UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

POMONA VALLEY HOSPITAL MEDICAL CENTER, Employer, and SERVICE EMPLOYEES INTERNATIONAL UNION – UNITED HEALTHCARE WORKERS – WEST, Petitioner.	Case No. 21-RC-166499

EMPLOYER'S BRIEF FOLLOWING NATIONAL LABOR RELATIONS BOARD'S ORDER ON AND PARTIAL GRANT OF REVIEW OF REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND DIRECTION TO SUSTAIN CERTAIN CHALLENGED BALLOTS AND TO COUNT THE REMAINING CHALLENGED BALLOTS

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I. RESPONSE TO BOARD ORDER ON REQUEST FOR REVIEW

Pursuant to Section 102.67(h) of the Board's Rules and Regulations, as amended, Pomona Valley Hospital Medical Center (the "Hospital" or "Employer"), submits its brief following the National Labor Relations Board's Order ("Order") and partial grant of review of the Regional Director's Supplemental Decision and Direction to Sustain Certain Challenged Ballots and to Count the Remaining Challenged Ballots, dated March 17, 2017 ("Decision").

The Order, issued on December 15, 2017, granted the Employer's request for review of the Decision as to 65 ballots, supporting the Employer's position that they should be opened and counted. The Order also granted the Union's request for review of the Decision as to 5 ballots.[1]

This brief addresses those 70 ballots. The Regional Director's ("RD") Decision excludes 65 ballots on the basis that the individuals who cast them work in business office clerical positions. That conclusion is wrong. Those 65 positions and the five additional jobs which are subject to the Union's request for review consist of service and maintenance employees whose jobs involve the use of independent judgment and specialized training in major health care occupational groups. They work at the Hospital's main facility (not at an off-site location), frequently interact with patients and other Hospital employees who are part of the voting unit, and do not conduct routine human resources or clerical work.

Compelling reasons exist for overturning the RD's Decision and counting all 70 ballots. The Decision on substantial factual issues as to 65 of the ballots was clearly erroneous on the record, and such error prejudicially affected the rights of the Hospital. Moreover, substantial questions of law and policy were raised because of the RD's departure from Board precedent.

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[1] The parties' requests for review as to all other ballots were denied.

All of the 70 ballots at issue in the Order should be opened and counted since they are rightfully a part of the nonprofessional[2] and technical[3] employees' voting unit. The Board should overturn the Decision and issue an order finding that the appropriate voting unit includes the 70 employees discussed below.

II. PROCEDURAL HISTORY

Pomona Valley Hospital Medical Center ("Hospital") is a 453-bed acute-care facility located in Pomona, California. The Hospital's main, twenty-three acre campus consists of several interconnected buildings and stand-alone structures, including a three-story building housing physical therapy and outpatient surgery departments, a separate building housing an information technology department, and a further separate building primarily housing Hospital security personnel, the credit union, and physician billing. (Tr.[4] 127:1-18; 446:15-23.) All of these buildings on the Hospital campus share the same address: 1798 North Garey Avenue. (*Id.*) The Hospital's business office is located approximately two miles away from this main campus, at 300 Park Avenue. (*id.* at 127:2-3; 106:13 – 107:3.) The Business Office consists of pre-services and finance departments and contains no patient care units. (*id.* at 106:13-20; 107:4-6; 108:7-9.)

The Service Employees International Union – United Healthcare Workers – West ("Union") seeks to represent a unit of nonprofessional and technical employees at the Hospital. On January 21 and 22, 2016, certain employees of the Pomona Valley Hospital Medical Center

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[2] Nonprofessional employees "will generally include all service and maintenance employees . . . who generally perform manual and routine job functions, and are not highly skilled or trained." GC 91-4, p. 9.

[3] Technical employees are "[e]mployees whose job/jobs involve the use of independent judgment and specialized training in major health care occupational groups such as medical laboratory, respiratory therapy, radiography, emergency medicine and medical records. . . ." *Id.*, p. 3.

[4] The reporter's transcript from the Hearing is cited herein as "Tr.," the Hospital's exhibits are cited as "EX," and the Board's exhibits are cited as "BX."

("Hospital") voted in an election pursuant to a petition filed by the Union. Among the 1065 eligible voters, 531 voted in favor of the Union and 458 cast ballots against the Union. 218 additional ballots were challenged, a number sufficient to alter the outcome.

After a hearing was conducted on the challenged ballots on February 12, 16, 17, and 18, 2016, hearing officer Alvaro Medina ("Hearing Officer") issued a "Hearing Officer's Report on Challenges" ("Report") on June 9, 2016, in which he overruled 65 of the challenges.

On June 23, 2016, the Hospital timely filed exceptions to the Hearing Officer's Report. On June 27, 2016, the Hospital filed a supplemental brief on the exceptions as well. In both documents, the Hospital argued that the remaining 153 challenged ballots should be counted.

On March 27, 2017, Regional Director William Cowen issued his Supplemental Decision and Direction to Sustain Certain Challenged Ballots and to Count the Remaining Challenged Ballots. Upholding the Hearing Officer's finding that 65 of the challenged ballots should be released and counted, the RD determined that 17 additional ballots should be counted as well, for a total of 82.

On March 31, 2017, the Employer filed a request for review, asking the Board to overturn the Regional Director's decision not to open 132 ballots. Simultaneously, the Union filed a request for review, asking that the Board overturn the Regional Director's decision to open and review the 17 additional ballots.

On December 15, 2017, the Board issued its Order, granting the Employer's request for review as to 65 of the 132 ballots which were subject to its request – the Information Technology Clericals; Telecommunication Technician; Workers' Compensation Claims Specialist; Education Coordinator; Charge Revenue Representatives; System Coordinator Laboratory; and the Nursing Staff Coordinator. The Board also granted the Union's request for

review as to 5 of the 17 ballots which were subject to the union's request – the Specialists HIM data Integrity; Application Specialist, Pharmacy; and the Application Specialist, Perioperative.

III. STATEMENT OF THE CASE – EMPLOYER'S REQUEST FOR REVIEW

Through a fundamental misunderstanding of the job duties in these positions, the RD misapplies applicable long-standing Board law and reached the wrong conclusion on each of the ballots at issue in the Employer's request for review, which review was granted by the Board as to 65 ballots. The facts show that the challenges should be overruled and the 65 ballots, plus the five ballots at issue in the Union's request for review, should be opened and counted.

1. Excluding the Information Technology Clericals Is Clearly Erroneous on the Record, Prejudicially Affects the Rights of a Party, and Deviates from Board Precedent

The RD fails to recognize the specialized nature of each of the Hospital's IT positions as compared to IT employees at other acute care facilities and IT occupations of the past. As end-users become more sophisticated with smart device use, IT professionals at acute care facilities are no longer sitting in a remote, dimly lit room away from patients and other employees. This is particularly true at Pomona Valley Hospital Medical Center where IT employees have frequent interactions with other bargaining unit employees and are often supervised by individuals who oversee bargaining unit employees. They are not located off-site, but work within the Hospital, regularly walking its grounds in order to address end-user problems.

In his dissent, Member Pearce states that he would exclude information technology clericals from the unit due to Board precedent holding that "employees working in the IT field are BOCs who constitute a separate appropriate unit in acute care hospital

settings..." Board precedent is stale – applying the same standard to employees who work differently from previous IT specialists.

Pomona Valley Hospital Medical Center IT employees are not garden-variety IT personnel. Their unique duties, work locations, and nearly constant in-person contact with others removes them from the business office clerical classification and renders them voter eligible.

a. Executive Secretary, Information Systems: Ellen T. Bauer (138)[5]

The RD's decision to exclude the Executive Secretary, Information Services is inconsistent with its conclusion that two other Executive Secretary job classifications - the Executive Secretary, Resources Center and the Executive Secretary, Support Services - are eligible. Ellen Bauer's work is primarily the same as the Support Services and Resources Center Executive Secretary, only in a different department. She "[p]erforms diversified administrative secretarial duties for the Information Services managerial staff." (Tr. 539:8-10.)

Ms. Bauer's interaction with unit employees is regular and substantial. "So she would -- mail pick up, things like that; so the people in the mailroom. She would be -- a lot of ordering goes through Ellen; almost all of it. So she would be working with the warehouse staff. She'd work from the purchasing departments. So she'd work with all of those people. She would -- a lot of the set-up for meetings inside the hospital that we're having; she's -- oversees that, makes sure things are arranged. She's continually -- you know, my schedule, she is the one that books my day. And, you know, depending on what my day may entail, she would be talking to them and/or working with them to make that work." (Tr. 540:3-13.) Since Ms. Bauer regularly interacts with Unit employees and since she performs nearly identical duties as two other employees who are in the voting unit, she should be included in the Unit and her ballot should be

[5] The parenthetical numbers refer to the number assigned to the challenge by the Hearing Officer at the hearing and in the Hearing Officer's Report and RD's Decision

counted. *Baptist Mem'l Hosp.*, 225 NLRB 1165, 1167-68 (1976).

b. Systems Analyst, Nursing/Surgical Services: Araceli Arriaga (166) and Judy Carrillo (167); Systems Analyst, EPM–EMRIS Specialist: Melinda Hagen (168); System Analyst I: Gilbert Alamilla (169), Katherine Treadwell (170) System Analyst II: William Ho (171), Peter Yuen (172) System Analyst III: Dolores Elefano (173), Pamela Garcia (174), Catalia Guzman (175), Anthony Hipol (176), Jose Sahagun (177), Edward Torres (178), Paulette White (179)

The Hospital's Systems Analysts, Nursing Services, are "[r]esponsible for all system functionality, reporting, and support. Responsible for prevention, detection, diagnosis, and resolution of computer-related problems/issues for the "nurse – nursing office or surgical services operating systems. Responsible for creation and maintenance of databases, developing reports, and instructing end users in these systems as needed." (Tr. 178:14-21.) They work in the Hospital's main building and report directly to their respective department heads – the same supervisors who oversee LVNs, CNAs, and patient care associates – all of whom are eligible voters. (Tr. 179:7-10.) Their position therefore diverges from the BOC classification found by the RD, since they serve side-by-side with unit employees every day.

The Systems Analyst EPM serves primarily the same functions as the Nursing and Surgical Services Systems Analysts, only in a different unit. The Systems Analyst EPM-EMRIS Specialist works closely with Medical Records, the Data Integrity Team, ITIS staff, and Family Practice Residency Program employees – all of whom are part of the voting unit – to "manage[], monitor[], and evaluate[] the Enterprise Practice Management Electronic Medical Record Information Services systems, secure efficiency and proper operating order." (Tr. 543:23-25.)

Systems Analysts I, II, and III have varying levels of experience, but their duties are primarily the same. They "[c]ollect information to analyze and evaluate existing or proposed systems; research, plan, construct, install, configure, troubleshoot, maintain and/or operate application systems; research, plan, construct, install, configure, troubleshoot, maintain and upgrade hardware and/or software interfaces with the application systems; research, plan, and construct, install, configure, troubleshoot, maintain, and/or upgrade application reports and data bases; analyze and evaluate present or proposed business procedures or problems to define data processing needs; research and recommend hardware and software development, purchases, and use; troubleshoot and resolve hardware, software, and connectivity problems including user access and component configuration." (Tr. 550:1-14.) They spend a large portion of their workday "[m]eeting with their end users, configuring systems if they need to do it hands-on over there." (Tr. 554:14-16.). This undisputed interaction with unit employees, defeats the RD's claim to the contrary. (Decision, pg. 8.)

Moreover, in its Rulemaking, 53 Fed. Reg. 33900, 33923-24, 284 NLRB at 1561 (1988), the Board stated that relatively unskilled workers may be included, "if they are involved in the maintenance, repair, and operation of hospitals' physical plant systems, or if they are part of a separate maintenance department." *Id.* at 33924, and 1562. That is precisely the case here. The Hospital's Systems Analysts maintain the Hospital's systems and are therefore non-technical, non-professional employees who fall outside of the business office clerical and skilled maintenance categories. *Silver Cross Hospital*, 250 NLRB 114 (2007). Their ballots should be counted.

c. Applications Specialist, Materials Manager: Daniel Martinez (180)

Working from the main Hospital, the Application Specialist is "[r]esponsible for the day-to-day operations of the Lawson system, assuring that it is properly utilized and the

report of materials management operations. Assures that all setups, upgrades, enhancements are coordinated with information systems. Acts as a liaison between the materials management and information systems." (Tr. 452:25, 452:1-5.)

The RD contends that Mr. Martinez spends an insubstantial portion of his day with other employees. This is inaccurate. Through his liaison duties, he regularly interacts with various unit employees, including "the stores and distribution associates." (Tr. 453:3-4) This strong community of interest with the other voting non-professionals defeats the RD's finding and renders this is a nonprofessional position as well. *Silver Cross Hospital*, 250 NLRB 114 (2007). Mr. Martinez's ballot should be counted too.

d. Software Engineer III: Alan Duran (183), Rita Lomax (184), Theodore Lundholm (185), Chad Maldonado (186)[6]

Software Engineers are non-professionals who "[a]nalyze, design, modify, develop, deploy and implement software programming applications; support and/or install client applications, web applications, server applications, and operating systems; participates in the testing process through test review and analysis; witness testing and certification software; familiar with the standard concepts, practices, and procedures within the health care technology field; perform significant self or engineering tasks..." (Tr. 556:4-11.)

These tasks cause them to work with "anyone that touches a computer at the Hospital...they're talking with end-users constantly" including eligible voters, such as administrative assistants, LVNs, patient care associates. (Tr. 558:8-19.) Their strong community of interest with these non-professionals in their unit exclude them from skilled maintenance classifications of BOC. *Silver Cross Hospital*, 250 NLRB 114 (2007). Their ballots should be

[6] While the challenges to the Software Engineers' votes were sustained in the Decision, the RD does not discuss them individually or provide any rationale for his conclusion. (Decision, p. 7.)

opened and counted.

e. Healthcare Intelligence Architect: James Pulver (187)

The Healthcare Intelligence Architect "is responsible for leading and development and implementation of an enterprise-wide clinical intelligence reporting system that meets the strategic objectives of the organization; responsible for the analysis, design and development of the data modeling and reporting solutions to improve performance; collaborates with the clinical departments and information services to accomplishment and maintain a quality clinical reporting system." (Tr. 559:21-25, 560: 1-4.)

Contrary to the RD's belief, Mr. Pulver works on-site at the Hospital, writing reports that track patient care, so that the Hospital can improve. (EX 65; Tr. 560:11-17.) These tasks require him to work with other voting unit members including LVNs and patient care associates. He is therefore closely linked with other non-professionals in his unit. *Silver Cross Hospital*, 250 NLRB 114 (2007). His ballot should be counted.

f. Clinical Support Liaison, Information Services: Alexander Arellano (188), Jorelle Chua (189), Celena Fernandez (190), Melinda Hiett (191), Jennifer Lloyd (192), Corinne Quesnel (193), Maria Vetter (194)

Clinical Support Liaisons work with the Clinical Information Systems "to troubleshoot and resolve problems in a timely manner [and make] suggestions for system optimization to improve the end user experience." (Tr. 564: 18-23.) When users experience problems with one of the Hospital's 2800 computer devices or information systems, Clinical Support Liaisons work with them to troubleshoot and implement solutions. (Tr. 564:4-21.) Logically, the end-users including other Hospital employees, particularly LVNs and PCAs, all of whom are eligible voters. (Tr. 563:18-23.) They also interact with patients when there is "an

issue in the room [with] a mounted device in the room. (Tr. 565: 4-9.)

The RD contends that their interaction with *all* Hospital employees, instead of only unit members renders them ineligible, but Board law does not support this conclusion. *Silver Cross Hospital*, 250 NLRB 114 (2007). Indeed, since Clinical Support Liaisons provide services that are instrumental to the Hospital's operations, they are non-professional employees whose ballots should be counted.

g. System Engineer I: Adam Guerrero (195), Steven Mason (196), Rocky Teano (197) System Engineer II: Rico Caymo (198) System Engineer III: Quoc Luu (199)

Varying only as to experience, Systems Engineers I, II, and III are "responsible for the servers in the data center, our virtual desktops, our virtual servers, connectivity to those servers, maintenance, overall storage, backups of our systems." (Tr. 567:18-21.) In this work, they must constantly interact with other Hospital employees, many of whom are eligible voters. (Tr. 569:13-24.)

The RD again incorrectly contends that this factor removes them from the voting unit. These employees work on site providing a critical service without which the Hospital could not function. *Silver Cross Hospital*, 250 NLRB 114 (2007). This work with voter-eligible employees creates a strong community of interest with the other non-professionals. Their ballots should therefore be opened and counted.

h. Helpdesk Technician: Jose Baldivia (200), Monique Goodman (201), Samuel Hernandez (202), Eliaser Martinez (203), Alfredo Portuguez (204); Katherine Requena (205), Francisco Saldana (206)[7]

Helpdesk Technicians are "[r]esponsible for assisting all customers with their questions regarding any of your supported software and hardware to the best of his or her ability; answer help desks phones and handle walk in questions in a courteous and professional manner; must document all daily logs and take any applications as required; must have the ability to follow and understand process and escalation procedures as documented." (Tr. 570:11-17.)

They assist other employees from the Hospital's main facility, many of whom are in the petitioned-for unit. (Tr. 571:14-21.) This rebuts the business office clerical argument asserted by the RD. *Silver Cross Hospital*, 250 NLRB 114 (2007). Helpdesk Engineers should be in the voting unit and their ballots should be opened and counted.

i. Desktop Engineer: George Choy (207), Andrew Chung (208), Presley Hite II (209), Garret Lopez (210), Jobert Oropesa (211)

"The desktop engineer troubleshoots and resolves computer hardware, software and related technology device problems. This position also maintains and installs upgrades and configures computer hardware, software, devices and the overall desktop experience." (Tr. 572:23-25, 573:1-2.) They serve in primarily the same role as Helpdesk Techs, and System Engineers and work out of the Hospital's main building.

Desktop Engineers are instrumental to the Hospital's operations and therefore directly impact patient care. *Silver Cross Hospital*, 250 NLRB 114 (2007). Although the

[7] The challenges to the Helpdesk Technicians' votes were sustained in the Decision, but the RD does not discuss them individually or provide any rationale for his conclusion. (Decision, p. 8.)

position does not require a license or degree, their technical services allow Hospital employees to do their jobs. Their ballots should be opened and counted.

j. Infrastructure Technician: Augustus Prieto (212)

Infrastructure Technicians are "responsible for PC, network, telephone, TV or other cabling needs throughout the enterprise. Terminates all cabling as according to hospital standards. Ensures all cabling is properly working, labeled and documented." (Tr. 575:2-11.) The position has no licensure or advanced degree requirements, excluding it from the skilled maintenance classification, but is technical in nature. Mr. Prieto operates from the Hospital's main facility, so he should be excluded from the BOC classification. *Silver Cross Hospital*, 250 NLRB 114 (2007). Oddly, the RD's Decision does not discuss this position. Regardless, his ballot should be opened and counted.

k. Network Engineer III: William Martin (213), Scott Stewart (214)

"The network engineer administrates and maintains and engineers the technologically advanced infrastructure and data center to meet the varied data, computing and communications need of Pomona Valley Hospital Medical Center enterprise. The position is also responsible for assessing organizational needs and proposing appropriate changes, technologies and services to meet the business-aligned customer service, work processes and technical documents of the organization." (Tr. 576:16-24.)

Contrary to the RD's conclusion, Messrs. Martin and Stewart work from the Hospital's main facility (Tr. 577:7-8.) and are "responsible for the hospital's overall network conductivity." (Tr. 577:11-13.) Since they serve in primarily the same role as Helpdesk Techs and System Engineers. *Silver Cross Hospital*, 250 NLRB 114 (2007). Their ballots should be opened and counted.

l. EPM (Enterprise Practice Management) Specialist: Traci Cavitt (215)

The EPM Specialist is "[r]esponsible Responsible for providing training to satellite division associates regarding NextGen, EPM and system policy and procedures to help ensure effective use of the system, accurate registration, accurate data entry. Respond to various requests and questions and/or issues and perform special projects and analysis." (Tr. 581:15-20.)

This is a service position with manual and routine duties and no licensure or advanced degree requirements. Ms. Cavitt strives to make the Hospital's systems seamless, so that employees "have the ability to get online wherever you're at and get to your data as a patient." (Tr. 582:21-22.) Her duties therefore directly impact patient care, contrary to the RD's conclusion. This strong community of interest with other non-professionals, means that she should be in the voting unit. *Silver Cross Hospital*, 250 NLRB 114 (2007). Her ballot should be opened and counted.

m. Senior Security Administrator: Jeffrey Barding (216)

The Senior Security Administrator "is responsible for the implementation, configuration and support and use of security monitoring and reporting tools and software." (Tr. 583:23-25.) Mr. Barding is able to grant or withhold employee access to secure Hospital systems and therefore interacts with many Hospital employees. "He's going to deal with the end users on -- if they were doing something wrong. He would provide training to end users on HIPAA requirements, those types of things. They routinely go out and provide that kind of training. And then he would also work in conjunction with a request being made on who got into the system and when. So if somebody requested that type of thing and that can be from a -- secondhand from a patient." (Tr. 584:16-23.)

Protecting patient confidentiality is instrumental to the Hospital's operations and

directly impacts patient care. These technical services fit within the defined voting unit, pursuant to *Silver Cross Hospital*, 250 NLRB 114 (2007). His ballot should be counted.

n. Radiology Maintenance Engineer: Neil Parisi (2)

Mr. Parisi "[m]aintains and repairs diagnostic medical imaging equipment according to established standards and practices." (Tr. 696:11-12.) He regularly interacts with other unit employees. "If there are repair issues, broken pieces of equipment, he's usually the first contact. So they would contact him. He either initiates repairs or might follow up with an OEM or some other person. But he interacts with those staff on a daily basis." (Tr. 696:25, 697:1-4.) These factors place him in a non-professional or technical category, together with all of the other employees in his department. *Hosp. Employees Dist. 1199e (Johns Hopkins)*, 273 NLRB 319, 327 (1984) ("radiology maintenance technicians" included in service and maintenance unit); *William W. Backus Hosp.*, 220 NLRB 414, 416-17 (1975) (darkroom technicians working in X-ray department processing X-ray film included in service and maintenance unit); *Barnert Mem'l Hosp. Ctr.*, 217 NLRB 775, 778 (1975) (darkroom technician responsible for placing film in development apparatus included in service and maintenance unit)

The Nuclear Medicine Technologists, Team Leader Diagnostic (evening and day shifts), Radiology Technologists, Mammographic Technologists, PACS Administrator, Mammography Technologists, Ultrasound Technologists, Ultrasound Team Leader, and Imaging Support Representatives – all members of the voting unit. (EX 102, 104, p. 3.) Yet, inexplicably, the RD has chosen to exclude the one member of the Radiology team who was mistakenly left off the voter list. This error should be remedied and Ms. Parisi's ballot should be counted.

2. Excluding Employee Benefits' Clericals Is Clearly Erroneous on the Record, Prejudicially Affects the Rights of a Party, and Deviates from Board Precedent

a. Workers' Compensation Specialist: Vicki Reinert (26)

The Workers' Compensation Specialist resides in the Occupational Health Department, which is located within the Hospital's main facility. (Tr. 401:7-11, 16-23.) Ms. Reinert is "responsible for data entry of all job related associate injuries/illnesses, processes and submit workers' compensation claims through the Hospital's third party administrator, TPA, and forward all pertinent documents and information as required." (Tr. 375:20-24.) In performing these duties, Ms. Reinert regularly interacts with injured employees, including Unit members, assisting them in completing appropriate paperwork. (Tr. 376:10-23.)

Contrary to Member Pearce's dissent, this is not a human resources position and Ms. Reinert frequently interacts with Unit employees. Therefore, the RD's and Member Pearce's sole basis for excluding this employee from the unit fails. *St. Luke's Episcopal Hosp.*, 222 NLRB 674, 677 (1976). According to the RD's own standard, this position has "continual contact with other service and maintenance employees, [is] physically separated from business office employees…and are not supervised by people who supervise BOCs. (Decision, p. 4.) Ms. Reinert shares a supervisor with a Unit member should be included in the Unit and her ballot should be counted.

b. Coordinator, Education: Sharon Kaitz (35)

Like the Coordinator, Labor Delivery Recover Postpartum, Coordinator, Emergency Department, Coordinator, Cardiac Services, Coordinator, Mail/Messengers, Coordinator, Physical Therapy, Coordinator, Surgery, and Coordinator, Utilization Management Reporting – all of which were found eligible to vote – the Coordinator, Education position

should be included in the unit. *William W. Backus Hospital*, 220 NLRB 414, 415 (1975). Ms. Kaitz works at the Hospital's main facility and is "[r]esponsible for coordinating the day-to-day clerical operation of an Education Department office; maintaining an organized work environment while maintaining internal and external customer needs." (Tr. 134:15-18.)

Contrary to Member Pearce's dissent, she does not perform only clerical work. Indeed, she works side-by-side with other Hospital Coordinators to ensure high patient care standards. Although she does not have constant patient interaction, that fact is "not determinative of whether she should be included in service and maintenance unit since the unit included both employees involved in patient care and employees not involved in patient care." *Lincoln Park Nursing & Convalescent Home, Inc.*, 318 NLRB at 1165.

Education-based positions like Ms. Kaitz's have been included in units of service and maintenance employees. *St. Elizabeth's Hosp. of Boston,* 220 NLRB 325, *1, n. 1 (1975) (in-service education clerk/typist included in unit of nonprofessional employees); *Lakeside Cmty. Hosp., Inc. & Hosp. & Health Care Workers Union, Local 250, Serv. Employees Int'l Union*, 310 NLRB 86, *2 (1993) (in-service education employees included in service and maintenance unit). She should therefore be classified as hospital clerical and her ballot should be counted.

3. Excluding Charge Revenue Representatives Is Clearly Erroneous on the Record, Prejudicially Affects the Rights of a Party, and Deviates from Board Precedent

a. Charge Revenue Representative: Matthew Freetage (146), Laura Huezo (147), Sarah Laporte (148), Nadia Rivas (149)

The RD claims that Charge Revenue Representatives are BOC because "their work primarily involves billing," and because "they are currently not located in the Emergency Room." Testimony confirms that once the Hospital's construction is complete, "they will be

moving back inside of the [main facility of the] hospital." Directly contradicting Member Pearce's dissent, their duties impact Hospital billing, but they do no actual billing or coding:

> So what they do on a daily basis is they take the clinical documentation. So our nurses and our doctors fill out a chart for the patient when they come into the emergency room; some of it electronic, some of it on paper. And they document everything from when you came in, what -- what you said was wrong with you, your vital signs, and any medications they gave you. So what these – I've got to get there -- charge revenue -- what -- what they do is they take that clinical documentation, either on paper or electronic, and they translate that into charges. So they say the doctor sutured up a laceration on your arm, and they check a box saying the doctor sutured a laceration. You know, you were in the ER for this many hours. We gave you the -- you know, these medications, and they take that. And the held report would be a report where some parts of those entries, the charge entries, were missing. And they review that to say, okay, I got to go back because I forgot to say that we sutured a laceration on patient X or – that's the held report. (Tr. 175:3-21.)

To do this, they regularly interact with Unit employees: [T]hey're back and forth in the department, whether they're talking to an LVN, an RN or a physician to assure completeness of the documentation. They might -- if they couldn't read something or something was missing, they would communicate that with the clinicians to assure that we have a complete document. (Tr. 176:3-8.) Charge Revenue Representatives also report to the same supervisor as LVNs. (Tr. 174:21-22.)

Duties involving financial information does not necessitate a BOC classification, particularly where, as here, the employee frequently interacts with other unit employees. *See St. Luke's Episcopal Hosp.*, 222 NLRB 674, 677 (1976) (billing clerks having contact with nonprofessional employees included in nonprofessional unit); *Baker Hosp.*, 279 NLRB 308, 309 (1986) (outpatient billing clerk and outpatient billing clerk/admitting included in nonprofessional and technical unit "because of their significant, work-related contact with unit employees"); *Rhode Island Hosp.*, 313 NLRB 343, 361-62 (1993) (billing employees and emergency department billing clerks included in nonprofessional unit). Charge Revenue Representatives'

ballots should be counted.

b. System Coordinator, Laboratory: Dustie Flores (150)

The System Coordinator, Laboratory, Dustie Flores, "[m]onitors daily computer function and performs required maintenance. Performs departmental payroll and attendance documentation functions for the entire laboratory." (Tr. 177:6-9.) Ms. Flores works with in the laboratory with other lab employees – "she does the payroll and attendance. She takes minutes of staff meetings. So she – ***on a frequent basis***, she's interacting with them." (Tr. 177:25, 178:1-2, emphasis added.) Contrary to Member Pearce's conclusion, she does not have "very limited contact with unit employees." Indeed, her contact is frequent and not focused on "billing functions."

These duties are not "typical BOC functions." Laboratory clerks like Ms. Flores have, in fact, "generally been found not to be business office clericals." GC 91-4, p. 7; *e.g.*, *Ryder Mem'l Hosp.*, 351 NLRB 214, 218 (2007); *St. Elizabeth's Hosp. of Boston*, 220 NLRB 325, *1, n. 1 (1975); *Duke Univ.*, 226 NLRB 470, 471 (1976; *Lincoln Park Nursing & Convalescent Home, Inc.*, 318 NLRB 1160, 1163-64 (1995). Her ballot should be counted.

4. Excluding the Telecommunications Technician Is Clearly Erroneous on the Record, Prejudicially Affects the Rights of a Party, and Deviates from Board Precedent

a. Telecommunications Technician: William Mittelstaedt (217)[8]

The Telecommunications Technician "Repairs and programs the PBX switch. Repairs and installs hospital communications equipment, including user training and cable pulling. Answers phones and operates PBX console. (Tr. 585:13-15.) Mr. Mittelstaedt is "the

[8] The Decision does not discuss the Telecommunications Technician. The RD does list Ms. Mittelstaedt among the 136 sustained challenged ballots, but provides no justification for doing so.

phone repair guy." (Tr. 585:21.) He travels throughout the Hospital, interacting with other employees and patients, to maintain the Hospital's approximately 5000 telephones. (EX 95; Tr. 586:5-18.) This necessary daily interaction with others, including unit employees and patients, removes him from the business office clerical classification. (Tr. 586:20-23.)

This position requires no advanced education certifications, or licenses (Tr. 585:7-10.) thereby excluding him from a skilled maintenance classification pursuant to *Silver Cross Hospital*, 250 NLRB 114 (2007). He is a nonprofessional and his ballot should be counted.

5. Excluding the Nursing Staff Coordinators Is Clearly Erroneous on the Record, Prejudicially Affects the Rights of a Party, and Deviates from Board Precedent

a. Arlene Martinez (128), Sandra Moody (129), Inez Ortiz (130), Cheryl Puma (131), Melody Solomon (132), Maria Vera-Estrada (133)

Nursing staff ratios are instrumental to patient care. That is the Nursing Staff Coordinators' primary purpose:

> They take -- so the main role of -- of the -- of -- of the nurse staffing coordinator is -- is that every day they assure that we have the correct staffing on each unit. So what happens is they take information that is out of our electronic acuity system, and it might say that there is 15 patients on a specific unit, and that 15 patients by a ratio would require this many nursing assistants, this many nurses, and then we would -- they would take the -- what's spit out of the acuity system which might say they require this many nurses. And then so they know that I have to staff this unit with three nurses, three nurses' aides, and the major And the major part of their job is then saying, okay, I had scheduled this many nurses and this many nurses' aides, I had this many sick calls. And what they might do -- what they do is call -- if we were short, they could call people in and say, would you like to work today? And so they assure that we have the correct number of staff by either calling in people or telling people we don't need them. (Tr. 160:18-25, 161:6-12.)

Theirs is not a "human resources function," and their duties have nothing to do

with "payroll" or "start and end times," as the RD claims. Staff Coordinators must ensure proper staffing ratios to protect patient care.

The Board routinely excludes nursing clerks from the business office clerical classifications. *E.g., St. Elizabeth's Hosp. of Boston*, 220 NLRB 325, 329 n. 1 (1975) (nursing service secretary included in service and maintenance unit). Moreover, the Nursing Staff Coordinators report to the same supervisor as float pool employees who are within the Unit. (Tr. 162:3-6; 162:24 – 163:6.) Coordinator, Labor Delivery Recover Postpartum, Coordinator, Emergency Department, Coordinator, Cardiac Services, Coordinator, Mail/Messengers, Coordinator, Physical Therapy, Coordinator, Surgery, and Coordinator, Utilization Management Reporting, have been deemed eligible to vote. Nursing Staff coordinators should have their ballots counted too.

IV. STATEMENT OF THE CASE – UNION'S REQUEST FOR REVIEW

The Board Order granted review as to only five of the seventeen ballots which are subject to the Union's request for review of the RD's Supplemental Decision. The RD's Decision that those ballots should be included in the voting unit should be upheld because the Decision was based on accurate and complete application of the record using rational Board precedent. The five ballots which are discussed in the Board's Order should be included in the voting unit and counted.

1. The RD Properly Included the Hospital's Specialist, HIM Data Integrity - Cleo Bretado (61), Heidi Martinez (62), Adrienne Wilson (63)

HIM Data Integrity Specialist primarily ensure the accuracy of patient records and do not handle patient billing or insurance. "Responsible for ongoing monitoring and repair of patient identity issues, duplicate medical record numbers and patient overlays. Actively

collaborates with end users to resolve issues and ensure appropriate EHR and EDM documentation errors are corrected." (Tr. 487:18-22.) When errors are discovered in patient records, these employees manually alter them in the Hospital's records management systems.

"If a patient is misidentified, an example would be a father and son with the same last name, with the same name, full name, come into the hospital or one of them come into the hospital and upon registration, the incorrect patient is chosen. And information is placed into that record. Their responsibility is to desegregate those records and put them in the appropriate medical record electronically." (Tr. 848: 13-19) "It could be identified by the nursing personnel as they're treating the patient and the date of birth says 9/18/56 but the patient definitely doesn't look to be that old. Could be 9/18/75. Then they would contact -- the nursing personnel would contact the data integrity specialist and say that they 1 have a potential identity issue." (Tr. 848: 22-25, 849, 1-2) To do this, they work closely with Admitting Clerks, since errors often come to light during patient registration. (Tr. 848:12-19, 849:3-6.)

The Union admits that HIM Data Integrity Specialists do not handle insurance issues. (Union Request for Review, p. 32.) They are medical records employees – ensuring the accuracy of patient information, a position that is not BOC. *Rhode Island Hosp.*, 313 NLRB 343, 345-47 (1993) Moreover, the duties of a HIM Data Integrity Specialist are very similar to those of a HIM Imaging Technician – a voter eligible position. (Tr. 848:10-11.) Like the HIM Imaging Technician and other records management employees, HIM Data Integrity Specialists work in the Hospital's main facility.

Medical records employees like these Specialists are hospital clericals, not BOC. The HIM Data Integrity Specialists' ballots should be counted.

2. The RD Properly Included the Hospital's Applications Specialists

Application Specialist, Pharmacy: Randy Walker (181)

Applications Specialist, Perioperative Services: Theresa Bangunan (182)

The Hospital's Applications Specialists Pharmacy works side by side with Pharmacy Technicians - all of whom are eligible to vote. (Decision, p. 10.) Randy Walker works in the Hospital's main facility and reports to the Director of Pharmacy, who supervises the Pharmacy Techs – a position which he held previously. "By training, he is a pharmacy technician." (Tr. 181:1-9, 13.)

Presently, Mr. Walker trains the Pharmacy Techs, helping them navigate the Hospital's complex medication dispensing systems. "He trains them on any of the systems. He helps them troubleshoot anything related to either our medication dispensing cabinets or any other software in the pharmacy." (Tr.181:16-18.) He "[s]upports the development implementation, monitoring, testing, and ongoing maintenance and upgrades of pharmacy-related applications, clinical information systems, and computerized pharmacy systems and hardware. Supports resolution of all general computer-related issues within the pharmacy department." (Tr. 180:16-22.)

Ms. Bangunan performs the same work in the perioperative unit, which is "everything encompassing a patient having surgery. It starts off from when they first come in to have their surgery all the way until they go to the recovery room, and we discharge them home." (Tr. 182:2-5.) "She does training on the system. She provides access as far as passwords and updating any access issues that people might have to get into the surgery information system." (Tr. 193:12-15.) She trains, "RNs, LVNs, scrub techs, nurses' aides [and] patient care associates." The Director of Perioperative Services supervises this position and all of the

individuals with whom Ms. Bangunan works. (Id. at 182:6-11.) The training coincides with diagnostic, laboratory and technical services performed by other voting employees. *Silver Cross Hospital*, 250 NLRB 114 (2007).

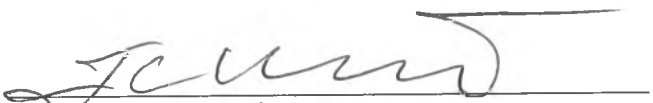
These facts support a strong community of interest with other voting employees and more than explain how the Application Specialists' "work and working conditions are materially related to unit work." *Silver Cross Hospital*, 250 NLRB 114 (2007); *Med. Arts of Houston*, 221 NLRB 1017, 1018 (1975). Their duties are precisely the type of diagnostic, laboratory and technical services performed by technical employees in the healthcare arena. Mr. Walker's and Ms. Bangunan's ballots should be counted.

V. CONCLUSION

For the foregoing reasons, the Hospital requests that the Board overturn the Supplemental Decision and Direction to Sustain Certain Challenged Ballots and to Count the Remaining Challenged Ballots as to the 65 ballots discussed above, and issue an order rendering those ballots opened and counted. The Hospital also requests that the Board uphold the Decision as to the 5 ballots subject to the Union's request for review.

DATED: December 29, 2017

MUSICK, PEELER & GARRETT LLP

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Boulevard, Suite 2000, Los Angeles, CA 90017-3383.

On December 29, 2017, I served true copies of the following document(s) described as **EMPLOYER'S BRIEF FOLLOWING NATIONAL LABOR RELATIONS BOARD'S ORDER ON AND PARTIAL GRANT OF REVIEW OF REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND DIRECTION TO SUSTAIN CERTAIN CHALLENGED BALLOTS AND TO COUNT THE REMAINING CHALLENGED BALLOTS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address j.mcnutt@mpglaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 29, 2017, at Los Angeles, California.

Jon C. McNutt

SERVICE LIST

Pomona Valley Hospital Medical Center v. SEIU – UHWW
CASE NO. 21-RC-166499

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