supervisors as defined in the Act.

In the October 12, 2016 *Order by Acting Regional Director under NLRB Rule 102.66 (c) Concerning Issues to be Litigated at Hearing,* I anticipated and approved in advance Petitioner's request at hearing to amend its petition in order to clarify the unit sought. At the October 13 hearing, Petitioner amended its petition, as described above, and took the position that the unit sought conforms on its face to the Board's rule set forth in 29 CFR, Section 103.30, i.e. the Board's Healthcare Rule. Specifically, Petitioner argued that the unit sought is a combined unit of all technical employees and all other nonprofessional employees (with stated exclusions), which are separate appropriate units under subsections (a)(4) and (a)(8) of the Board's Healthcare Rule, and which are together an appropriate unit under subsection (f)(5) of the Board's Rule, which allows for the combination of two or more of the eight appropriate units enumerated in the Rule. Briefly, the Rule reads in pertinent part as follows:

> Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National

Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

(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.
(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

At the hearing, the Employer did not take the position that a combined unit of all nonprofessional employees, including technical employees, but excluding skilled maintenance employees, business office clerical employees, and guards is inappropriate. Rather, it introduced a list of job classifications which the Employer believes belong in the petitioned-for unit, and when the Petitioner disagreed with a small portion of those classifications, the Employer argued that their exclusion would render the unit inappropriate. However, the issue of whether certain classifications fall within the broad conforming unit has no bearing on the appropriateness of the unit. Accordingly, it is uncontroverted, and I find, that the unit sought by the Petitioner's amended petition conforms to the Board's Healthcare Rule and is thus an appropriate unit.

Deferral of Eligibility/Inclusion Issues

As discussed above, the Employer introduced a list of job classifications which it asserts belong in the unit and reflect the correct job titles of the unit employees. The Petitioner agreed that all of the job classifications on the Employer's list are properly included in the approximately 427-person unit except for approximately 22 employees in 14 specified classifications.[1] In

[1] The classifications disputed by Petitioner are:
1) Community program/service coordinator
2) Community program/service educator
3) Community health worker
4) Community health worker-PD
5) Fitness instructor PD
6) HIM quality analyst
7) Lead community program/service analyst
8) Patient account rep
9) Point of care coordinator
10) Safety coordinator

addition, Petitioner contends that the supply chain coordinator, who is not on the Employer's list, should be included in the unit. I shall defer resolution of those eligibility/inclusion issues to post-election proceedings, if necessary. As indicated in my *Order*, I shall also defer resolution of the inclusion of the coders and lead coder, if necessary, to the extent their unit placement is still in dispute. Taken together, the total number of employees whose eligibility/inclusion is in dispute is approximately 26 of 427 (approximately 6% of the overall unit); a number too insubstantial to warrant litigation at this pre-election stage. The parties may, of course, challenge the ballots cast by any of those, and other, disputed individuals at the time of the mail-ballot count, directed below.

In sum, I find that the petitioned-for unit, as amended, constitutes an appropriate unit for the purposes of collective bargaining under the Board's Healthcare Rule, and I am directing an election among employees in that unit, as set forth herein:

> All nonprofessional employees, including technical employees, employed by the Employer at its facilities located at 1000 Trancas Street, 980 Trancas Street, 3448 Villa Lane, and 3421 Villa Lane in Napa, California; but excluding all other employees, skilled maintenance employees, business office clerical employees, confidential employees, guards and supervisors as defined in the Act.

In reaching my conclusions, I have considered but rejected the Employer's arguments that the petition must be dismissed and a new petition filed because the amendment of the petition increases the size of the unit and the number of included job classifications. The record shows that by its original petition, Petitioner sought approximately 400 employees, and the amended petition has not significantly altered that number. Contrary to Employer's contention, Petitioner does not lack the requisite showing of interest to support its amended petition.

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Union of Healthcare Workers (NUHW).**

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11) Senior inventory clerk
12) Staffing coordinator
13) Transcription coordinator
14) Transcriptionist.

A. Election Details

The election will be conducted by U.S. mail as set forth in the forthcoming Notices of Election. After careful consideration of the parties' positions and evidence, I have decided for the reasons that follow that a mail ballot is appropriate for the election in this matter and will better ensure the effective exercise of employees' Section 7 rights. In *San Diego Gas and Electric*, 325 NLRB 1143 (1998), the Board set forth guidelines clarifying the criteria used in determining whether or not to conduct an election by mail, including employee scatter, the impracticality of a manual election, and the prudent expenditure of Agency resources.

Here, the Employer operates an acute-care hospital on a 24/7 basis, which results in employees working staggered and variable schedules. While the Petitioner seeks a one-day election on October 26, the Employer asserts that two full days (October 26 and 27) of manual balloting are required in order to account for the absence of approximately half of the bargaining unit on any given day. Because approximately 60% of the unit employees live outside of Napa, conducting the election on only one day would require those on their day off to travel a substantial distance to vote. Moreover, because many part-time and per-diem employees have second jobs, those employees might not be available to vote at all. The Employer urges for 16 hours of polling over six polling sessions because patient care is paramount, the schedules vary constantly, and there is no guarantee that voters can be released at any given time, as many classifications consist of only one employee. All told, the record establishes that conducting two full days of polling could potentially net as many as 389 employees out of approximately 427, depending on the variable work schedules.

Although both parties generally oppose a mail-ballot election, in these circumstances it is evident that manual balloting would likely disenfranchise approximately 10% of the voting unit, if not more. While manual balloting is the Board's preferred method, in these circumstances, where employees are scattered geographically and by work schedule, and others might be unavailable all together due to secondary employment, it appears impractical, if not impossible, to gather the voting unit at a common place at a common time in order to vote.

I also note that, even if the proposed manual balloting were feasible, it would nevertheless require the Region to deploy two or more Board agents for two full days and three overnight stays in the field. While conserving scarce Agency resources is not a primary factor, common sense and the sound stewardship of public resources dictate that the Region put its agents' time to more efficient use, particularly where, as here, conducting by mail will better

serve to enfranchise the entire voting unit.[2] See *California Pacific Medical Center,* 357 NLRB 197 (2011); and *M & N Mail Service, Inc.*, 326 NLRB 451 (1998), citing *San Diego Gas and Electric,* supra.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 15, 2016,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by Friday, October 21, 2016. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font

[2] Neither party has indicated that any voters will find it difficult to understand the nature of the election or wording on the ballot, such that they would benefit from the ability to speak to a Board agent at a polling place.

must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the forthcoming Notices of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 19, 2016

/s/ Jill H. Coffman

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