UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

SPECTRA EAST, INC.[1]

Employer

and **Case 22-RC-185486**

1199 SEIU UNITED HEALTHCARE
WORKERS EAST, NEW JERSEY REGION

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit of all full-time, regular part-time, and per diem lead scientists, scientists, technicians and laboratory assistants employed by the Employer in the following departments at its Rockleigh, New Jersey laboratory: chemistry,[2] diagnostic immunology, environmental, hematology, microbiology, and Spectra East diagnostics. The Employer maintains that the unit sought by the Petitioner is not appropriate, and that the smallest appropriate unit must additionally include employees in the following classifications: specimen handler, lead specimen handler, specimen processor, specimen resolution representative, lead specimen resolution representative, and client services scanner.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. On the issue of the appropriateness of the unit, the Petitioner argues the employees in the petitioned-for unit are a readily identifiable group who share a community of interest, and that the Employer failed to show that the employees it seeks to include share an overwhelming community of interest with the petitioned-for unit, that the petitioned-for unit is otherwise fractured, or that the identity of the petitioned-for unit has been so merged with that of other employees that the only appropriate unit would be that which the Employer proposes. Specifically, the Petitioner argues the employees in the petitioned-for unit track the Employer's departmental lines and that these employees are all engaged in the discrete function of analyzing specimen samples. In contrast, the Employer argues that the petitioned-for unit is not a clearly or readily identifiable unit and due to the interchange of employees in its laboratory facility, the Employer's specimen handlers, specimen processors, specimen resolution representatives, and client services scanners share an overwhelming community of interest with the petitioned-for employees. Thus, the Employer argues that the only appropriate unit is a more

[1] The name of the Employer appears as amended at the hearing, to reflect its correct legal name.
[2] Although the Petitioner seeks to include all atomic absorption department employees in its petitioned-for unit, the hearing confirmed that these employees are actually part of the Employer's chemistry department, which is included in the petitioned-for unit.

expansive unit essentially covering all non-clerical and supervisory employees in its Rockleigh laboratory.

As described below, based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) enfd. 727 F.3d 552 (6th Cir. 2013), I find that the employees in the petitioned-for unit are a readily identifiable group with a community of interest. Additionally, I find the Employer did not meet its burden to rebut this initial determination and establish that all of its employees fitting the petitioned-for classifications share such an overwhelming community of interest with the unit employees that a laboratory-wide unit is the sole appropriate unit. Therefore, I direct that an election be held for the following bargaining unit[3]:

> All full-time, regular part-time, and per diem lead scientists, scientists, technicians and laboratory assistants employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.[4]

I. FACTS

The Employer is engaged in the operation of a scientific laboratory in Rockleigh, New Jersey. This laboratory processes and analyzes blood samples and other specimens for renal and clinical patients. Ketan Patel and Lloyd Castillo are the co-directors of this facility. This lab operates on a 24/7 basis with three different shifts. The morning shift is 8.5 hours with staggered start times beginning anywhere between 5:00am and 7:00am. The afternoon or evening shift is 8.5 hours with staggered start times beginning anywhere between 2:00pm and 4:00pm. The night shift is also 8.5 hours and its start times range from 10:00pm through 12:00 midnight. Libaba Kure is the manager for the evening shift.

There are approximately 181 employees in the petitioned-for unit, all of whom work at the Rockleigh facility. There are approximately 148 additional employees in the unit proposed by the Employer.

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[3] The parties stipulated, and I find, that the lead scientists and scientists involved in this matter are professional employees within the meaning of Section 2(12) of the Act. Because the Petitioner seeks an election in a mixed Professional--Non-professional bargaining unit, please refer to Section III, subsection 4 for a discussion of the application of the *Sonotone* procedure to the directed election herein.

[4] The parties stipulated, and I find, that there is no contract bar, or other bar, to an election.

Facility Layout

The laboratory consists of two floors. The first floor is open concept meaning that there are very few walls obstructing one's view from one end of the laboratory to the other. The first floor contains the following departments: accessioning, specimen handling, specimen resolution, Spectra clinical research, diagnostic immunology, chemistry (one portion), hematology, and lab outsourcing. The second floor consists of the microbiology, environmental, chemistry (one portion), specimen resolution, and specimen research departments. The second floor is also open concept with the exception of the atomic absorption section, which is part of the chemistry department. The atomic absorption section is walled off to protect instrumentation which is sensitive to heat and humidity.

General Overview of Workflow

The laboratory receives approximately 60,000 patient samples for testing each day. Generally, the majority of samples arrive during the morning, but samples can continue to arrive throughout the day. Samples come to the facility packaged in boxes. These boxes arrive at the loading dock and are opened on the first floor of the facility. Specimen handlers in the Accessioning and Specimen Handling departments[5] open the boxes, label and scan the samples to ensure that the correct identifying information for the samples is entered into the Employer's laboratory information system. The specimen handlers then aliquot the samples, meaning that they are transferred from one tube to another. The tubes (containing blood samples) are loaded onto trays and delivered to one of the laboratory departments for testing. At peak times, about 80 lab employees receive and process these samples.

After the samples are analyzed, they are delivered to various areas of the laboratory for storage. This process is called archiving. Other tasks primarily performed by the Specimen Handling and Accessioning departments include inspecting "pendings" reports to determine whether there are still tests to be performed on the samples, and "placing" filters into test tubes to protect the integrity of the samples.

Specimen handlers, specimen processors, and specimen resolution representatives have overlapping responsibilities with a few distinctions. Specimen processors travel to various dialysis clinics to collect and process samples which are then brought to the Employer's laboratory for testing. There are 5 specimen processors in the Employer's facility, all of whom work in the Specimen Handling department. Specimen resolution representatives speak with clients, physicians, and other clinicians over the telephone to clarify orders. There are 9 specimen resolution representatives and 2 lead specimen resolution representatives, all of whom work in the Specimen Research department.[6] Additionally, client services scanners take paper requisition documentation that accompanies the samples and scans them into the laboratory information

[5] Yorladys Fiscal is the manager for both the Specimen Handling and Accessioning departments. Dindo Basamelia is the evening supervisor for the specimen handling department, working from 8:00pm until 4:00am.
[6] Kathleen Vogt is the manager for the Specimen Research department. This department is also known as the Specimen Resolution department.

system. There are 2 client services scanners and both of these employees work in the Specimen Research department.[7]

The Petitioned-For Unit Departments

The chemistry department tests for routine chemistry analytes contained in the human body to aid diagnosis.[8] According to the Employer's schematic diagram of its facility, the chemistry department is located in the 2nd and 4th quadrants of the first floor.[9] The department consists of 31 employees who work as lead scientists[10] (3), scientists (16), technicians (1), and laboratory assistants (11). Philip Vaiigian is the chemistry department manager and Abid Mahmood is the atomic absorption supervisor.

The diagnostic immunology department tests for various analytes that have an antibody or antigen effect. According to the Employer's schematic diagram of its facility, the diagnostic immunology department is in the 4th quadrant of the first floor. The department consists of 28 employees who work as lead scientists (1), scientists (11), technicians (6), and laboratory assistants (10). Jawaid Arain is the diagnostic immunology department manager.

The environmental department tests fluids from end stage renal disease patients sent from Fresenius clinics.[11] Whereas all of the other departments perform both renal and clinical testing, the environmental department only performs renal testing. This department is located on the 2nd floor of the Employer's facility in a large open space it shares with the microbiology lab. The department consists of 14 employees who work as lead scientists (1), scientists (6), technicians (1), laboratory assistants (4), and specimen researchers (2). Specimen researchers perform similar customer relations functions to specimen processors but they work specifically with the environmental lab. Also, in this department, samples are processed and retrieved differently than other departments because there are no blood samples tested here. Consequently, lab assistants often ferry samples directly to the environmental lab for analysis. Gerry Sorondo is the environmental lab manager and Rhandy Belen is the lab supervisor.

The microbiology department tests human blood or body fluids for various microorganisms. This department is located on the 2nd floor of the Employer's facility in a large open space it shares with the environmental lab. The department consists of 33 employees who work as lead scientists (1), scientists (19), technicians (1), laboratory assistants (11), and specimen researchers (1). Like in the environmental lab, specimen researchers here perform the customer relations functions of specimen resolution representatives but they do so exclusively for the microbiology department. And also like the environmental lab, non-blood specimens are brought directly to the department by

[7] Specimen handlers perform this scanning work on the night shift.
[8] The atomic absorption section tests for various heavy metals in the body, including aluminum.
[9] As noted earlier, the atomic absorption department is also located on the 2nd floor.
[10] The parties stipulated that none of the "lead" employees in the petitioned-for unit and non-petitioned-for unit are supervisors within the meaning of Section 2(11) of the Act.
[11] Fresenius Medical Care North America is the parent company of the Employer.

lab assistants. Gerry Sorondo is the microbiology lab manager. The lab supervisor position is currently vacant.

The hematology department tests for specific blood components in the samples, e.g. red and white blood cell counts. According to the Employer's schematic diagram of its facility, the hematology department is located in the 1st quadrant of the first floor. The department consists of 40 employees who work as lead scientists (3), scientists (19), technicians (4), laboratory assistants (13), and as a specimen handler (1). This specimen handler, Maria DeRojas, is currently in a training program to become a lab technician. It is unclear from the record as to whether there will continue to be a specimen handler working in the hematology department when DeRojas permanently transfers to her new position. Silvia Trainor is the hematology department manager and Erik Glaser is the department supervisor.

The Spectra East Diagnostics (formerly known as Shiel) department exclusively tests clinical patient samples.[12] It is unclear from the record the purpose or scope of these clinical tests. According to the Employer's schematic diagram of its facility, the Spectra East Diagnostics department is located in the 4th quadrant of the 1st floor. The department consists of 35 employees who work as scientists (18), technologist[13] (1), technician (2), and laboratory assistant (14). According to the Employer's flow chart for this department, there does not appear to be a department manager or supervisor.

Scientist and Technician Responsibilities

Scientists and technicians run analyzers in each of the petitioned-for departments. Analyzers are the machines that test each of the samples brought into the laboratory. Each department has multiple analyzers and both scientists and technicians are responsible for ensuring that these analyzers are running properly. For example, there are approximately 8 analyzers (5 renal and 3 clinical) in the chemistry department. Both scientists and technicians review the results of the tests and each has the ability to report the test results to the prescribing physician. In practice, all scientists release results to physicians while technicians can release these results under the guidance of the scientist. According to co-laboratory director Lloyd Castillo, the only difference between a technician and scientist's role is if there is complexity involved in the specific test or if the technician has questions. In these cases, the higher educated scientist will review and release the test results.

Scientists, technicians, and laboratory assistants all "start-up" the analyzers on the night shift. This process takes anywhere from 40 minutes to 2 hours for each machine. To "start-up" the analyzers, reagents are filled in based on precise quantities and types of reagent. Each of the machines is cleaned and calibrated on the night shift and quality control tests (which last about 20 minutes) are run at regular intervals throughout the day to ensure that test result readings are

[12] The Employer acquired Shiel Diagnostics about 3 years ago and moved its testing operations from a Brooklyn, New York facility to the Employer's existing Rockleigh facility.

[13] A technologist is a term used interchangeably with scientist but it is unclear from the record why the term technologist was used in the Spectra East Diagnostics department.

accurate. Only scientists or technicians can approve the results of the quality control tests. Deliveries of samples arrive about every hour during peak times and every few hours during quieter times. Therefore, samples are continuously being tested throughout the course of a shift. Additionally, night shift scientist Carolyn Harmon testified that scientists, technicians, and laboratory assistants remain in their lab for their entire shifts with the exception of about 10 minutes.

Laboratory Assistant Responsibilities and Training

Laboratory assistants perform many of the same duties in the laboratory as scientists and technicians with the exception of reporting test results. Laboratory assistants also primarily "push" filters. When test tube samples arrive in the lab, there are filters placed in each of the tubes (by the specimen handlers). Laboratory assistants will push the filters down so that scientists can break them before putting them on the analyzers to run the tests. Sometimes if the laboratory assistants are busy with quality control tasks, scientists or technicians will "push" the filters.

How much responsibility is delegated to the laboratory assistants is dependent on their level of experience. The job description for the laboratory assistant 1 position states that these employees prepare reagents under the guidance of a scientist, prepare instrumentation for operation, are responsible for daily equipment maintenance and troubleshooting, and may perform routine lab protocols.[14] The job description for the laboratory assistant 2 position states that these employees prepare appropriate instruments for operation, load patient samples, order reagents and chemicals, are responsible for instrument printouts and printing of worksheets, and may handle chemicals while performing testing procedures. Furthermore, the job description for the laboratory assistant 3 position states that these employees prepare instrumentation for operation, run patient samples, transmit data to computers, and maintain equipment.

Laboratory assistants also receive on-the-job training to acclimate themselves to the laboratory equipment. This training lasts for approximately one month and will be conducted by scientists, technicians, and/or more experienced laboratory assistants. Harmon testified that even specimen handlers who transferred into laboratory assistant positions required a month of training to become proficient with the loading and operation of the analyzers. Harmon cited Rimma Sternberg and Ayman Baskhairoun as two transferees into the laboratory assistant position who required the full month for on-the-job training.

Specimen Handler Responsibilities

As noted earlier, specimen handlers receive specimens, aliqout them, work with bar code labeling, verify the specimen's integrity, retrieve and archive specimens. Specimen handlers also perform "pour offs," meaning that they pour a portion of the primary sample into another tube to create a secondary sample source. Learning to do a "pour off" only takes about 5 minutes. It is unclear from the record how much training specimen handlers receive before they begin their jobs.

[14] The job description also states that contacts are primarily within the immediate work unit.

According to the Employer's witnesses, specimen handler and lab assistant duties overlap between 85 and 95%. In this vein, specimen handlers and lab assistants both open sample boxes, label samples, aliquot them, find and retrieve samples from the archive area, and perform pending list searches. There is near constant interaction between laboratory assistants, specimen handlers, specimen researchers, and specimen processors. Castillo also testified that specimen handlers can load reagents and analyzers. When asked, Castillo could only name 1 specimen handler he has observed performing these tasks- Maria DeRojas, a specimen handler who is training to be a laboratory technician. Fiscal testified that she has seen specimen handler Ruqui Queresah loading analyzers in the chemistry department. Fiscal also testified that specimen handlers push filters on Saturdays, as do specimen processors and specimen researchers. Specimen handlers do not run analyzers, review test results, or release these results. Specimen handlers also do not perform start-up duties in the respective departments.

Harmon, a night-shift scientist in the chemistry department, and Keith Leomo, a night-shift laboratory assistant in the chemistry department, testified that specimen handlers deliver samples to their department and the laboratory employees direct the specimen handlers where to put the samples. These interactions last less than five minutes. Harmon asserts that specimen handlers do not come to her department to help the scientists, technicians, or laboratory assistants with tasks. Also, Harmon and Leomo both testified that scientists, technicians, and laboratory assistants do not go to the specimen handling department to perform tasks there, e.g. opening or sorting boxes.[15] Harmon has also not witnessed specimen handlers pushing filters.

The Employer's job descriptions list the principal duties and responsibilities of specimen handlers. For the specimen handler 1 position, the job description states that these employees will process incoming shipments of specimens, sort tubes and operate sorting machines, distribute samples for testing, dispose of samples, archive tubes, resolve pending issues, perform document imaging, get supplies, load instruments, and maintain robotic equipment. This job description also states that contacts are primarily within the immediate work unit. For the specimen handler 2 position, the job description states that these employees perform all tasks of specimen handler 1, process manual lab orders, scan tubes, verify receipts, process add on tests, resolve problem tubes, and process unspun and insufficiently spun tubes. This job description also states that contacts are typically with individuals within their own department and occasionally with contacts outside their own organization. For the specimen handler 3 position, the job description states that the employees act as subject matter experts for all specimen handler 1 and 2 tasks, process error racks on automated sorting equipment, resolve tickets and test cancellations, resolve issues on pending tests, and initiate entry of new patient records. This job description also states that contacts are frequently with individuals representing other departments and/or representing outside organizations. Finally, for the specimen handler 4 position, the job description states that the employees act as subject matter experts in accurate preparation of send-out specimens, data enter all types of orders, electronic requisitions, send out tests, data enter priority accounts, perform RP

[15] Kure testified that more of the opening of boxes and consequently, the interchange of lab employees helping out in specimen handling, takes place in the morning.

Holds, duplicates and No Specimen Received (NSR), and resolve problems from OLA error racks. This job description also states that contacts are frequently with individuals representing outside organizations.

Employer Evidence of Employee Interchange

All of the Employer's witnesses testified that during periods of high volume,[16] employees assist one another to ensure that the flow of samples is not backed up. This assistance can be initiated by a supervisor or manager, or by employees themselves who volunteer to help given the spirit of camaraderie which permeates the facility. Specifically, Specimen Handling manager Yorladys Fiscal testified that 3 specimen handlers on the day shift- Gloria Quinchia, Jonathan Soto, and Olga Vega- fill in as lab assistants on a daily basis.[17] Fiscal also testified that Raphaela Maniago, a specimen handler 2, works as a lab assistant in hematology every afternoon from 3:00pm until 5:30pm. Fiscal also testified that the reverse happens, meaning that some laboratory assistants assist in specimen handling when it is very busy. Fiscal named Edna Agwdello and Chris Patalita, laboratory assistants from hematology, who regularly help out in specimen handling.[18] Additionally, Fiscal testified that specimen handlers work overtime in other departments on a daily basis to help out with lab assistant functions. Specimen handlers who perform these overtime laboratory assistant duties are paid at the specimen handler rate. Kure testified that Shanaz Malik, a specimen handler on the day shift, does pour offs and centrifuging in the late afternoon and during parts of the evening shift. Kure also testified that as the evening laboratory manager, she has moved specimen researchers into the chemistry department to push filters, and has ensured that understaffed departments (e.g. hematology) has enough personnel to timely perform its work.

Permanent Transfers

Castillo testified that permanent transfers from specimen handler to lab assistant and from lab assistant to technician occur about 2-3 times per month. Human resources handles the posting of these positions as well as effectuating the transfers. Human Resources Director Sheryl Morgan testified that transfers from specimen handler to lab assistant could be the result of an internal posting for the position or if a manager has identified an employee ready to further his or her career path. Fiscal testified that there were about 12 specimen handlers who transferred to lab assistant positions in the previous year- including Delia Sadsad, Rekha Rai, Sara Buenafe, Jonathan Soto, Shehnaz Malek, and Marieta Hipolito. The Employer's Exhibit 11 shows that 9 specimen handlers have transferred into laboratory assistant positions since May 1, 2016. All 9 of these transferees moved into the Spectra East Diagnostics department. No employees have permanently transferred from laboratory assistant positions to specimen handling.

[16] The first 2 weeks of the months were identified as high volume.
[17] Evening lab manager Libaba Kure also testified that Quinchia and Vega load instruments and rack instruments in hematology on a daily basis.
[18] Kure also testified that Agwadello and Patalita, along with Catherine (last name unknown) from the environmental lab, open sample boxes, do "pendings," take samples to archive, and retrieve samples from throughout the lab.

Educational Requirements

The Employer's scientists are required to have a Bachelor's degree in biological or medical laboratory science. Lab technicians are required to hold an Associate's degree and the Employer's position description indicates that a Bachelor's degree in applied, biological, or laboratory science is desired. The lab assistant position requires a high school diploma (or GED equivalent). The job description for both lab assistant 1 and 2[19] indicates that a 2-year degree in applied, biological, or laboratory science is preferred. The job description for the lab assistant 3 position indicates that a 2-year degree is preferred but an advanced degree is desired. Specimen researchers, specimen processors, client services scanners, specimen resolution representatives, and specimen handler 1s are only required to have a high school diploma. The job description for specimen handler 2s indicates that while only a high school diploma is required, some science and medical college courses are preferred. The job description for specimen handler 3s indicates that a high school diploma is required and an Associate's degree in science is preferred. Additionally, the job description for specimen handler 4s indicates that a high school diploma is required, an Associate's degree is desirable, and a Bachelor's degree is strongly preferred.

Pay Scale

Fresenius human resources personnel set the pay scales for all of the Employer's Rockleigh employees without input from the department managers. Lead scientists are paid at the X35 pay grade (with a minimum salary of $70,400 and a maximum of $117,400). Scientist 1s are paid at the X31 pay grade (minimum salary of $48,100 and maximum of $80,100), scientist 2s are paid at the X32 pay grade (minimum salary of $52,900 and maximum of $88,100), and scientist 3s are paid at the X33 pay grade (minimum salary of $58,200 and maximum of $97,000). Lab Technician 1s are paid at the X29 pay grade[20] (minimum salary of $42,800 and maximum of $65,300) and lab technician 2s are paid at the X30 pay grade (minimum salary of $46,600 and maximum of $71,100).

Lab assistant 1s are paid at the X24 pay grade (minimum salary of $28,900 and maximum of $42,200), lab assistant 2s are paid at the X25 pay grade (minimum salary of $30,900 and maximum of $45,200), and lab assistant 3s are paid at the X26 pay grade (minimum salary of $33,000 and maximum of $49,600). Specimen researcher 1s are also paid at the X26 pay grade. Specimen researcher 2s are paid at the X27 pay grade (minimum salary of $36,000 and maximum of $54,000).

Specimen processors and specimen handler 1s are paid at the X22 pay grade (minimum salary of $26,800 and maximum of $36,200). Specimen handler 2s are paid at the X23 pay grade (minimum salary of $28,800 and maximum of $39,400). Specimen handler 3s and 4s are paid at the X24 and X25 pay grade, respectively. Client services scanners are paid at the lowest pay grade (X21 with a minimum salary of $25,100 and a maximum of $33,900).

[19] Employees progress within job classifications (e.g. lab assistant 1, 2, or 3) based on experience.
[20] Specimen resolution representatives are also paid at the X29 pay grade.

Other Shared Terms and Conditions of Employment

All employees in the Employer's Rockleigh laboratory are subject to the same terms and conditions of employment outlined in the Fresenius employee handbook. Likewise, all employees receive the same benefit package (e.g. 401k, vacation, health insurance, etc.). All Rockleigh employees receive a 30-minute unpaid lunch break along with two paid 15-minute breaks. Also, the facility cafeteria and gymnasium are available for all employees to use. Furthermore, all new hires attend the same orientation classes, including HIPAA and safety training, regardless of classification. Moreover, all employees are issued and wear personal protective equipment, which consists of a white lab coat and gloves.

II. ANALYSIS

A. Board Law

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.,* 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit that would also be appropriate, or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an "overwhelming community of interest" with those in the petitioned-for unit. *Specialty Healthcare*, 357 NLRB at 938, 944.

Thus, the initial inquiry is whether the job classifications sought by the Petitioner are readily identifiable as a group and share a community of interest. Readily identifiable as a group means that the description of the unit is sufficient to specify the group of employees the petitioner seeks to include. *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at fn 10 (2015). For its community of interest analysis, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; have functional integration with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and have separate supervision. *United Operations, Inc.*, 338 NLRB 123 (2002); see also *Specialty Healthcare*, supra, at 942. All relevant factors must be weighed in determining community of interest.

With regard to the subsequent inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there "is no legitimate basis upon which to exclude (the) employees from" the larger unit because the traditional community of interest factors "overlap almost completely." *Specialty Healthcare*, supra, at 940-946, and fn. 28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017, fn. 8 (2011).

B. The Petitioned-for Unit is an Appropriate Unit for Collective Bargaining Because its Employees Form a Readily Identifiable and Distinguishable Group and Share a Community of Interest

First, I find that the petitioned-for unit is an appropriate unit for bargaining because it is a readily identifiable group that shares a community of interest. The petitioned-for unit—all full-time, regular part-time, and per diem employees in the Employer's chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments—thus tracks clear classifications and functions. To this end, the petitioned-for unit contains all of the Employer's non-supervisory employees who work in these departments, operate the sophisticated machinery contained only in these departments, and perform analytical tasks associated with their respective departments. Furthermore, the proposed unit includes all of the non-supervisory scientists, technicians, laboratory assistants, and specimen researchers working in the Employer's laboratory. Significantly, the petitioned-for unit is coextensive with a departmental line that the Employer has drawn. See *Macy's Inc.,* 361 NLRB No. 4, slip op. at 10 (2014). Based on this evidence, I find that the petitioned-for unit is a "readily identifiable group."

I also find that the record sufficiently demonstrates that these employees share a community of interest. The petitioned-for employees have distinct job functions and perform distinct work separate and apart from the excluded employees. The Employer's scientists, technicians, and lab assistants are the only laboratory employees who test and analyze the thousands of samples received on a daily basis. They are also the only employees who prepare, load, and operate the analyzers. The petitioned-for unit also includes 3 specimen researchers. It is undisputed that these employees work exclusively with the microbiology and environmental departments to perform their customer service and sample retrieval functions. Importantly, these are the only specimen researchers who work in the Employer's facility and all of these employees are included in the petitioned-for unit.

The petitioned-for employees also have distinct skills and training. It is undisputed that scientists are required to have a Bachelor's degree and technicians must, at a minimum, possess an Associate's degree. But although laboratory assistants and specimen handlers are only required to have a high school diploma, the extensive on-the-job training laboratory assistants receive sets them apart from specimen handlers. To this end, laboratory assistants, both new hires and transfers from specimen handling, receive a month-long training period to fully acclimate them to the inner workings of the laboratory's complex machinery. This extensive training window stands in stark contrast to the minimal training specimen handlers receive, e.g. five minute lessons for pouring off.

While the record revealed that specimen handlers have occasionally assisted with some laboratory assistant functions, the Employer's job descriptions make clear the demarcations the Employer has set between these classifications. Nowhere in the specimen handler job descriptions does it say that their principal duties and responsibilities involve the preparation of reagents or the loading and running of patient samples, which are responsibilities reserved for laboratory assistants, technicians, and scientists in their job descriptions. Instead, specimen handler job descriptions confine them to their department to process incoming samples, archive tubes, resolve pending issues, and process problem tubes. Based on the above, I find that the petitioned-for unit's work has a shared purpose, involves distinct skills and training, is organized along readily identifiable department lines, and have primary work functions which minimize interchange with other employees. Accordingly, I conclude that the employees in the petitioned-for unit share a

community of interest and the petitioned-for unit is appropriate for the purposes of collective bargaining.[21]

C. The Employer's Proposed Inclusions Do Not Have an Overwhelming Community of Interest with Petitioned-For Unit Employees

Having met the threshold burden and found that the petitioned-for unit is a readily identifiable group of employees who share a community of interest, I turn to the second inquiry of whether the Employer met its burden to show that its remaining employees share such an overwhelming community of interest with the petitioned-for unit that the sole appropriate unit is a laboratory-wide unit. I find the Employer has not met that burden.

As an initial matter, there are a number of similarities between the petitioned-for employees and employees who work in the excluded classifications. All of these employees work one of three shifts that have the same start and end times (within the aforementioned staggered two hour windows), are subject to the same employee handbook, receive the same benefits, have use of the same cafeteria and gymnasium, attend the same new employee orientation, and wear the same uniforms. But the fact that two groups share some community of interest factors, does not, by itself, render a separate unit inappropriate. See *Specialty Healthcare,* 357 NLRB No. 83 slip op. at 10 (once Board has determined petitioned-for employees share a community of interest, "it cannot be that the mere fact that they also share a community of interest with additional employees renders the smaller unit inappropriate").

It is readily apparent that there are clear distinctions between the petitioned-for employees and excluded employees. First, the petitioned-for employees work in separate departments from the excluded employees and the petitioned-for unit consists of all nonsupervisory employees in those departments. The fact that the petitioned-for unit tracks a dividing line drawn by the Employer is particularly significant as is the fact that none of the excluded employees regularly perform work with the analyzers. *Macy's*, 361 NLRB No. 4 slip op. at 12; See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013).

Although the petitioned-for employees and the excluded employees are commonly supervised at the highest level of the facility by co-directors Patel and Castillo, it is clear that specimen handlers have separate supervision at all times of the day. In this regard, Yorladys Fiscal manages the specimen handling and accessioning departments, which collectively account for over 100 specimen handlers who are excluded from the petitioned-for unit. Fiscal works from 9:00am until 6:30pm and Dindo Basamelia, the night shift supervisor for specimen handling, works from 8:00pm until 4:00am. The Employer attempts to argue that common supervision of all lab employees' results from Libaba Kure being the sole manager on duty during the evening shift. But Kure only works from 2:00pm until 10:00pm (and occasionally until midnight), hours in which both Fiscal and Basamelia are managing and supervising the facility's specimen handlers. Therefore, I

[21] The departments included in the petitioned-for unit are located on two separate floors. A petitioned-for unit is not rendered inappropriate simply because the petitioned-for employees work on different floors of the same facility. *Macy's, Inc.*, 361 NLRB No. 4 at slip op. 11; *D.V. Displays Corp.*, 134 NLRB 568, 569 (1961).

find that the lack of common supervision among all of the facility's employees weighs against a finding of overwhelming community of interest.

Additionally, I find that the Employer's compensation policies militate against a finding of overwhelming community of interest. In this regard, the pay scales in evidence establish that some of the more experienced specimen handler positions overlap with the pay rates for less experienced laboratory assistants. For example, specimen handler 3s are paid at the X24 pay grade- the same as lab assistant 1s. But the appropriate analysis is not whether most of the excluded employees share similarities with some of the petitioned-for unit, it is whether all of the excluded employees share similarities with all of the petitioned-for employees. To this end, the lowest paid technicians start at the X29 pay grade and the lowest paid scientists start at the X31 pay grade, whose minimum salary of $48,100 exceeds the highest possible salary that a specimen handler 4 can earn ($45,200). And the highest paid scientists earn over twice as much as the highest paid specimen handlers ($97,000 vs. $45,200). This pay disparity between some of the petitioned-for unit and most of the excluded employees does not support a finding that an overwhelming community of interest exists amongst all of the Employer's Rockleigh employees.

Furthermore, the Employer argues that the geographic proximity of all laboratory employees supports a finding of overwhelming community of interest. The Employer cites the open lab facility with no clear demarcation by department, and all employees doing the same types of duties in the same types of areas, as support for its contention. I cannot agree. While the lack of interior walls certainly opens up the first floor of the laboratory, the record evidence indicates that the petitioned-for departments are clearly delineated. To this end, each of the petitioned-for departments uses analyzers that are specific to the department. For example, the environmental lab employees congregate around the environmental lab analyzers for that is where most, if not all, of their work is performed. Significantly, Castillo was easily able to identify the quadrant and fixed coordinates for each of the petitioned-for departments on the Employer's schematic floor plan. While Specimen Handling is situated squarely in the middle of the first floor, each of the petitioned-for departments operates in its own distinct work space.[22]

The Employer also argues that the excluded employees must be included in the petitioned-for unit on the basis of interchange and contact with other employees. In support of its interchange contention, the Employer relies on the fact that between 9 and 12 specimen handlers permanently transferred to laboratory assistant positions in the past 10 months. These statistics are insufficient to prove significant interchange. It is worth noting that the Board in *Macy's* determined that 9 permanent transfers over 2 years in a bargaining unit of 41 employees (22% of the bargaining unit) did not establish significant interchange between petitioned-for and non-petitioned-for employees, particularly because all but one of these transfers was in to the unit. Here, the record evidence shows that about 9 to 12 specimen handlers were promoted to laboratory assistants in the past 10 months. In a bargaining unit of 181 employees, the number of transferees accounted for

[22] The fact that the petitioned-for departments are adjacent to other departments not included in the petitioned-for unit does not reduce the significance that the petitioned-for departments have their own distinct work spaces. *Macy's, Inc.,* 361 NLRB No. 4, slip op. at fn39.

approximately 6.6% of the bargaining unit, well below the 22% threshold the Board used to reject an overwhelming community of interest finding in *Macy's*.[23]

The Employer also argues that there is regular contact between the petitioned-for unit employees and the non-petitioned for employees. The Employer describes this contact as happening repeatedly on a daily basis with more temporary transfers taking place in the first two weeks of the month, which are the busiest in the lab. According to the Employer, laboratory assistants, technicians, and even scientists assist specimen handlers with opening and sorting boxes of samples during these busiest times of the month. Although it is clear that all laboratory employees work in relatively close proximity to each other, and there is constant, informal contact between employees, I find that these temporary interchanges are informal in nature and incidental to employees' primary job duties. See *DPI Secuprint, Inc.,* 362 NLRB No. 172 slip op. at 6-7; *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 12-13. Most importantly, the Employer's job descriptions make clear that specimen handlers' primary duties and responsibilities are confined to their immediate work unit and involve the opening, sorting, and processing of samples that enter the lab. The job descriptions, and the testimony of Harmon and Leomo, also make clear that scientists, technicians, and laboratory assistants principally work within their own department performing analytical tasks that are separate and distinct from the non-petitioned-for employees. Based on this evidence, the Employer is unable to establish that the interchange and contact with other employees support a finding of an overwhelming community of interest between all of the petitioned-for and non-petitioned-for employees.

In support of its position that the excluded employees share an overwhelming community of interest with the petitioned-for unit employees, the Employer relies on *Odwalla, Inc.*, 357 NLRB 1608 (2011). *Odwalla* is distinguishable from the facts here. Most importantly, the Board in *Odwalla* stated that the requested unit did not track any lines drawn by the Employer, such as classification, department, or function. *Odwalla, Inc.,* 357 NLRB at 1612. Therefore, none of the traditional bases for drawing unit boundaries supported excluding the employer's merchandisers while including all of the employer's other employees. *Odwalla, Inc.,* 357 NLRB at 1613. In the instant case, I have specifically found that the petitioned-for unit tracks the Employer's departmental lines and these employees share common work functions. Therefore, *Odwalla* is inapposite.

In sum, I conclude that the record establishes that the petitioned-for unit of employees is a readily identifiable group of employees with a sufficient community of interest. In contrast, I find that the Employer did not meet its burden of establishing that the employees it seeks to add to the unit share such an overwhelming community of interest with the petitioned-for unit so as to render that unit inappropriate for collective bargaining.

[23] It is unclear from the record whether the 1 employee who moved from laboratory assistant to specimen handling transferred to prevent a layoff or did so voluntarily.

III. CONCLUSIONS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction therein.[24]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer, and the Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Under Section 9(b)(1) of the Act, the Board is prohibited from including professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has adopted a special type of self-determination procedure in such an election known as a *Sonotone* election. Under this procedure, a separate voting group encompassing all professionals would elect whether to constitute a separate appropriate bargaining unit or be included in the larger unit with non-professionals. Accordingly, I find that all lead scientists and scientists, who are professional employees, constitute a separate voting group which, depending on the outcome of the election, may constitute either a separate appropriate bargaining unit, or be included in the unit with the non-professional employees.

I therefore find that the following employees of the Employer *may* constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time, and per diem lead scientists, scientists, technicians and laboratory assistants employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives,

[24] The Employer, Spectra East, Inc., a Delaware corporation, is engaged in the operation of a scientific laboratory providing laboratory testing services at its Rockleigh, New Jersey facility, the only facility involved herein. During the preceding twelve months, a representative period, the Employer purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of New Jersey.

lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.

In order to ascertain the desires of the professional employees as to their inclusion in the unit with the non-professional employees, I shall direct separate elections in the following groups:

(a) **(Professional Group)** All full-time, regular part-time, and per diem lead scientists and scientists employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all technicians and laboratory assistants, administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.

(b) **(Non-professional Group)** All full-time, regular part-time, and per diem technicians and laboratory assistants employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all lead scientists, scientists, administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.

The employees in the Professional Group (a) will be asked two questions on their ballots:

(1) Do you wish to be included in a unit with non-professional employees for purposes of collective bargaining?

(2) Do you wish to be represented for the purposes of collective bargaining by 1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION?

The choices for each question shall be "Yes" or "No."

If a majority of the professional employees in voting group (a) vote "yes" to the first question, indicating their wish to be included in the unit with non-professional employees (voting group b), they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional employees to determine whether or not the employees in the combined professional and non-professional unit wish to be represented by 1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION. If, on the other hand, a majority of the professional employees in voting group (a) vote against such inclusion, they will not be included

with the non-professional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented by 1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION.

The non-professional employees comprising voting group (b) will be polled to determine whether or not they wish to be represented by 1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION.

The unit determination is based, in part, on the results of the election among the professional employees. However, the following findings in regard to the appropriate unit are now made:

(1) If a majority of the professional employees vote for inclusion in the unit with the non-professional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time, and per diem lead scientists, scientists, technicians and laboratory assistants employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.

(2) If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, but do vote for representation apart from them, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time, and per diem lead scientists and scientists employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all technicians and laboratory assistants, administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.
>
> All full-time, regular part-time, and per diem technicians and laboratory assistants employed by the Employer in its chemistry, diagnostic immunology, environmental, microbiology, hematology, and Spectra Diagnostics departments at its Rockleigh, New Jersey facility, excluding all lead scientists, scientists, administrative assistants, office clerical employees, specimen handlers, lead specimen handlers, specimen processors, specimen resolution representatives, lead specimen resolution representatives, client services scanners, confidential employees, managers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by 1199 SEIU United Healthcare Workers East, New Jersey Region.

A. Election Details

The election will be held on Thursday, December 22, 2016 from 5:00am until 7:00am, 2:30pm until 4:30pm, and from 7:00pm until 9:00pm in the 2nd Floor Cafeteria at the Employer's facility located at 8 King Road in Rockleigh, New Jersey.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in 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.

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. **Because this is a *Sonotone* election, the list must be organized by professional status – the included professional employees should be listed on separate pages from the included non-professional employees.**

To be timely filed and served, the list must be *received* by the regional director and the parties by **December 8, 2016, two business days after the date of issuance of this Decision and**

Direction of Election. 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 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 name in this decision (at wmassey@grmny.com). 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

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Monday, December 19, 2016.** If the Employer does not receive copies of the notice by December 15, 2016, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English and Spanish, please notify the Board agent immediately if that is necessary for this election. Also, as noted in paragraph 10 of the stipulated election agreement, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

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, S.E., 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: December 6, 2016

David E. Leach III, Regional Director
National Labor Relations Board, Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102