

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**Rocky Mountain Planned Parenthood, Inc. d/b/a
PPRM**

Employer

and

Case: 27-RC-205940

Service Employees International Union, Local 105

Petitioner

PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW

In this representation case, SEIU Local 105 (“Union or Petitioner”) petitioned for all clinical staff employees at 15 Colorado based health care centers operated by Planned Parenthood of the Rocky Mountains (“Employer”) (RD Dec. p. 1; Bd Ex. 1(d)). The Employer opposed this petitioned-for unit, arguing that the only appropriate unit must include these same classifications at all of its facilities in Colorado, New Mexico and Nevada. (RD Dec. p. 2, R. 248).

The Region 27 Regional Director, weighing the community of interest factors set forth by the Board for determining an appropriate unit in a multi-facility operation to the record evidence presented by the parties,

[C]onclud[ed] that the unit sought the Petitioner, with the exclusion of Salida, Colorado¹, is appropriate because the record reveals, on balance,

¹ The Employer’s facility in Salida Colorado has one clinician, is located 82 miles away from the closest facility in the unit found appropriate by the Regional Director. (*See* Ptner Ex. 2). In its Request for Review the Employer does not claim that the Regional Director erred by not including this one person facility but rather by not including all 10 facilities in southern Colorado, New Mexico and Nevada. Though the Union petitioned for a unit that included Salida, it does not challenge the Regional Director’s finding that the appropriate unit should not include Salida.

that these Colorado locations have a substantial community of interest distinct from the community of interest they may share with employees in the Four Corners of Colorado, smother Colorado, New Mexico and Nevada.

(RD Dec. p. 18).

Specifically, the Regional Director found that the following factors supported the petitioned-for unit, less the Salida facility, as distinct from a larger three state unit the Employer claimed: geographic proximity of the 14 facilities as contrasted with the distances and geographical features for locations outside the petitioned-for unit; some functional integration within the petitioned-for unit as compared to more distant location, employee interchange among the 14 facilities within the appropriate unit, while there was an absence of significant employee interchange with other locations and a managerial/supervisory structure that “reasonably (though not perfectly tracked the Petitioner’s preferred unit.” (RD Dec. p. 18-19).

The Employer now requests review of the Region 27 Regional Director’s decision. This request should be denied. The record evidence clearly supports the Regional Director’s decision. The evidence shows a commonality of skills, job duties, and common terms of employment in this petitioned-for unit along with the evidence supporting the factors that distinguish this appropriate unit from the Employer-sought three state unit: functional integration, interchange of employees, geographic proximity and managerial/supervisory structure at the first and second levels that closely tracks the appropriately found unit.

Indeed, the absence of any interchange of employees, lack of geographic proximity, lack of any functional integration of operations and separate first and second level supervisors between the non-contiguous states of Nevada and Colorado where the appropriate unit exists is reason enough to reject the Employer’s request that Regional Director erred by not finding that the only appropriate unit must include Nevada.

Moreover, none of the Employer's contentions in its Request provide a basis to grant a request to overturn the Regional Director's decision.

1. Citing the Hearing Officer's Guide, the Employer claims that the Regional Director failed to apply the presumptions for an employer-wide unit. (Er. Req. p. 3). While it is true that the Board has found a presumption for an employer-wide unit, that presumption rests with the petitioner and it is the employer's burden to rebut that presumption, not the other way around. *See Hazard Express, Inc.*, 324 NLRB 989 (1997) ("It is well settled that petitioned-for employer wide unit is presumptively appropriate."); *Greenhorne & O'Mara, Inc.* 326 NLRB 514, 516 (1998) ("As the Petitioner seeks to represent a unit of employees on an employer-wide basis, we find that it is a unit which is, under well-established Board principles, presumptively appropriate under the Act."); *Montgomery County Opportunity Board, Inc.*, 249 NLRB 880, 881 (1980) ("The Petitioner seeks to represent a unit of all the Employer's professional and nonprofessional full- and part-time employees."); *Jackson Liquors*, 208 NLRB 807, 808 (1974) ("Petitioner seeks to represent an employerwide unit of store and warehouse employees."); *Western Electric Co.*, 98 NLRB 1018 (1952) ("By this proceeding the Petitioner seeks to establish a single unit coextensive with the Employer's entire operations, embracing all its technical-professional employees. Because of the Employer's opposition to such a company-wide unit...."). Indeed, even the Hearing Officer's Guide appears to acknowledge that the employer-wide presumption rests with the petitioning party as it states "when all of the employer's facilities are sought."² (underline added). Here, however, as the Regional Director

² In *Acme Markets, Inc.*, 328 NLRB 1208 (1999), after finding that the employer-wide unit was appropriate, in a footnote the Board cited to the cases that held an employer-wide unit is presumptively an appropriate unit. *See* 328 NLRB at 1210, n. 9. Significantly, in its analysis the Board does not apply such a presumption and require the petitioner to rebut it. Also, in each of

correctly found, there was no presumption for the petitioned-for multi-facility unit. (RD Dec. p. 5, citing *Exemplar, Inc.*, 363 NLRB No. 157, at p. 2 (2016), and thus the Regional Director simply weighed the various factors in reaching her determination.

But it is unnecessary for the Board to even resolve this issue, because even if the Employer had a presumption in favor of an employer-wide unit and the Petitioning Union had to rebut it, the evidence supports a finding that this presumption for an employer-wide unit was rebutted. As found by the Regional Director, the petitioned-for unit (less the Salida facility) is appropriate as the employees in that appropriately found unit share substantial community of interest through 1) common skills, duties and terms of employment, 2) functional integration among these facilities as employees refer patients for specific procedures only to other facilities within the appropriately found unit; 3) significant employee interchange within the facilities in the appropriately found unit; 4) that these 14 facilities are geographically proximate as evidenced by the fact that employees move between the facilities from the southernmost point of the unit to the facilities in the northern most point; and 5) the managerial/supervisory structure of facility managers and their regional directors, the first two levels of management that have significant authority over the day to day operation and oversight of the operation, though not perfect, closely parallel the appropriately found unit. On the other hand, while the employees in the employer-wide unit also share common skills, duties and terms of employment, the indisputable evidence shows no employee interchange between the appropriate unit and Nevada and almost no interchange with New Mexico. Moreover, there was no geographic proximity between the

the cases the Board cited for this proposition, the petitioner sought the employer-wide unit. *See* cases cited above, *infra* at p. 3.

petitioned-for unit and the facilities in New Mexico in the non-contiguous state of Nevada. (RD Dec. pp. 10-11). This lack of interchange and geographic proximity rebut any presumption for an employer-wide unit and show that the appropriately found unit share a community of interest sufficiently distinct from the excluded employees.

2. The Employer argues that the Regional Director “disregarded or failed to consider substantial evidence on most factors and questions set forth in the [Hearing Officer’s Guide].” (Er. Req. p. 3). However, it is not the Hearing Officer’s Guide that the Regional Director is bound to follow, but Board law. Here, the Regional Director properly described and considered each of the factors that the NLRB and courts outlined in deciding the community of interest issue for a multi-facility unit. (See RD Dec. p. 5 for outline of factors and pp. 5-18 for analysis of the evidence under each of these factors.).³ Specifically, the Regional Director described the factors as outlined in *Exemplar, Inc.*, 363 NLRB No. 157, at p. 2 (2016). In *Exemplar*, the Board cited to earlier NLRB decisions that stated the same factors to be considered in a petition for a multi-facility unit. *Id.*; see also *NLRB v. Carson Cable TV*, 795 F.2d 879 (1986).

The Employer also complains that the Regional Director considered “the extent of union organization and employee choice, which [the Employer states] are not among the factors or questions the [Hearing Officer’s] Guide advises hearing officers to consider. (Er. Req. at pp. 3; 9). However, not only do the cases cited above, consider “extent of union organization and employee choice” to be a factor to be considered but so does the United States Supreme Court. See *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438 (1965). In any event, the Regional Director did not rely on this factor in reaching her decision. (RD. Dec. p. 18).

³ In its closing argument, the Employer referred to the factors as described in Board decisions, not the Hearing Officer’s Guide. (R. 282)

Finally, while claiming that the Regional Director “disregarded or failed to consider substantial evidence,” the Employer does not identify any “substantial evidence” that the Regional Director “disregarded or failed to consider” other than that she allegedly “failed to properly compare terms and conditions of the petitioned-for employees with those excluded.” (Er. Req. p. 3-4). And as to this one example, the Employer is wrong. The Regional Director expressly ruled that “while the petitioned-for employees clearly share similar terms and conditions of employment, they are not different than the terms of the employees based on Southern and Southwestern Colorado, New Mexico, and Nevada. The Employer’s pay scales and benefits are the same from location to location.” (RD Dec. p. 17). But as explained above, that one factor favoring a larger unit did not overcome the many factors favoring the petitioned-for unit (less the Salida facility.). (See RD Dec. p. 19).

3. The Employer claims that the Regional Director “departed from ... *Acme Markets, Inc.*, 328 NLRB 1208 (1999). (Er. Req. p. 4). The Employer’s reliance on *Acme Markets* as precedent that required the Regional Director to find that the only appropriate unit was employer-wide is misplaced. In *Acme Markets*, the union petitioned for a unit covering three of the four contiguous states in which its operates pharmacies. The Regional Director rejected this petitioned-for unit because there was more interchange between the pharmacies in the excluded state and an included state, than among the three included states. *Id.* at 1209. Instead, the Regional Director ordered separate elections for each of the three states that were part of the petition. *Id.* The Board rejected this finding of three separate units by the Regional Director because the pharmacies were not administratively divided coterminous with each state and there was no evidence of significant interchange within each state. *Id.* Further, the Board found that while the originally petitioned-for three state unit shared “a significant community of interest, the

record fails to show that their community of interest is distinct from the community of interest they share with the employees in the Employer's [excluded state] stores." *Id.*

However, the Board's finding that the only appropriate unit in *Acme Markets* employer-wide among the four contiguous states does not require the same result here. The reason is clear: as found by the Regional Director, the unit found appropriate share a "community of interest" distinct from the community of interest in an employer-wide unit. Here, the appropriately found unit has significant employee interchange among its facilities, (Ptner Exs. 4, 5; R.62, 84, 117, 126-127), some functional integration of operations between these facilities, (R. 67, 87-88, 118-119), and the facilities are geographically proximate to each other, especially as compared to the excluded facilities. (Ptner Exs. 2, 3). However, the Employer-wide unit does not share these factors. Nevada, for example has no employee interchange, no functional integration of operations with the petitioned-for unit and can hardly be characterized as geographically proximate as it is not even a contiguous state to the state where the facilities in the appropriately unit operate. Also, New Mexico and southern Colorado have insignificant interchange with the unit found appropriate, share no functional integration of operations and for the most part, those facilities are many more miles from even the southern-most facility in the unit than the facilities in the appropriate unit are from the Employer's headquarters.

Therefore, the Regional Director did not err by not applying the ultimate finding in *Acme Markets* — an employer-wide unit — to facts presented in this case.

4. The Employer argues that the Regional Director "concludes erroneously that th[e] factor [centralized control of management and supervision] supports the petitioned-for unit." (Er. Req. p. 7). However, that is not what the Regional Director found. Rather, she found that the highest level of management, which controlled HR, payroll functions, labor relations policy,

training development, salary scale determinations and final determination of terminations weighed in favor of the employer-wide unit. (RD Dec. pp. 8-9). However, the lower levels of management retain significant control over day to day administration of the facility, scheduling, performance reviews, approving or accepting transfers, selecting new hires, and initiating discipline. (RD Dec. pp. 9; R. 27-28, 66, 69, 86-87, 88, 109, 119, 116, 174, 177). As the Regional Director explained, these the health care managers, regional directors, supervisor of floats and travelers and director of surgical services track the petitioned-for unit (less Salida) “level of management while flexible, largely tracks the Colorado locations” as two regional directors are assigned almost all of the locations within the unit found appropriate and the third covers the excluded employees in southern Colorado, New Mexico and Nevada. (RD Dec. p. 9). Moreover, the supervisor for travelers and floats only supervises employees that are part of the appropriately found unit. (R. 34, 238-239). And the only deviation from a perfect alignment of first and second level supervisory structure with the appropriately found unit is that only three of the five surgical centers supervised by the director of surgical services are within the supervised unit. (RD. Dec. p. 9, R. 27, 46). It is these first and second level supervisors that “reasonably (though not perfectly) tracks the Petitioner’s preferred unit, to include some regional and facility control” that favors the unit found appropriate (RD. Dec. p. 19). This conclusion by the Regional Director comports with the record evidence and does not provide a basis for rejecting the appropriate unit, especially since, as found by the Regional Director, other factors -- employee interchange, functional integration and geographic proximity -- make the appropriately-found unit sufficiently distinct from the much broader three state employer-wide unit.

5. The Employer claims that the Regional Director “largely treated geographic separation as dispositive.” (Er. Req. p. 7). The Employer’s characterization of the Regional Director’s finding is inaccurate. Rather, she found that this factor, like the other factors of employee interchange, functional integration of operations and first and second level supervisory control, favored the petitioned-for unit (less the Salida facility). (RD Dec. pp. 11, 18-19). Considering this as one of the four factors that made the appropriately found unit distinct from the employer-sought three state unit does not show that this one factor was “dispositive.”

The fact is that inclusion of the facilities in Nevada, which was demanded by the Employer as a necessary part of the “only” appropriate unit that it seeks, (*see* R. 248), would have provided a sufficient basis to reject this employer-sought unit. The facilities operated by the Employer in Nevada, a state not contiguous to Colorado, are more than 700 miles from the Employer’s headquarters. (Ptner Ex. 2). There is no evidence that shows that these distant facilities have employee interchange with any facility in the appropriately found unit. Because of this distance, there is no functional integration of operations among the Nevada facilities and the facilities in the appropriately found unit. The first and second level supervisors covering Nevada do not cover or provide oversight for any of the facilities in the appropriately found unit.

The facilities in New Mexico are not much different. Each of these facilities is 366 or more miles away from the Employer’s headquarters. (RD Dec. pp. 10-11; Ptner. Ex. 2). In the 6 months leading up to the petition there is only example of employee interchange between an employee based in New Mexico and a facility within the appropriately found unit and that was for a total of three days. (R. 245-246). Like in Nevada, but unlike within facilities within the appropriately found unit, New Mexico employees do not refer clients to facilities located within the appropriately found unit, nor vice versa. (R. 68, 88, 101-102, 118-119). The only difference

from Nevada is that one of the four facilities in New Mexico, a surgical center, has the same second level supervisor as the three surgical centers within the appropriately found unit. But the second level supervisor for the three other New Mexico facilities is the same as that supervisor for Nevada and not for any facility within the appropriately found unit.

In its Request, in challenging the Regional Director's finding as to geographic proximity, the Employer focuses on the southern Colorado facilities, which are closer geographically to the headquarters than those facilities in New Mexico or Nevada. (Er. Req. pp. 8). But the Employer does not assert that the Regional Director erred by finding that a unit of all Colorado facilities is inappropriate. (*See* RD Dec. p. 12).

6. The Employer claims that the Regional Director failed to follow the Hearing Officer's Guide that treats functional integration and employee interchange as two separate factors. (Er. Req. p. 8). While the Hearing Officer's Guide treats these as separate factors, Board and court precedent have found as one factor "functional integration, including employee interchange." *See Capital Coors Company*, 309 NLRB 322, 325 (1992); *Exemplar*, 363 NLRB No. 157, at p. 2 ; *NLRB v. Carson Cable TV*, 795 F.2d at 885.

But even if treated as separate factors, these two factors do not support the Employer-sought three state unit. As the Regional Director found, here, the numerous referrals of clients between the facilities within the appropriately found unit evidences some functional integration within that group of employees. (RD Dec. pp. 12-13; R. 68, 88, 101-102, 118-119). *See Visiting Nurses of Illinois*, 324 NLRB 55, 56 (1997)("some degree of functional integration through patient referrals and through shared services of RNs and other professionals"). On the other hand this functional integration does not exist with facilities outside the appropriately found unit.

Moreover, as previously discussed, there is ample evidence of significant employee interchange within the appropriately found unit, while there is insignificant to no employee interchange between excluded facilities and facilities within the appropriately found unit. (RD Dec. pp. 13-16). The Employer claims that that the Regional Director “place[d] undue emphasis on [this employee interchange] factor in deciding to exclude the Southern Colorado, Nevada, and New Mexico locations.” (Er. Req. p. 9). The Employer is wrong.

“The frequency of employee interchange has been regarded as a ‘critical factor’ in ascertaining a community of interest among employees.” *NLRB v. Carson Cable TV*, 795 F.2d at 885; *Executive Resources Associates*, 301 NLRB 400, 401 n. 10 (1991)(citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981) for the proposition that “frequency of employee interchange is a critical factor in determining whether employees who work in different [groups] share a ‘community of interest’ sufficient to justify their inclusion in a single bargaining unit” and then finding that the “lack of significant employee interchange between two groups of contract employees is a strong indicator that the [petitioned-for group of] employees enjoy a separate community of interest.”). Thus, this factor, whether treated along with or separately from functional integration support the Regional Director’s conclusion as to the appropriately found unit.

7. While, as the Employer points out, certain factors — similarity of job duties and skills, common terms and conditions of employment and central control of labor relations – favor the employer wide unit, the fact is, as pointed out by the Regional Director, the “employees in the subset of petitioned-for locations also share that same community of interest within the more limited geographic area that the Petitioner seeks to represent.” (RD Dec. p. 19). Thus, these factors do not make this larger unit distinct from the appropriately found unit. Indeed, many of

these factors are shared by all employees of Employer and do not even make this group distinct from other Employer's employees who even the Employer agrees should be excluded. (R. 55, 234-235).

As the Regional Director points out, even if these common factors support this larger unit as an appropriate unit, that does not lead to the conclusion that this is the only appropriate unit. (RD Dec. p. 19). Rather, as the record evidence establishes, this smaller petitioned-for unit (excluding Salida), share not only common terms, skills, duties with each other, but also geographic proximity, functional integration and employee interchange and this "demonstrates a substantial community of interest" among the petitioned-for unit (excluding the Salida facility) that is distinct from the larger employer-sought unit. Accordingly, the Regional Director correctly found this petitioned-for unit (excluding the Salida facility) to be an appropriate unit for bargaining and directed an election among this unit.

8. Finally, the Employer argues that the Board should reconsider the Regional Director's decision in light of the Board's recent decision in *PPC Structural, Inc.*, 365 NLRB No. 160 (2017). (Er. Req. p. 10). The Employer is wrong. The Regional Director applied the same standard as enunciated in *PPC Structural*.

In *PPC Structural*, the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), including its "overwhelming community of interests" test. *PPC Structural* returned to its old standard:

Applying the Board's traditional community-of-interest factors, the Board will determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.

Id. at p. 7. The Regional Director here applied that same standard in finding the appropriate unit was the petitioned-for group of 14 facilities in Colorado, from Colorado Springs and north. After

weighing the community of interest factors applied in a multi-facility unit, the Regional Director “conclude[d] that the unit sought by the Petitioner, with the exclusion of Salida, Colorado, is appropriate because the record reveals, on balance that these Colorado locations have a substantial community of interest *distinct* from the community of interest they may share with [the excluded] employees.” (italics added). The factors that established that these employees had a “substantial community of interest distinct from the community of interest they share with [the excluded employees] were: functional integration, including employee interchange, geographic proximity, and near perfect alignment of first and second level supervision to the appropriately found unit. At no point in her decision did the Regional Director cite to *Specialty Healthcare* or find that the Employer did not show “overwhelming community of interest” standard between the included and excluded employees.

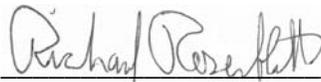
At the hearing, the Hearing Officer did request the parties’ position on the application, if any, of *Specialty Healthcare* to this case. (R. 22). However, Petitioner’s attorney argued that it should prevail without applying *Specialty Healthcare*, (R. 280-281), the Hearing Officer opined that she was not aware of any multi-location unit determination in which it applied, (R. 22), and, as stated above, the Regional Director never applied the “overwhelming community of interest” standard in evaluating the record evidence. Indeed, in her decision, the Regional Director only cited to two cases decided since *Specialty Healthcare*. One of those cases, *Exemplar*, was only cited by Regional Director for a listing of the factors to be applied in determining the appropriateness of a multi-facility unit. (RD Dec. p. 5). In stating those factors in *Exemplar*, the Board cited to prior decisions all decided under the old standard. *Exemplar*, 363 NLRB No. 157, at p. 2. In the second case, *Bergdorf Goodman*, 361 NLRB 50, 51 (2014), the Regional Director only cited for the long held proposition that more than one appropriate unit can be found in a

particular factual setting. (RD Dec. p. 5). In fact in *Bergdorf Goodman*, in rejecting the petitioned-for unit the 5 member Board unanimously did not apply the “overwhelming community of interest” test in *Specialty Healthcare*

Therefore, there is no basis to reconsider the Regional Director’s decision.

For each of the reasons stated above, the Employer’s Request for Review should be denied.

Respectfully submitted,



Dated: January 18, 2018

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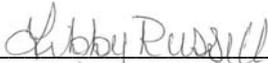
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of January, 2018, I electronically filed a true and correct copy of **PETITIONER'S OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW** with the NLRB's E-file, electronic filing system which will send notification of such filing to:

Paula S. Sawyer, Regional Director
National Labor Relations Board, Region 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

A true and correct copy of the foregoing and a Certificate of Service was sent via e-mail to:

Todd Frederickson tfredrickson@fisherphillips.com



Libby Russell, Legal Specialist
ROSENBLATT & GOSCH, PLLC

Decision and Direction of the Election

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

ROCKY MOUNTAIN PLANNED PARENTHOOD,
INC. D/B/A PPRM

Employer

And

Case 27-RC-205940

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 105

Petitioner

DECISION AND DIRECTION OF ELECTION

On September 11, 2017, the petition in this matter was filed by Service Employees International Union, Local 105 (Petitioner) under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of employees of Rocky Mountain Planned Parenthood, Inc. d/b/a PPRM (Employer). On September 12, 2017, Petitioner filed an amended petition adding two additional locations to the petitioned-for unit. As will be described further below, the Employer operates out of numerous locations in Colorado, New Mexico, and Nevada. The amended petition identifies the unit as including those employees designated as the clinical staff in the following 15 Colorado health centers: Denver Stapleton, Denver Central, Denver Southeast,¹ Denver Southwest, Aurora, Littleton, Arvada, Boulder, Greeley, Fort Collins, Colorado Springs, Granby, Steamboat Springs, Glenwood Springs, and Salida; excluding all supervisory and managerial health center staff and all other staff. The parties estimated that there are approximately 154 employees in the Petitioner's proposed unit. The general titles of the petitioned-for employees are Health Care Assistant (HCA), Registered Nurse (RN), and Advanced Practice Nurse (APN).²

¹ Denver Southeast is occasionally listed as "Glendale" in some exhibits.

² In Board Exhibit 2, the parties stipulated that the appropriate unit(s) should include the following classifications and that a *Sonotone* election would be appropriate given the proposed inclusion of professional employees in a unit with non-professional employees:

Group A Included: Advanced Practice Nurse I, Advanced Practice Nurse II, Advanced Practice Nurse III, Traveling Advanced Practice Nurse, RN for Surgery Center, RN for Surgery Center 2, Float Advanced Practice Nurse, Float RN.

Group B Included: Health Center Assistant, Health Center Assistant III, Advanced Health Center Assistant, Float Health Center Assistant III, Float Health Center Assistant, Float Advanced Health Center Assistant, Regional Traveling Advanced Health Center Assistant, Traveling Advanced Health Center Assistant III, Traveling Health Center Assistant.

On September 19, 2017, a hearing officer of the National Labor Relations Board held a hearing on the petition. The parties orally argued their respective positions prior to the close of the hearing.

At the hearing, the Employer stated its position that the only appropriate bargaining unit is employer-wide, encompassing employees at all of its locations throughout Colorado, New Mexico, and Nevada. The parties estimate that there are approximately 201 or 202 employees in the Employer's proposed unit, including approximately 49 employees who work at locations in New Mexico and Nevada.³

The Petitioner stated that, although it prefers the above-described petitioned-for unit, it would be willing to proceed to an election in a unit including employees at all of the Employer's Colorado locations if the Board were to determine that the smallest appropriate unit must include all of the Colorado locations. Specifically, the Petitioner stated that, in addition to the petitioned-for locations, it is willing to include employees at the more remote facilities in Alamosa, Durango, and Cortez, Colorado. Petitioner also asserted that it would be willing to proceed to an election if the Alamosa and Salida, Colorado facilities were included in or excluded from the unit. Petitioner, furthermore, stated that it would not be willing to proceed to an election in a unit including employees located in New Mexico and/or Nevada.

The main issue to be addressed is whether the petitioned-for unit of employees in the petitioned-for locations specified above constitutes an appropriate unit, whether some alternative unit as proposed by Petitioner is the smallest appropriate unit, or whether a larger, more comprehensive, system-wide unit is the smallest appropriate unit. Petitioner contends that its petitioned-for unit is appropriate because of the geographic cohesiveness of those locations and interchange but, as stated above, it is willing to represent an all-Colorado unit. In contrast, the Employer contends that the proposed unit is not appropriate because its highly centralized management structure requires that the unit be system-wide.

The other issue addressed is whether voting should be done manually at polling places, by mail, or by mixed manual-mail voting. The Petitioner's position is that the election should be done completely through mail ballots. The Employer's position is that the election should be done through a mixture of mail and manual ballots.

As explained below, based on the record and relevant Board law, I find that the Petitioner's petitioned-for unit, with the exclusion of the Employer's facility in Salida, Colorado, is an appropriate unit for purposes of collective bargaining and will direct a mail ballot election in that unit.

³ There are approximately 23 HCA, RN and APN employees at six facilities in New Mexico and 16 HCA and APN employees at two Las Vegas, Nevada facilities.

THE EMPLOYER'S OPERATION

The Employer, part of the Planned Parenthood Federation of America, is a non-profit health care provider that provides reproductive health care services to patients in Colorado, New Mexico, and Nevada. The Employer's headquarters is located in the Stapleton neighborhood in Denver, Colorado. Employer's Exhibit 1 also lists an administrative office in Albuquerque, New Mexico⁴ and identifies an administrative site at the Charleston Boulevard, Las Vegas, Nevada health center. To provide these health services, the Employer employs HCAs, RNs, and APNs, among other job classifications.

The HCAs' duties include answering phones, making appointments, filing, keeping records, assisting with lab testing, and ordering and maintaining supplies and medications. The HCAs do not have to be licensed. There are approximately 91 HCAs in the Petitioner's petitioned-for unit, and approximately 118 in the Employer's proposed three-state unit.⁵

The RNs primarily work at the five surgical sites.⁶ The RNs' responsibility is to provide medical care to clients and quality assurance as outlined in the Employer's medical policies. The RNs' duties include providing medical care to clients, assisting physicians with surgical procedures, performing lab tests, screening medical histories, and providing clients with information about birth control. The RNs assigned to the surgical centers also handle after-hours calls from clients or potential clients that originate from anywhere in the three-state area. It appears that, because the RNs handle these calls from throughout the three-state area, the Employer requires them to be licensed in all three states. There are approximately 20 RNs in the Petitioner's petitioned-for unit, and there are approximately 29 RNs in the Employer's proposed three-state unit.

The APNs' responsibility is to provide primary reproductive health care services. The APNs' duties include reviewing health histories and recording findings, performing physical exams with emphasis on the reproductive system, performing and ordering diagnostic tests, providing birth control educational services, and participating in clinical services. The APNs have advanced degrees that qualify them to do higher-level work than the RNs. The APNs must be licensed, but the Employer does not require most to be licensed in all three states. There are approximately 31 APNs in the Petitioner's petitioned-for unit, and approximately 44 APNs in the Employer's proposed three-state unit.

⁴ This administrative office is listed at a separate address from the Albuquerque surgical center.

⁵ The record includes several exhibits setting forth numbers associated with the various facilities (Petitioner Exhibit 1 and Employer Exhibits 2, 3, and 4). I have relied primarily on Employer Exhibits 2 and 3 in estimating the numbers involved.

⁶ Employer's Exhibits 2 and 3 show the surgical center classifications as being located at the health centers in Colorado Springs, Fort Collins, Denver Stapleton, Durango, Colorado and Albuquerque, New Mexico. There are no RNs listed as working in Nevada.

The Employer also uses traveler and float employees in the HCA, RN, and APN job classifications. Traveler employees are full-time employees who are available to work at all health care centers and they are expected to pick up shifts where needed. Float employees work as needed, without standard hours. All of these traveler and float employees, with one exception, are based in Colorado. There are approximately 12 Colorado-based travelers and floaters (5 travelers and 7 floaters). The exception is one HCA traveler who is based in Albuquerque, New Mexico, and who usually works in New Mexico and occasionally in Colorado. The Employer's Chief Operating Officer testified that the traveling APNs and RNs should be licensed in all three states. In that regard, at the time of the hearing there was one Colorado-based traveling APN who is licensed in all three states and a newer traveling APN who is licensed in Colorado and working on licensure in New Mexico and Nevada. There is one float APN and two float RNs. The two float RNs are based in Fort Collins and Colorado Springs, Colorado.

The approximate numbers of employees in each location sought by Petitioner in its proposed unit are:

Denver Stapleton	18
Denver Central	15
Denver Southeast	7
Denver Southwest	5
Aurora	10
Littleton	10
Arvada	12
Boulder	13
Greeley	5
Fort Collins	19
Colorado Springs	18
Granby	1
Steamboat Springs	1
Glenwood Springs	6
Salida	1

The approximate additional numbers of employees, by location, that the Employer contends must be included in its proposed multi-state unit are:

Alamosa, CO	1
Durango, CO	9
Cortez, CO	1
Albuquerque Central (Nob Hill), NM	2
Albuquerque Surgical, NM	7
Albuquerque Northeast Heights, NM	6
Rio Rancho, NM	1
Santa Fe, NM	4

Farmington, NM	2
Las Vegas East, NV	6
Las Vegas Charleston, NV	10

BOARD LAW

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. See *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. See *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996). More than one appropriate bargaining unit usually can be defined from any particular factual setting. See *Bergdorf Goodman*, 361 NLRB 50, 51 (2014).

As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. See *Overnite Transportation Co.*, 322 NLRB at 723. When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” See *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). The Board has broad discretion in deciding whether a petitioned-for unit is “appropriate,” reflecting Congress’ recognition of the need for flexibility in shaping the bargaining unit to the particular case. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 2 (2016).

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following community-of-interest factors among employees working at different locations: similarity in employees’ skills and duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee interchange; geographic proximity; bargaining history; and extent of union organization and employee choice. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 2. The Board does not apply a presumption in favor of finding petitioned-for multi-facility units to be appropriate. Nor does it apply a presumption against finding a petitioned-for multi-facility to be appropriate. *Id.*

APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

As discussed above, the parties agree on the classifications to be included, but disagree about the proper geographic extent of the unit. For the sake of clarity, the first factor I will consider is centralized control of management and supervision, followed by geographic proximity, and then the remaining factors.

A. Centralized Control of Management and Supervision

In this case, as described in detail below, the record reveals the following organizational structure: the administrative office in Denver Stapleton, regional directors who each cover several facilities, and managers at each facility level, referred to as health center managers. Further, there is a manager, Senior Director of Surgical Services, who is normally responsible for overseeing all five surgical centers, and a separate supervisor for the Colorado-based travelers and floaters who work primarily in the petitioned-for locations.

The Denver Stapleton administrative office houses the highest-level managers. The Employer's Chief Operating Officer (COO), a Vice President of Clinical Operations, Senior Director of Client Services, Senior Director of Surgical Services, Senior Director of Clinical Quality and Risk Management, Senior Director of Patient Services and other officers all work there. The COO also works out of the facility in Steamboat Springs for part of her time.

The Employer has three regional directors who share oversight of all the non-surgical facilities in the three-state area, although one director was on an extended leave at the time of the hearing. The COO testified that the specific locations assigned to each of the regional directors have not been fixed over time. She testified that the organization is "switching up" the health centers assigned to the directors with some frequency. The COO testified that when the regional director who is on extended leave returns, there will likely be a reevaluation of regional directors' health center assignments.

The Director of Patient Services oversees the three regional directors who, in turn, directly oversee the non-surgical health centers. It appears from Employer's Exhibit 10, that the Director of Patient Services is directly, on a temporary basis, covering some Colorado locations including Denver Central, Prenatal Plus,⁷ Littleton, Denver Southwest, and Aurora. The Director of Patient Services is sharing direct oversight of the Cortez, Colorado health center with the health center manager from Durango, Colorado. The Business Process Director listed on Employer Exhibit 12 is temporarily covering the Denver Southeast Health Center. The record refers to another regional director who used to split her time between the Denver Stapleton administrative office and the health center in Longmont, Colorado, before its recent closure. That director is assigned to Boulder, Granby, Glenwood Springs, Steamboat Springs, Greeley, and Arvada. The third regional director is located in Albuquerque, New Mexico and presently oversees all New Mexico locations including Farmington, Albuquerque Central, Northeast Heights and Santa Fe; Colorado health centers in Salida and Alamosa; and the Flamingo and Charleston health centers in Las Vegas, Nevada. The

⁷ The record does not disclose whether there are any HCAs, RNs, or APNs working at the Prenatal Plus location, which is at Rose Medical Center in Denver. The record establishes that there is a prenatal program manager. To the extent that there may be HCAs, RNs, or APNS assigned to this program who are not otherwise included in the petitioned-for locations, they may vote subject to challenge.

Senior Director of Surgical Services, who works out of the Denver Stapleton location, normally oversees the five surgical centers at Denver Stapleton, Fort Collins, Colorado Springs, Durango, and Albuquerque, but Employer's Exhibit 10 notes that a VP of Clinical Operations is temporarily covering the Colorado Springs surgical center.

Each health center has a manager, who is responsible for the operation of the particular facility and oversight of the facility's staff. The health center manager is responsible for the day-to-day management of the facility, monitoring and ensuring compliance with medical protocols and applicable regulations, preparing and submitting reports, managing grants and other funds, handling finances and the budget, and conducting community outreach. Each facility also has an Assistant Health Center Manager, whose role is to assist the Health Center Manager in all aspects of the daily function of the facility.

Additionally, there is a separate supervisor for the HCAs, RNs, and APNs who travel or float. This supervisor's job title is TAPN Supervisor. The TAPN supervisor is based at Denver Stapleton. The TAPN Supervisor does not supervise the one HCA traveler who is based in Albuquerque. That HCA traveler reports to the Albuquerque regional director.

The Employer's Human Resources (HR) office is located at the Denver Stapleton location, and it maintains all employees' personnel records, although duplicate records may be retained by health center managers. HR is responsible for managing the annual performance review process, but health center managers complete the performance reviews, have employees sign the evaluations, and sends the reviews to HR.⁸ Licensed staff also undergo a Quality Management Review that is handled by the Clinical Quality and Risk Management department in Denver. The HR department issues a handbook that is applicable to all employees and reviews all discipline. The Human Resources office also puts out a supervisory manual to provide guidance to supervisors on various subjects. That supervisory manual applies to all facilities in all three states. All FMLA leave is monitored and approved by the HR division, and leave requests for extended periods are approved by HR. Scheduling and regular requests for leave are handled by the health center managers.

All positions for hire are posted by headquarters both internally on an intranet site and on its website for external applicants. As for new hires in Colorado and New Mexico,⁹ resumes are pre-screened by HR and then forwarded to the regional director who, in turn, provides them to the health center manager seeking to fill a position. The regional director will conduct the first interviews, and the health center manager will usually determine which applicant to select. There was some testimony that a regional director could insist on the hiring of an applicant over the objections of a health center

⁸ Employer's Exhibit 32 outlines the performance review process.

⁹ The record shows that HR will provide this support to Nevada locations if requested, but the record otherwise does not address the hiring of employees in Nevada.

manager, but no examples were provided. HR performs the background check for all hires while health center managers usually perform the reference checks. After applicants are hired, all attend a paid orientation in the administrative office in Denver, with a two day orientation for HCAs and a three day orientation for clinicians.

Permanent transfers occur when there is an email notice of an opening. A form from the Employer's intranet is completed. An employee must secure the signature of his or her manager and then submit it to HR. The employee then talks to the manager at the location where they would like to transfer in order to complete the process. HR reviews the proposed transfer and higher level approval is required if a transfer is proposed during the first six months of employment.

Discipline of employees is usually initiated by the health center manager, or the float/traveler supervisor, and the manager will normally confer with both the regional director and HR. If the issue relates to clinical practice, the issue is referred to Quality Management as the health center managers are usually not clinicians.

Any employee terminations would involve the regional directors and require approval by HR to ensure that the decisions are legally sound. Performance related problems would require a performance plan that HR would help develop.

As to wages, HR conducts annual salary surveys and the vice-presidents make recommendations to top officials in order to establish the salary wages. As for promotions to the various levels, health center managers recommend the promotions, subject to review by the regional director and approval by HR.

A training department is located in the Denver Stapleton administrative office that develops training that is usually presented by the staff located in the health centers. On occasion, health center staff will come in to Denver for "train the trainer" programs for that purpose, but the record does not reveal the frequency. Webinars are also conducted so that staff may participate in training remotely. There is also required training conducted at the health centers and most often conducted by the managers, covering topics such as OSHA, medical emergencies, patient donations, and customer service. The record reveals that the Employer also endeavors to conduct a conference in Denver for the clinicians in all three states every other year, budget permitting. Regular staff meetings are held approximately every two weeks at the health centers that are conducted by each health center manager.

The Employer maintains a central warehouse in Denver for certain supplies that are provided to the health centers in all three states, such as birth control and therapeutics. Other supplies may be obtained directly by the health centers. There is a centralized, computer-based payroll system for all locations.

Based on these facts, it appears that at the highest levels there is centralized control of many aspects of management, including centralized HR and payroll functions,

labor relations policies, training development, determinations as to the salary scale, and final determinations as to terminations. This factor arguably weighs in favor of the larger, all-inclusive unit that the Employer seeks. However, health center managers for each of the petitioned-for facilities retain significant autonomy as to scheduling, performance reviews, approving or accepting transfers, selecting new hires, and initiating discipline.

Further, the Employer divides the oversight of the health centers by its regional directors, the supervisor for travelers and floats in Colorado, and the Senior Director of Surgical Services for the surgical centers. This oversight demonstrates that not all authority is retained by the highest level of management. This level of management, while flexible, largely tracks the Colorado locations sought by Petitioner. In that regard, there are two regional directors who are assigned almost all of the Colorado locations, with the third covering mostly New Mexico, Nevada and two southern Colorado locations (Alamosa and Salida). As noted herein, I do not find that the facility in Salida shares a sufficient community of interest with the other petitioned-for locations due to its proximity to, and interchange with Alamosa, which Petitioner seeks to exclude. The exclusion of Salida along with Alamosa, conforms most closely to the Employer's operational structure.

The TAPN Supervisor¹⁰ supervises all of the Colorado-based travelers and floaters that the Petitioner wants to include in the unit. The TAPN Supervisor does not supervise the Albuquerque-based HSA traveler. The travelers and floaters who the Petitioner seeks to include (all Colorado-based) that are under the supervision of the Denver Stapleton-based TAPN supervisor lends support to the validity of the Petitioner's preferred unit. This close adherence to the administrative structure is distinguishable from *Acme Markets, Inc.*, 328 NLRB 1208 (1999), where the Board noted that three separate *statewide* units in Pennsylvania, Delaware and Maryland did not track the Employer's division of pharmacies between the five area managers. In that regard, one manager oversaw seven locations in Pennsylvania, and another manager was assigned to eight stores in Pennsylvania. Here, Petitioner is not seeking a statewide unit, nor is its petitioned-for unit likely to split the already flexible management structure for the Colorado facilities.

To be sure, there is not a perfect managerial/supervisory division that exactly tracks the petitioned-for unit. Three of the surgical centers that are normally all supervised by Senior Director of Surgical Services (Fort Collins, Denver Stapleton and Colorado Springs) are within the petitioned-for unit and two are not (Durango and Albuquerque). However, the Board recognizes that the unit sought need not be the ultimate, the only, or the most appropriate unit and the lack of common supervision in this respect is not fatal to the unit that largely conforms to the Employer's operational structure. Thus, a bargaining unit does not necessarily have to track administrative or

¹⁰ TAPN stand for "Traveling APN." The record reveals that the position has recently been modified so that the supervisor oversees almost all of the Colorado-based traveling and float staff.

operational lines drawn by an employer, at least where there are other community-of-interest factors that overcome a petitioned-for unit's failure to precisely track administrative or operational lines drawn by an employer. Based on my conclusions below concerning other factors, I conclude that any limited deviation of the petitioned-for unit from the Employer's administrative or operational lines does not make inappropriate the petitioned-for unit, with the exclusion of the Salida facility.

B. Geographic Proximity

Most of the locations that the Petitioner seeks are located in Northern Colorado along a north-south corridor running from Fort Collins, Colorado in the north, through the Denver/Boulder Metropolitan area, and south to Colorado Springs, Colorado. In addition, the petitioned-for unit includes four locations that are located some distance away from the north-south corridor just described. These locations are in the cities of Granby, Steamboat Springs, Glenwood Springs, and Salida. Each of those communities is located in the Colorado Rocky Mountains west of Denver, with Salida being most southern. When viewing a map of Colorado from the southern Rocky Mountains northward, Salida is 149 driving miles southwest of Denver Stapleton. Glenwood Springs is approximately 166 driving miles directly west of Denver Stapleton. Granby is approximately 92 driving miles northwest of Denver Stapleton and Steamboat Springs is approximately 163 driving miles northwest of Denver Stapleton. The distance from Fort Collins (the northern-most location in the Petitioner's proposed unit) to Salida (the southern-most location in the Petitioner's proposed unit) is approximately 202 driving miles, with an estimated driving time of three hours and thirty three minutes.

Alamosa is situated in the San Luis Valley between the Sangre de Cristo mountains and the San Juan mountains. It is staffed by one HCA and the record reveals that an APN in Salida, which is about 80 driving miles directly north of Alamosa, has split her time between the two facilities.¹¹ Alamosa is approximately 226 driving miles from Denver Stapleton, 150 driving miles to Durango, and 187 driving miles to Farmington, NM. As noted above, the regional director in Albuquerque, NM supervises the Alamosa and Salida facilities.

Durango and Cortez are in the southwest corner of Colorado, in the Four Corners region, where the borders of Colorado, New Mexico, Utah, and Arizona come together. Durango is approximately 341 driving miles from Denver Stapleton, and Cortez is 387 driving miles from Denver Stapleton. On the other hand, the Durango health/surgical center is only about 51 driving miles from the Employer's Farmington, New Mexico health center and about 215 driving miles to Albuquerque surgical center.

The Employer's New Mexico facilities, in the cities of Albuquerque, Santa Fe, and Farmington, are approximately 426, 366, and 381 driving miles, respectively, from

¹¹ The closest metropolitan area to Salida is Colorado Springs, which is 103 driving miles away. It would take about 2 hours to reach Salida from Colorado Springs. In contrast, it takes about 1.5 hours to drive from Salida to Alamosa.

Denver Stapleton. The two Employer locations in Las Vegas, Nevada are approximately 757 and 763 driving miles away from Denver Stapleton. Nevada is not contiguous with Colorado or New Mexico.

The Board has held that community of interest will not be found in a petitioned-for multi-site unit based solely on a county or state division that is not otherwise supported by other factors. See *Bashas, Inc.*, 337 NLRB 710, 712 (2002)(countywide unit not geographically coherent group). See also *Acme Markets*, 328 NLRB 1208 (1999)(separate statewide units not appropriate). The Board has taken into account that geographic factors can establish economic, demographic, and social realities that are relevant to unit determinations. See, e.g., *Drug Fair – Community Drug Co., Inc.*, 180 NLRB at 527528 (observing that employees in a metropolitan area “shar[e] and fac[e] those needs and problems peculiar to such a community, and enjoy[] a large measure of economic and environmental integration”). In this case, the evidence described above concerning geographic proximity favors a conclusion that the Petitioner’s desired unit, with the exception of the inclusion of the Salida, Colorado location, is an appropriate one. As can be seen in Petitioner’s Exhibit 3, most of the locations that the Petitioner seeks to represent are reasonably close to one another, in the urban corridor from Fort Collins to Colorado Springs, Colorado. Further, most of the petitioned-for locations are clustered in the Denver metropolitan area, which is roughly halfway between Fort Collins and Colorado Springs. The relatively close proximity (in western terms) of these locations to each other supports including the employees at these locations in the unit.

Petitioner also seeks to include in the unit four mountain locations (Granby, Steamboat Springs, Glenwood Springs, and Salida, Colorado) that are located west of Denver. Although these four locations are some distance from the Front Range locations, I conclude that the geography supports the inclusion of Granby, Steamboat Springs, and Glenwood Springs, the most northern mountain locations. The distances involved here do not preclude placing these locations in the bargaining unit. First, Granby, Steamboat Springs, and Glenwood Springs are close enough to the Front Range that they can be reached from Denver (where the Petitioner is located) by car within approximately two to three-and-a-half hours of driving time. Interstate Highway I-70, the main east-west interstate in Colorado, leads west out of Denver toward each of these locations, making them reasonably accessible from Denver. The most direct driving route from Denver to Granby is to drive west on I-70 and then connect to a state highway, Highway 40, which leads north to Granby. Highway 40 continues northwest from Granby to Steamboat Springs. Glenwood Springs is located directly on I-70.

Additionally, if the employees in Granby, Steamboat Springs, and Glenwood Springs were not included in a unit with the Front Range employees on the basis of remoteness, it would be difficult to place them in an appropriate unit where Granby and Steamboat Springs each has only one employee. At the locations with only one employee, no bargaining unit would be appropriate at those individual locations because the Board does not permit bargaining units of only one employee. See

Virginia-Carolina Chemical Corp., 104 NLRB 69, 70 (1953). No party asserts that a unit comprised of these northern mountain locations would be an appropriate grouping, and the northern location in the state makes it appropriate to include them in the proposed unit. Indeed, unlike the southern locations near New Mexico, there would be no other proximate unit where they would share a community of interest.

The southern locations in Durango and Cortez are more remote from Denver and the broader Front Range corridor. Durango is 341 driving miles from Denver Stapleton, and Cortez is 387 driving miles from Denver Stapleton. The record shows that Durango is approximately 200 miles from Salida (the furthest of the petitioned-for locations from Denver), and almost four hours driving time from Salida. Estimated driving time from Denver to Durango is over six hours in good weather conditions. Indeed, actual driving time from Denver to Durango and Cortez may be even higher, because that drive is through rugged mountain areas that are more difficult to traverse due to winter conditions. These distances would limit face-to-face communication between the employees in these cities with their coworkers located in Northern Colorado, and they also provide substantial practical difficulties for the Denver-based Petitioner to provide representation to those distant locations. Further, the location in the Four Corners region, which places them fairly close to the Farmington, New Mexico location is a more geographically appropriate placement.

Additionally, with regard to an alternative unit of all Colorado locations, there does not seem to be any particular reason for such a unit except that it is an understandable delineation. However, the Employer does not have any administrative groups or managerial/supervisory structures that coincide with Colorado's or any other state's borders. The Farmington, New Mexico facility is also reasonably close to the Durango, Cortez, and Alamosa, Colorado locations so as to make the division by state problematic. Additionally, as discussed more below, employee interchange between the petitioned-for unit with the southern Colorado locations of Durango, Cortez, Salida, and Alamosa is infrequent. In such circumstances, the mere fact that all locations are in Colorado is not enough to establish appropriateness. See *Basha's, Inc.*, 337 NLRB at 711 (grouping stores on a county-wide basis did not constitute a coherent geographic unit where there was one store close to stores in the unit and the only basis for excluding it was that it was not in the county).

C. Functional Integration/Employee Interchange

In this case, the record evidence shows that there is some functional integration and employee interchange of employees between the petitioned-for locations, but very little evidence of functional integration or employee significant interchange between petitioned-for locations and other locations.

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on

different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. See *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

In this case, the record reveals that each facility largely operates independently from the others, but that there are some functional ties among facilities that are located close to each other. The evidence shows that there is a practice of referring clients from one facility to another. All the facilities provide core services, such as health exams and STD and HIV testing. However, there are some differences between facilities in the scope of services that are provided. An APN who is based at the Aurora, Colorado health center, testified that she frequently refers patients to other nearby clinics when her facility does not provide a needed service (such as an ultrasound or a surgical procedure) or her facility is busy and patients are waiting. Another APN, based in Littleton, Colorado, testified that she has referred patients to different facilities fairly frequently. Specifically, she stated that she has referred patients most often to surgical centers at Denver Stapleton and also to Colorado Springs and Fort Collins, when patients are willing to drive that far. She testified that Littleton received many referrals from other facilities in the Denver metropolitan area, because Littleton provides numerous services, including ultrasound. An HCA based in Littleton, testified that she has referred patients to other facilities on a weekly basis, including to facilities in Denver, Colorado Springs, and Fort Collins.

In contrast, the evidence does not show that there is much functional integration between facilities that are not located relatively near each other. Thus, the record evidence shows that there are no client referrals from the petitioned-for locations in Colorado to facilities in New Mexico or Nevada.

The establishment of a system for covering shifts through the Employer's traveler and float program operates largely within the petitioned-for unit, also demonstrates functional integration as well as interchange within that group. The Employer uses Colorado-based traveler and floater employees, with the single exception of one HCA float who is based in Albuquerque. The Employer pays such employees for travel time and reimburses employees for any mileage and lodging, when approved by a manager. As set forth in detail below, the evidence shows that the Colorado-based traveler and floater employees work primarily at the locations included in the petitioned-for unit and that there is limited traveler/floater work in Southern and Southwestern Colorado, New Mexico, and/or Nevada.

Petitioner Exhibit 5 is a compilation of the locations and number of hours worked for Colorado-based travelers and floaters from May 28 to June 24, 2017 (a four-week

time period), based on payroll records set forth in Employer Exhibits 25 and 26.¹² Petitioner Exhibit 5 shows that in this four-week period the travelers and floaters worked in petitioned-for locations in the Denver Metro Area, Boulder, Colorado Springs, Longmont, Fort Collins, Greeley, Granby, Glenwood Springs, and Steamboat Springs. The total number of traveler/floater hours worked in these petitioned-for locations combined was 926.25 hours over the covered month. Broken down by facility, the exhibit reflects the following number of traveler/floater work hours utilized by each facility during that period:

Denver Stapleton	129
Denver Central	24.75
Denver Southeast	59
Denver Southwest	61
Littleton	62.25
Aurora	71.75
Arvada	40.25
Boulder	72
Fort Collins	81.25
Greeley	229.5
Colorado Springs	46
Granby	15.25
Steamboat Springs	10.5
Glenwood Springs	6.5
Salida	0
<hr/>	
Alamosa	0
Cortez	27.50
Durango	19

Petitioner Exhibit 5 also shows that, during this four-week time period from May 28 to June 24, 2017, there was little to no traveler or floater work in the locations that the Petitioner does not seek. There was no traveler or floater work in Alamosa (or Salida), and there were only 19 hours of traveler/floater work in Durango by a single RN based at the Denver Stapleton surgical center and 27.5 hours of traveler/floater work in Cortez by two traveling HCAs. The exhibits do not reflect any Colorado-based traveler or floater work in New Mexico and/or Nevada during that time period.

Another exhibit, Petitioner Exhibit 4, is a compilation of data based on Employer Exhibit 27, showing the locations and dates (but not the number of hours) that Colorado-based travelers and floaters worked during the ten-week time period from approximately June 25 to September 1, 2017. Petitioner Exhibit 4 shows that the

¹² The record shows that the Parker and Longmont, Colorado locations that appear in a number of exhibits have closed and are not listed here. Also, a location in Casper, Wyoming has closed and is not included here.

Colorado-based travelers and floaters predominately worked at Colorado locations in the Denver metropolitan area, Boulder, Greeley, Fort Collins, Colorado Springs, Glenwood Springs, and Steamboat Springs.

Additionally, Petitioner Exhibit 4 also shows that, throughout this ten-week period, these Colorado-based travelers and floaters worked infrequently in Alamosa, Durango, Cortez and Salida. This exhibit, as well as Employer Exhibit 27, shows that one employee worked in Alamosa on July 6, 2017. Petitioner Exhibit 4 and Employer Exhibit 27 show that another employee worked in Cortez on July 10 and 13, 2017, and in Durango on July 11, 2017. Another worked in Salida on August 7, 2017.

Petitioner Exhibit 4 further reflects that there was very little traveler or floater work in any of the New Mexico locations and none in Nevada. In that regard, one traveler worked in Santa Fe from August 28 through 31, 2017, but no other Colorado-based travelers or floaters worked in New Mexico during the ten-week period in Petitioner Exhibit 4.

In addition to the documentary evidence discussed above, the record also includes some witness testimony that relates to the issue of employee interchange. The COO testified that travelers and floaters have traveled from Colorado to work at locations not only throughout Colorado, but also in New Mexico and Nevada. For example, the COO testified that a float APN who is located in Glenwood Springs fills in when needed in Colorado and Nevada. The exhibits discussed above, however, do not reflect any Colorado-based floaters doing work in Nevada. The likely reason is that any work that this floater did in Nevada was not covered during the time period covered by the exhibits. The COO testified that this floater worked in Nevada sometime in the "past year," but she did not know any more specifics. This testimony demonstrates that any Colorado-based floater or traveler work in Nevada that is not reflected in the two sample periods (a total of 14 weeks) is sporadic.

An APN who is based in Aurora, Colorado, testified that 12 to 13 months prior to the hearing (that is, before approximately January or February 2017) she had worked as a float in Alamosa, Colorado as well as Salida, Colorado and that she is scheduled to work in Alamosa in December 2017 (the record does not disclose for how long she will work there). The record reflects that when this APN floated to Alamosa in the approximately six month period prior to early 2017, she went approximately once per month. The Aurora APN also testified that she worked in New Mexico for approximately six months from January to June 2016 for approximately four days per month, floating between the facilities in Albuquerque and Santa Fe. This evidence, however is not recent and is insufficient to establish significant interchange.

The only traveler or floater based outside Colorado is an HCA. Since January 2017, the New Mexico HCA has worked in locations outside of New Mexico on eight days. On or about January 13, 14, and 20, 2017, this HCA worked at Denver Stapleton, a petitioned-for location. The record also shows that the New Mexico HCA worked in

Cortez, Colorado on February 20, 2017 and in Durango, Colorado on February 21 and 23 and June 2 and 23, 2017, locations outside of the petitioned-for unit. The record further shows that the Employer has scheduled this New Mexico traveler to work in Denver Stapleton after the close of the hearing, in January 2018, possibly for a few days. Assuming that this HCA actually will work up to three days in that petitioned-for location does not constitute significant employee interchange so as to require the multi-state unit that the Employer urges.

Overall, the documentary evidence shows that the 12 Colorado-based travelers and floaters worked mostly within the petitioned for-facilities. There were 926.25 total hours for travelers and floaters within the sample four-week period from May 28 to June 24, 2017, with 909 hours assigned to the petitioned-for unit locations. This evidence does show interchange that tends to support the Petitioner's proposed unit, as that evidence establishes that there is employee contact from location to location within the petitioned-for unit. Moreover, this interchange consists of temporary assignments in the various work locations, as opposed to permanent transfers. The Board considers temporary transfers to be more indicative of multi-facility integration than permanent transfers. See *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000).

In contrast, the evidence does not support the Employer's position that employee interchange justifies a larger three-state unit. The low number of documented traveler/floater hours in Southern and Southwestern Colorado, New Mexico, and absence of any records for Nevada shows that there is very limited interchange of the Colorado-based travelers and floaters with those locations.¹³ The testimony concerning interchange outside of the petitioned-for unit, and regarding Salida, Colorado, is for the most part too remote and lacking the sufficient frequency to establish frequent interchange. Interchange between employees in the petitioned-for unit to facilities in Nevada was not supported by the record evidence, other than one isolated account.

D. Job Duties and Skills

This factor examines whether employees can be distinguished from one another on the basis of job functions, duties, skills and working conditions. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use

¹³ I note that the 14-week sample period taken from Employer's Exhibits 25 and 26 for traveler and floater assignments are for the summer months in 2016. The records do not include information about travelers' and floaters' assignments during winter months to show interchange from Front Range locations to Alamosa, Salida, Durango, and Cortez, Colorado. In Colorado, adverse winter conditions increases travel times and can result in temporary road closures over mountain passes.

similar equipment supports a finding of similarity of skills. See *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

In this case, the record reveals that the employees in the petitioned-for job classifications and locations cannot be distinguished from the employees in the job classifications and locations that the Employer seeks to add to the unit. The HCAs, RNs, and APNs at the various facilities throughout the three states all share the same skills and qualifications across locations, within each particular job classification. The RNs and ARNs must be properly licensed. The Senior Director of Clinical Quality and Risk Management at Denver Stapleton works with a team of clinicians whose role is to ensure that all of the health centers in Colorado, New Mexico, and Nevada follow the applicable medical standards and guidelines. The team of clinicians provides staff training throughout the three states. The Employer's clinician training team also creates policies and procedures on medical standards and guidelines that are pushed out from Denver Stapleton to the various local facilities. These policies and procedures are uniform in all three states, unless there is a particular state law that requires separate treatment. In practice, there are few differences among the states. There is some variation among the three states' laws on parental notification, medicine dispensing, and lab regulation. In light of the similarities from location to location, the Employer allows transfers between locations, subject to the Human Resources approval.

Given that there are not significant differences within each job classification between locations, this factor favors the Employer's proposed unit incorporating all of the locations in the three states.

E. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook.

In this case, the record reveals that while the petitioned-for employees clearly share similar terms and conditions of employment, they are not different than the terms of the employees based in Southern and Southwestern Colorado, New Mexico, and Nevada. The Employer's pay scales and benefits are the same from location to location. Personnel in the Denver Stapleton office handle payroll for all locations. Employment records are kept in the HR office at Denver Stapleton. The Denver Stapleton Human Resources office issues the employee handbook which is uniform in all locations within the three states. The HR office also puts out a supervisory manual to provide guidance to supervisors on various subjects. That supervisory manual applies to all facilities in all three states. The HR office coordinates interviewing and hiring for the locations in Colorado and New Mexico. The Employer uses the same

application and other hiring forms at all its locations. The Employer's HR department does training for personnel in all locations in the three-state area. The HR office provides orientation for supervisors and staff in all locations. Supervisors travel from locations in Colorado, New Mexico, and Nevada to the Denver Stapleton facility for training. All new hires attend a two-day orientation at Denver Stapleton. The HR office oversees performance management and reviews and employee relations. The Employer has a warehouse at its Denver Stapleton office where it maintains supplies of birth control and therapeutic items. The Stapleton warehouse provides medicines to each of the facilities within the three-state area.

These considerations show that there is little to no variation in terms and conditions of employment from location to location. Therefore, this community-of-interest factor weighs in favor of the three-state wide bargaining unit that the Employer contends is the only appropriate one

F. Bargaining History

There is no bargaining history. Accordingly, that factor weighs neither for nor against the appropriateness of the petitioned-for unit.

G. Extent of Union Organization and Employee Choice

As discussed above, in deciding the unit, the Board first considers whether the unit sought in a petition is appropriate. The extent of Petitioner's organizing, although one factor to be considered, it is not controlling. See *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at p. 5; citing *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 441-2 fn. 4 (1965). In that regard, Section 9(c)(5) of the Act precludes unit requests that are based solely on the extent of organization of the employees. Based on the other factors in this matter, including geographical proximity of the facilities, functional integration, interchange and the fact that the petitioned-for unit largely tracks the Employer's administrative and supervisory organization, the Petitioner's extent of organization is not a controlling factor in this unit determination.

CONCLUSION

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the community-of-interest factors set forth in the cases cited above. I conclude that the unit sought by Petitioner, with the exclusion of Salida, Colorado, is appropriate because the record reveals, on balance, that these Colorado locations have a substantial community of interest distinct from the community of interest they may share with employees in the Four Corners Region of Colorado, southern Colorado, New Mexico, and Nevada.

The following community-of-interest factors support the appropriateness of the petitioned-for unit, to exclude Salida, Colorado: (1) reasonably close geographic

proximity within the petitioned-for unit from Colorado Springs northward as contrasted with the distances and geographical features formed by mountain ranges for locations outside the petitioned-for unit; (2) some functional integration within the petitioned-for locations as compared to more distant locations, along with employee interchange between the petitioned-for locations and the absence of significant employee interchange with the other locations; and (3) a managerial/supervisory structure that reasonably (though not perfectly) tracks with the Petitioner's preferred unit, to include some regional and facility control.

As discussed above, other factors favor the larger unit that the Employer seeks. These factors are: central control over labor relations, similarity in employees' job duties and skills and common terms and conditions of employment. These factors, however, are not dispositive of the unit issue, as I have concluded that the factors discussed above demonstrate the existence of a substantial community of interest. Additionally, the fact that employees in all locations have similar job duties and skills and common terms and conditions means that the employees in the subset of petitioned-for locations also share that same community of interest within the more limited geographic area that the Petitioner seeks to represent. In that regard, with the exception of similarity of terms and conditions of employment and job duties and skills, the record is almost completely devoid of any factors that would establish a community of interest between the petitioned-for employees and the employees in Nevada. Furthermore, there may be multiple appropriate bargaining units and the fact that there may be a larger appropriate unit than the one Petitioner seeks to represent, with the exclusion of Salida, Colorado, does not compel a finding that only the larger unit is appropriate.

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 are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it is subject to the jurisdiction of the Board.¹⁴
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.

¹⁴ The parties stipulated that the Employer is a Colorado corporation with facilities located in the State of Colorado. Additionally, the parties stipulated, and I find, that during the 12 months preceding the hearing the Employer derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5,000 directly from points outside of Colorado.

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.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Group A (Professional employees):

Included: All full-time and regular part-time Advanced Practice Nurse I, Advanced Practice Nurse II, Advanced Practice Nurse III, Traveling Advanced Practice Nurse, RN for Surgery Center, RN for Surgery Center 2, Float Advanced Practice Nurse, and Float RNs employed by the Employer at the Employer's locations at Denver Stapleton, Denver Central, Denver Southeast, Denver Southwest, Aurora, Littleton, Arvada, Boulder, Greeley, Fort Collins, Colorado Springs, Granby, Steamboat Springs, and Glenwood Springs, Colorado.

Excluded: All non-professional employees, managers, confidential employees, guards, and supervisors as defined by the Act.

Group B (Non-professional employees):

Included: All full-time and regular part-time Health Center Assistant, Health Center Assistant III, Advanced Health Center Assistant, Float Health Center Assistant III, Float Health Center Assistant, Float Advanced Health Center Assistant, Regional Traveling Advanced Health Center Assistant, Traveling Advanced Health Center Assistant III, and Traveling Health Center Assistants employed by the Employer at the Employer's locations at Denver Stapleton, Denver Central, Denver Southeast, Denver Southwest, Aurora, Littleton, Arvada, Boulder, Greeley, Fort Collins, Colorado Springs, Granby, Steamboat Springs, and Glenwood Springs, Colorado.

Excluded: All professional employees, managers, confidential employees, guards, and supervisors as defined by the Act.

Because the petitioned-for bargaining unit includes professional and non-professional employees who cannot be joined in a single unit without the desires of the professional employees being determined in a separate vote, the election will be conducted in the following two Voting Groups:

Voting Group A (Professional employees)

Included: All full-time and regular part-time Advanced Practice Nurse I, Advanced Practice Nurse II, Advanced Practice Nurse III, Traveling Advanced Practice Nurse, RN for Surgery Center, RN for Surgery Center 2, Float Advanced Practice Nurse, and Float RNs employed by the Employer at the Employer's locations at Denver Stapleton, Denver Central, Denver Southeast, Denver Southwest, Aurora, Littleton, Arvada, Boulder, Greeley, Fort Collins, Colorado Springs, Granby, Steamboat Springs, and Glenwood Springs, Colorado.

Excluded: All non-professional employees, managers, confidential employees, guards, and supervisors as defined by the Act.

Voting Group B (Non-professional employees):

Included: All full-time and regular part-time Health Center Assistant, Health Center Assistant III, Advanced Health Center Assistant, Float Health Center Assistant III, Float Health Center Assistant, Float Advanced Health Center Assistant, Regional Traveling Advanced Health Center Assistant, Traveling Advanced Health Center Assistant III, and Traveling Health Center Assistants employed by the Employer at the Employer's locations at Denver Stapleton, Denver Central, Denver Southeast, Denver Southwest, Aurora, Littleton, Arvada, Boulder, Greeley, Fort Collins, Colorado Springs, Granby, Steamboat Springs, and Glenwood Springs, Colorado.

Excluded: All professional employees, managers, confidential employees, guards, and supervisors as defined by the Act.

The employees in Voting Group A will be asked the following two questions on their ballots:

- 1) Do you wish to be included in the same unit with non-professional employees of the Employer for the purpose of collective bargaining?
- 2) Do you wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 105?

To which the choice for an answer for each question will be "YES" or "NO".

The employees in Voting Group B will be polled to determine whether or not they wish to be represented for collective bargaining purposes by Service Employees International Union, Local 105. To which the choice for an answer will be “YES” or “NO”.

The professional employees will vote separately as to whether or not they wish to be included in the same bargaining unit with non-professional employees. If a majority of the professional employees in Voting Group A vote “Yes” to the first question, indicating their wish to be included in a unit with non-professional employees, they will be so included in the overall bargaining unit, as described above. Their votes on the second question will then be counted together with the votes of the non-professional employees in Voting Group B to decide whether or not the Petitioner has been selected to represent the combined bargaining unit.

If a majority of the professional employees do not vote for inclusion in the same bargaining unit with non-professional employees, they will not be included with the non-professional employees. The professional employees’ votes on the second question will then be counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit.

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 Service Employees International Union Local 105.

A. Election Details

I have determined that a mail ballot election will be held. No party has urged that a manual ballot only election be held in this matter because of the large geographical area, although manual elections are preferred whenever feasible. Petitioner has recommended a mail ballot election, while the Employer has urged a mixed mail/manual election with polling to be held at the Denver Stapleton, Arvada, and Boulder locations. In that regard, the Employer contends, consistent with its Statement of Position, that employees in areas surrounding the Denver metropolitan area could choose to vote at one of these three locations (for example, employees from Fort Collins and Greeley could choose to vote in Boulder, Colorado), while other employees, including travelers and floaters could receive mail ballots.

The Board has long held that Regional Directors may act within their discretion when they choose to direct mail ballot elections due to the scattering of employees, by geography or schedule, and in light of the conservation of Agency resources. *San Diego Gas and Elec.*, 325 NLRB 1143, 1145 (1998) (finding that Regional Director

should take employee scattering into account in deciding appropriateness of mail ballot elections). Section 11301.2 of the *Casehandling Manual, Part Two, Representation Proceedings* indicates that the following situations suggest the propriety of using mail ballots: "(a) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (b) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present in a common location at common times." *Id.* In addition to considering scattering, the Regional Director "should also consider the efficient use of the Agency's financial resources, because their efficient and economic use is a reasonable concern." *Id.*

I find that a mixed mail/manual election is fraught with difficulties in this case. The unit deemed to be appropriate includes numerous locations spread throughout the Fort Collins to Colorado Springs Front Range urban corridor as well as three mountain locations outside Denver. If polling were conducted in Boulder, Colorado, as the Employer has suggests, that location is about 50 miles from Greeley and Fort Collins, Colorado, which is too far for voters to reasonably travel, even in fair weather, and the distance could suppress voter turnout. Even traveling from Littleton, Colorado, which is within the metropolitan area, to either Stapleton Denver or Arvada could take a substantial amount of time depending on the traffic. Further, the numbers of employees at each of the locations is relatively small, with the largest location (Fort Collins, Colorado) only having 19 employees, and some having only one employee. Thus, even if manual polling were to be conducted at a few locations, it would not capture a significant portion of the voting unit. Additionally, employees' days off vary, so it is unclear how polling on one day could capture a significant number of employees. Finally, the unit includes travelers and floaters whose work locations might change by the time of manual polling. I also note that the employees voting in the election should not have difficulties using the mail ballot process. Under the circumstances involved in this case, manual voting is not practical.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **4:30 p.m. on Tuesday, November 28, 2017**, ballots will be mailed to voters from the National Labor Relations Board, Region 27, at the Byron Rogers Federal Building, 1961 Stout Street, Suite 13-103, Denver, Colorado 80294. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Tuesday, December 5, 2017** should communicate immediately with the National Labor Relations Board by either calling the Region 27 Office at (303) 844-3551 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Region 27, NLRB Regional Office at **3:00 p.m. on Tuesday, December 19, 2017**. In order to be valid and counted, the returned ballots must be received in Region 27, at the Byron Rogers Federal

Building, 1961 Stout Street, Suite 13-103, Denver, Colorado 80294, by 3:00 p.m. on December 19, 2017, prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **November 11, 2017**, 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.

To be timely filed and served, the list must be *received* by the regional director and the parties by **November 15, 2017**. 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.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

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

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

D. Posting of Notices of Election

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

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

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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.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated: November 13, 2017

/s/ Paula Sawyer

PAULA SAWYER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Petitioner's Exhibits

Clinic	Distance to Stapleton	
	Actual Distance in Miles	Driving Distance in Miles
Central	4.3	6.2
Southeast	4.5	5
Aurora	6.4	10.7
Arvada	10.6	13.1
Lakewood	10.75	15
Littleton	14.6	23
Boulder	25.5	27.9
Greely	46	53.3
Fort Collins	56	66
Granby	59	92
Colorado Springs	61.4	67.2
Salida	103	149
Steamboat Springs	114	163
Glenwood Springs	131	166
Alamosa	165	226
Durango	234	341
Cortez	260	387
Farmington	271	381
Santa Fe	289	366
Albuquerque Surgical Site	336	428
New Mexcio Northeast Heights	333	426
Las Vegas East	609	763
Las Vegas West	611	757



PETITIONER EX. 3

Name	Home Clinic	Transfer To	Dates
AB	Traveler	Glenwood Spring:	6/25 - 6/29
AB	Traveler	Boulder HC	6/30
CE	Traveler	Denver SE	6/27
CE	Traveler	Boulder HC	6/28, 7/1
CE	Traveler	Greeley	6/29
CE	Traveler	Longmont	6/30
KG	Floater	Greeley	6/26, 6/28
KG	Floater	Littleton	6/27
KK	Floater	Glenwood Spring:	6/30
MM	Traveler	Littleton	6/26, 7/1
MM	Traveler	Stapleton	6/27
MM	Traveler	DEnver SE	6/29
BO	Floater	Greeley	6/30-7/1
MR	Traveler	Greeley	6/26
MR	Traveler	Aurora	6/28-6/29
MR	Traveler	Parker Express	6/30-7/1
S,		SW Lakewood	6/27, 7/1
MS	Traveler	Stapleton	6/26
MW	Floater	Stapleton	6/27
MW	Floater	Co Springs	6/29-6/30
MW	Floater	Ft. Collins	7/1

Name	Home Clinic	Transfer To	Date
AA	Floater	Littleton	7/6
AB	Traveler	SW	7/5, 7/7
AB	Traveler	Alamosa	7/6
AB	Traveler	parker express	7/8
CE	Traveler	Denver Central	7/3
CE	Traveler	Ft. Collins	7/5
CE	Traveler	Boulder	7/6
S		SW	7/8
MM	Traveler	CoSprings	7/3
MM	Traveler	parker express	7/5
MM	Traveler	boulder	7/6-7/7
MR	Traveler	Aurora	7/3, 7/7
MR	Traveler	Greeley	7/5
MR	Traveler	Arvada	7/6
MS	Traveler	Denver SE	7/3
MS	Traveler	Denver central	7/5
AA	Traveler	Arvada	7/10
JB	Floater	Denver SE	7/13
JB	Floater	SW	7/14
AB	Traveler	Longmont	7/10
AB	Traveler	CoSprings	7/12-7/14
AB	Traveler	Arvada	7/15
CE	Traveler	Denver central	7/10, 7/15
CE	Traveler	CoSprings	7/12
CE	Traveler	Boulder	7/13
CE	Traveler	Aurora	7/14
KG	Floater	Greeley	7/12-7/13
EL	Floater	Ft. Collins	7/13-7/14
MM	Traveler	Cortez	7/10, 7/13
MM	Traveler	durango	7/11
MM	traveler	stapleton	7/15
BO	Floater	Greeley	7/15
S		SW	7/11, 7/14
MS	Traveler	Ft. Collins	7/12, 7/13
MS	Traveler	Greeley	7/14-7/15
AA	Floater	SW	7/17
JB	Floater	Littleton	7/18, 7/20
JB	Floater	Denver SE	7/19
JB	Floater	SW	7/21
AB	Traveler	SW	7/19
AB	Traveler	CoSprings	7/20 - 7/21
AB	Traveler	Denver SE	7/22
CE	Traveler	Casper	7/17-7/18
CE	Traveler	Denver Central	7/20
CE	Traveler	Boulder	7/21
KG	Floater	Glenwood Spring:	7/16-7/20
MM	Traveler	Aurora	7/17
MM	Traveler	stapleton	7/17

MM	Traveler	Littleton		7/21
BO	Floater	Greeley	7/19-7/20	
MR	Traveler	Boulder		7/21
MR	traveler	sw		7/22
S		SW	7/18, 7/22	
MS	Traveler	Casper	7/17-7/18	
MS	Traveler	Greeley		7/21

Name	Home Clinic	Transfer To	Date
AA	Floater	Littleton HC	7/25
JB	Floater	Glenwood Springs	07/26/2017
JB	Floater	Glenwood Springs	7/27
AB	Travler	Littleton HC	7/28
AB	Travler	Littleton HC	7/29
CE	Travler	Boulder HC	7/24
CE	Travler	Arvada HC	7/25
CE	Travler	Fort Collins HC	7/27
CE	Travler	Longmont HC	7/28
KG	Floater	Greeley HC	7/24
KG	Floater	Littleton HC	07/25/2017
KG	Floater	Fort Collins HC	07/28/2017
EL	Floater	Fort Collins HC	7/24
EL	Floater	Greeley HC	7/27
MM	Travler	Aurora HC	7/27
MM	Travler	Aurora HC	07/25/2017
MM	Travler	Southwest HC	07/26/2017
MM	Travler	Arvada HC	7/27
BO	Floater	Greeley HC	7/26
BO	Floater	Greeley HC	7/27
BO	Floater	Greeley HC	07/28/2017
MR	Travler	Longmont HC	7/24
MR	Travler	Greeley HC	07/26/2017
MR	Travler	Greeley HC	7/29
MR	Travler	Aurora HC	7/27
MR	Travler	Aurora HC	7/28
S		Southwest HC	07/25/2017
S		Southwest HC	07/26/2017
MS	Travler	Denver Stapelton	07/25/2017
MS	Travler	Greeley HC	7/27
MS	Travler	Greeley HC	7/28
MS	Travler	Greeley HC	7/29

Name	Home Clinic	Transfer To	Date
JB	Floater	Denver S.E. HC	8/2
JB	Floater	Denver S.E. HC	08/05/2017
AB	Traveler	Longmont HC	7/31
AB	Traveler	Arvada HC	8/1
AB	Traveler	Fort Collins HC	8/2
AB	Traveler	Boulder HC	8/3
AB	Traveler	Littleton HC	8/5
CE	Traveler	Stapleton HC	8/1
CE	Traveler	Aurora HC	8/3
CE	Traveler	Boulder HC	8/4
CE	Traveler	Arvada HC	8/5
KG	Floater	Parker Exp HC	7/31
KG	Floater	Steamboat Spgs	8/1
KG	Floater	Steamboat Spgs	8/4
EL	Floater	Greeley HC	7/31
EL	Floater	Fort Collins HC	8/3
EL	Floater	Littleton HC	8/5
MM	Traveler	Colo Spgs HC	7/31
MM	Traveler	Colo Spgs HC	8/2
MM	Traveler	Stapleton HC	8/1
MM	Traveler	Greeley HC	8/4
BO	Floater	Greeley HC	8/2
BO	Floater	Boulder HC	8/3
MR	Traveler	Boulder HC	7/31, 8/2
MR	Traveler	Stapleton HC	8/1
MR	Traveler	Parker Express H	8/4, 8/5
S,		Southwest HC	8/4
MS	Traveler	Aurora HC	7/31
MS	Traveler	Stapleton HC	8/3
MS	Traveler	Fort Collins	8/4, 8/5

Name	Home Clinic	Transfer To	Date
MS	Traveler	Greeley	8/18
MS	Traveler	Fort Collins	8/17
MS	Traveler	Central	8/16
MS	Traveler	Stapleton	8/15
MS	Traveler	SW	8/11
MS	Traveler	Steamboat	8/8-8/9
S	?	SW	8/8, 8/15
MR	Traveler	CS	8/16-8/17
MR	Traveler	Fort Collins	8/15
MR	Traveler	Aurora	8/11
MR	Traveler	Boulder	8/9, 8/12
MR	Traveler	Arvada	8/8
MR	Traveler	Longmont	8/7
BO	Float	Glenwood	8/16
BO	Float	Greeley	8/12, 8/14
BO	Float	Boulder	8/11, 8/15
BO	Float	Littleton	8/10
MM	Traveler	Littleton	8/19
MM	Traveler	SW	8/16, 8/18
MM	Traveler	Greeley	8/12
MM	Traveler	Arvada	8/11
MM	Traveler	Central	8/10, 8/17
MM	Traveler	Salida	8/7
KG	Float	Littleton	8/17
KG	Float	Fort Collins	8/8-8/9
CE	Traveler	Boulder	8/19
CE	Traveler	Arvada	8/17
CE	Traveler	Glenwood	8/14, 8/15
CE	Traveler	Aurora	8/12, 8/18
CE	Traveler	Fort Collins	8/11
CE	Traveler	SE	8/10
CE	Traveler	Littleton	8/9
AB	Traveler	Arvada	8/19
AB	Traveler	CS	8/18
AB	Traveler	Central	8/17
AB	Traveler	Littleton	8/16
AB	Traveler	SE	8/12
AB	Traveler	Glenwood	8/7-8/9
JB	Float	Steamboat	8/7-8/9
AA	Float	Steamboat	8/14-8/15

Name	Home Clinic	Transfer To	Date
MS	Traveler	Santa Fe	8/28 - 8/31
S	unknown	SW	8/22, 8/29-8/30
MR	Traveler	Aurora	8/30-9/1
MR	Traveler	Fort Collins	8/29
MR	Traveler	Boulder	8/28
MR	Traveler	CS	8/24-8/25
MR	Traveler	Stapleton	8/23, 8/31
MR	Traveler	Littleton	8/22
MR	Traveler	Arvada	8/21
BO	Greeley	Fort Collins	9/2
BO	Greeley	Boulder	8/23, 8/30
MM	Traveler	SW	8/30, 9/1
MM	Traveler	Stapleton	8/29, 8/31
MM	Traveler	Arvada	8/28
MM	Traveler	Steamboat	8/21-8/23
EL	Float (Boulder)	Littleton	8/25/17
EL	Float (Boulder)	Fort Collins	8/24, 8/31, 9/1
EL	Float (Boulder)	Greeley	8/23, 9/2
KK	Traveler	Steamboat	8/28-8/30
KG	Greeley (float)	Greeley	8/30
KG	Greeley (float)	SE	8/28
KG	Greeley (float)	Glenwood	8/22-8/23
CE	Traveler	Central	8/31-9/2
CE	Traveler	Aurora	8/26
CE	Traveler	SE	8/25
CE	Traveler	Fort Collins	8/24
AB	Traveler	Aurora	8-29, 9/2
AB	Traveler	CS	8/24, 8/25, 8/31
AB	Traveler	Stapleton	8/22-8/23, 8/30, 9/1
JB	Float	Glenwood	8/28-8/31
JB	Float	Arvada	8/25
JB	Float	Aurora	8/23-8/24
AA	Float	Littleton	8/28
AA	Float	Central	8/20

Name	Home Clinic	Transfer To	Date
Employee 1	Denver HQ	Traveler	6/11
Employee 2	Denver HQ	Traveler	6/12
Employee 3	DCC	Denver Central	7/31
Employee 4	DCC	Denver SE	8/21
Employee 5	Longmont	Boulder	8/23
Employee 6	Longmont	Boulder	8/23
Employee 7	Longmont	Boulder	8/23
Employee 8	Longmont	Boulder	8/23
Employee 9	SW	Aurora	9/1
Employee 10	SE	Stapleton	9/5
Employee 11	Rio Rancho	Northeast Heights	9/5
Employee 12	Parker	SE	8/7
Employee 13	Parker	SE	8/7
Employee 14	Parker	SE	8/7

Hearing Transcript References

1 MR. ROSENBLATT: Correct. That's right.

2 MR. FREDRICKSON: Okay.

3 MR. ROSENBLATT: Any of them that are more than eight and a
4 half is probably reflective of multiple days, but we --

5 MR. FREDRICKSON: Okay.

6 HEARING OFFICER SAVELAND: All right. Are you offering
7 Petitioner's 5?

8 MR. ROSENBLATT: I offer Petitioner's 5.

9 HEARING OFFICER SAVELAND: Employer?

10 MR. FREDRICKSON: No objection.

11 HEARING OFFICER SAVELAND: Okay. Petitioner's 5 is
12 accepted into evidence, admitted into evidence.

13 **(Petitioner Exhibit Number 5 Received into Evidence)**

14 HEARING OFFICER SAVELAND: Off the record we also briefly
15 discussed the issue that specialty healthcare may or may not
16 apply in this setting. As of now, I am unaware of any cases
17 where specialty healthcare has applied to a multilocation unit.
18 That doesn't mean the RD will not consider that in her decision
19 and perhaps apply it or not. So the parties need to be aware
20 that with their presentation of evidence, that they have all
21 these issues and cases in mind.

22 Then we also discussed that the Employer has agreed to
23 present as an initial witness what -- their first witness will
24 kind of give an overview of the Employer's operations and
25 facilities. At that point then the Union will put on their

1 management team.

2 Q Okay. And just, again, going level --

3 A Keep going?

4 Q -- by level, is there another level below that?

5 A Sure. So I'll take the Senior Director of Surgical
6 Services as an example. And so in her role, she oversees our
7 five surgical sites. Four of them are located in Colorado and
8 one is in New Mexico, in Albuquerque. Our Senior Director of
9 Patient Services oversees our -- what we call our Regional
10 Directors, who then oversee all the other 20 health centers in
11 our three-state region.

12 Q Okay. Keep going --

13 A Keep going.

14 Q -- yes, to the next layer --

15 A And so the --

16 Q -- management.

17 A -- next layer of those -- so the Regional Directors work
18 very closely and actually oversee our health centers. And so
19 they directly oversee the Health Center Managers. And for the
20 Regional Directors, we have one based in Albuquerque,
21 New Mexico. She oversees health centers in New Mexico, in
22 Las Vegas and in Colorado.

23 And then we have two other Regional Directors who oversee
24 currently sites in Colorado.

25 And then the Health Center Managers are responsible for the

1 oversight and supervision of the health center staff. So that
2 would be the Health Center Assistants, or HCAs, Registered
3 Nurses, the RNs, or Nurse Practitioners, also PAs and CNMs, the
4 clinical staff.

5 Q Okay. And so the -- the Healthcare (sic) Managers, are
6 those the -- the local leaders at each of the clinics or
7 facilities that PPRM has?

8 A Yes.

9 Q And does each of the facilities have a -- a Health Center
10 Manager?

11 A They do, correct.

12 Q Okay. Take a look at the Employer's Exhibit -- the
13 notebook right there -- Employer's Exhibit 28. Let me know
14 when you're there.

15 A Okay.

16 Q What is Exhibit 28?

17 A This is our organizational structure --

18 Q Okay.

19 A -- for Planned Parenthood.

20 Q Okay. And -- and at what level is your position? Where
21 can that be found on the chart?

22 A Sure. I am in the C suite with the other C suite
23 officers. So I'm the Chief Operating Officer reporting up to
24 the CEO.

25 Q And is that the second purple box from the left-hand side?

1 Quality there are three boxes, and you're referring to the
2 middle box?

3 A Correct.

4 Q Okay. And where is the Clinical Quality Analyst based?

5 A She's based in Denver.

6 Q At Stapleton?

7 A Correct.

8 Q What about the Clinical Quality Informatics --

9 A Informatics.

10 Q -- Manager?

11 A She's also based in Denver at Stapleton.

12 Q And then just, again, going down this portion of the org
13 chart, there's a reference to a -- a TAPN supervisor. What is
14 that?

15 A Oh, sure.

16 Q What's TAPN?

17 A So that's our traveling APNs and as practice nurses. And
18 this position has been modified. That -- the supervisor
19 oversees all of our traveling staff. So she oversees all of
20 our traveling APNs, all of our traveling HCAs as well and
21 building a -- a traveling RN float list.

22 Q So APNs and HCAs?

23 A HCAs. Correct. It's one supervisor for -- uh-huh.

24 Q And -- and would that be true for -- where -- where is
25 the -- the TAPN supervisor, or whatever you're going to call

1 A Correct.

2 Q And that was in Casper?

3 A Correct.

4 Q So and that -- that center has now completely closed,
5 correct?

6 A Correct.

7 Q So we will see in some of the information you provided us
8 information about --

9 A Uh-huh.

10 Q -- people going to Casper? But that center no longer
11 exists, correct?

12 A That's correct.

13 Q And the -- you said the R -- the Regional Director in New
14 Mexico also has certain locations in Colorado. She -- she has
15 two locations in Colorado --

16 A Yes.

17 Q -- correct?

18 A Correct.

19 Q Salida and --

20 A Alamosa.

21 Q Alamosa?

22 A Yes.

23 Q And isn't it correct that there's another Regional
24 Director who's out on maternity leave who would otherwise have
25 those two sites?

1 Q Okay. Are there policies and procedures in your employee
2 handbook?

3 A Absolutely.

4 Q Are those pushed out by PPRM centrally in Denver?

5 A Yes.

6 Q And is it -- do you have a different handbook for Nevada
7 than --

8 A No.

9 Q Do you have a different handbook from Nevada -- from
10 Nevada than Colorado?

11 A No.

12 Q Is the handbook in New Mexico different than what you have
13 in Colorado and Nevada?

14 A No.

15 Q It's all one handbook --

16 A Correct.

17 Q -- regardless of state?

18 A Correct.

19 Q And were those some of the policies and procedures you
20 were referring to in your early testimony in response to my
21 questions?

22 A Yes.

23 Q Do you have an on-call program?

24 A We do.

25 Q Do you have on-call RNs?

1 A I have a master's degree in Maternal Fetal Nursing, I have
2 a national certification as a Women's Health Nurse
3 Practitioner.

4 Q And where do you have -- where -- what states do you
5 presently hold licenses in?

6 A New Mexico and Colorado.

7 Q And without a license, could you practice in either of
8 those states?

9 A No.

10 Q Presently what is your home base?

11 A I have a home base of Aurora half time.

12 Q And what days a week do you work in Aurora?

13 A I work there every Monday and Tuesday and then I also
14 commit to give them two medical abortion clinics per month.

15 Q Okay. In addition to this those days?

16 A Correct.

17 Q And then do you work other times for Planned Parenthood?

18 A Yes.

19 Q And what do you work at other times?

20 A I'm -- I float the rest of the time. I pretty much work
21 five or six days a week and I work at all clinics in Colorado.

22 Q So encompassed with the two plus additional days to get
23 you to five or six days per week?

24 A Correct.

25 Q How do you get your shifts for Aurora? Is it on a

- 1 Q This is in --
- 2 A -- pickups.
- 3 Q -- New Mexico?
- 4 A Yes.
- 5 Q Okay.
- 6 A Yes. Because in Colorado that's done for us by the HCA.
- 7 Q And what about Nevada? Do you know about --
- 8 A I've never -- I don't know anything about Nevada.
- 9 Q Okay. So when you work at the Aurora health center, who
- 10 do you take direction from?
- 11 A From the center manager.
- 12 Q When you go to all these other sites you named in
- 13 Colorado, who do you take day-to-day direction from?
- 14 A The center manager at each center.
- 15 Q Okay. And who prepares the schedule for Aurora?
- 16 A The center manager.
- 17 Q And when -- when you provide patient care, do you often
- 18 have a back up in patient care? I mean do you often have a
- 19 back up of patients waiting to be seen?
- 20 A Oh. That's not uncommon.
- 21 Q Okay. And if you have a back up in patients waiting to be
- 22 seen, and it's time for a break, what -- what do you do? Do
- 23 you take the break or do you deal with the patients?
- 24 A Until very recently, I dealt with the patients.
- 25 Q And what happened very recently?

1 A Very recently there -- there seemed to have been a -- a
2 policy shift where the manager was directed that we were
3 required to take lunch. That's literally been in the last
4 month to six weeks.

5 Q Okay. What about other breaks? Do you take --

6 A No other breaks.

7 Q Okay. Do you ever refer a patient to another clinic?

8 A All the time.

9 Q And why would you do that?

10 A For two reasons. Primarily, number one, there are
11 services that the patient needs that are not -- that are not
12 provided at the clinic that I'm currently at. And that would
13 be, for example, if a patient needs an ultrasound, to localize
14 her IUD, or needs a first trimester of pregnancy ultrasound,
15 many of the clinics don't have ultrasound. So I would refer
16 her to another center.

17 Another example would be if a patient needs a -- a
18 termination of pregnancy that's surgical rather than medical
19 and she is scheduled at my clinic for a medical abortion, the
20 clinic that I'm at that day. Number three, if we're busy and
21 we have a walk-in patient and we know it's going to be a while
22 for them (sic) to be able to see them, we frequently will look
23 to see if there are schedules -- appointments available at
24 other centers that are nearby.

25 Q Okay. So when you refer them to other centers -- we'll

1 get to the surgery in a second. When you refer them to other
2 centers that have services you don't have, the first example,
3 do you refer them sometimes to New Mexico or Nevada or do you
4 always just refer them within Colorado?

5 A I've never referred anybody to New Mexico or Colorado
6 (sic).

7 Q You refer them to closest site?

8 A Closest -- I'm sorry. To Nevada or New Mexico I've never
9 referred anyone.

10 Q Right. So you refer them to the closest site --

11 A Correct.

12 Q -- within Colorado?

13 A Correct.

14 Q And if you -- surgical -- if it's for surgical, we heard
15 some testimony earlier that there are I think four surgical
16 centers?

17 A Five.

18 Q Five surgical centers, four of which are located in follow
19 and one of which is located in Albuquerque. Do you ever refer
20 someone for surgical center to Albuquerque?

21 A Never.

22 Q You refer them to a surgical center nearby in Colorado?

23 A Correct.

24 Q Have you ever been disciplined?

25 A Yes.

1 Q How long ago?

2 A Within the last two years.

3 Q Okay. And where were you working on the day you committed
4 the alleged infraction?

5 A Longmont.

6 Q Todd knows I'm never going to give it away.

7 A Longmont.

8 Q And were you at -- was that your home base that day?

9 A No.

10 Q You were acting as a float that day?

11 A Correct.

12 Q And who told you that you had been disciplined?

13 A Originally the -- the Longmont center manager and then
14 also my Aurora manager after that.

15 Q Okay. In the course of the process up to the handing out
16 an administering of the discipline, did you have contact with
17 anyone other than the two on-site managers?

18 A No.

19 MR. ROSENBLATT: I have no other questions.

20 HEARING OFFICER SAVELAND: Does the Employer have any
21 questions?

22 MR. FREDRICKSON: I do.

23 HEARING OFFICER SAVELAND: Go ahead.

24 **CROSS-EXAMINATION**

25 Q BY MR. FREDRICKSON: T., I have a -- a few questions for

1 THE WITNESS: It's not in there.

2 HEARING OFFICER SAVELAND: And please state your name and
3 spell it for the record.

4 THE WITNESS: B.H.; first name
5 B., all one word, H., H.

6 HEARING OFFICER SAVELAND: Okay. Your witness.

7 **DIRECT EXAMINATION**

8 Q BY MR. ROSENBLATT: Ms. H., by whom are you employed?

9 A PPRM.

10 Q And how long have you been employed with PPRM?

11 A Just over five years.

12 Q And what is your current position?

13 A A level 3 APN. I'm a nurse midwife.

14 Q And do you have a home site?

15 A Yes, Littleton.

16 Q And how many days a week do you work in Littleton?

17 A Three to four.

18 Q And do you work any other days besides those days in
19 Littleton at other sites?

20 A I haven't -- well, I haven't done much of that in the past
21 year until yesterday and I went to Glenwood and I do want to
22 pick up some other shifts --

23 Q Okay. So you worked in Glenwood --

24 A -- moving forward.

25 Q -- yesterday?

1 Q To work in a health center.

2 A No. And the reason I said that is they have come for
3 administrative reasons.

4 Q You mean --

5 A Our clinician conference, I mean, that's administrative
6 actually, but they've -- yeah.

7 Q So you've learned that through the clinician conference?

8 A No, they -- the -- the New Mexico clinicians have come to
9 the clinician --

10 Q Oh.

11 A -- conference, but not -- I'm not aware of them ever
12 coming to work in a health center.

13 Q Okay. Okay. And how often are the clinician conferences?

14 A About every other year.

15 Q Okay. Have you been evaluated recently?

16 A January, not very recently.

17 Q Okay. January.

18 A January of '17.

19 Q And who -- who did your evaluation?

20 A The health center manager.

21 Q In Littleton?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes. Uh-huh.

25 Q Do -- do the health centers have staff meetings?

1 A Yes.

2 Q And who runs that staff meeting?

3 A The health center manager.

4 Q And how often in Littleton, for example, do you have
5 health -- staff meetings?

6 A About once every two weeks.

7 Q As a clinician, have you ever -- have you ever referred a
8 patient to another health center?

9 A Yes.

10 Q How often?

11 A Pretty frequently.

12 Q And why would you do that?

13 A The most common reason I do it now is surgical abortion.
14 The reason I'm hesitating is that we provide a lot of services
15 at Littleton and I've only been working at Littleton lately so
16 we don't have a lot of reason to refer to other health centers.
17 We get a lot of referrals from other local health centers,
18 because we do have ultrasound and do we have someone who does
19 colposcopy. So the -- the reason that referrals would be made
20 is if the -- the clinician doesn't have the skills or the
21 health center doesn't have the equipment of -- to provide the
22 service.

23 Q So when you receive referrals in Littleton where are they
24 coming from; other clinics in the Denver Metro area?

25 A Yes. It --

1 Q Do they ever come from New Mexico?

2 A No.

3 Q Ever come from Nevada?

4 A No.

5 Q And when you refer someone, you refer them to -- so mostly
6 you're referring to surgical centers these days, correct?

7 A Correct.

8 Q And which surgical centers do you refer them to?

9 A Most often Denver Stapleton and then we will consider
10 Colorado Springs at Fort Collins, if appointments and patients
11 willing to drive.

12 Q Okay. Do you ever refer them to the Albuquerque surgical
13 center?

14 A No, we never have.

15 Q At the Littleton facility -- let me strike that. Let me
16 ask this first. The day-to-day operation at the -- at the
17 Littleton facility who -- who operates the facility day-to-day?

18 A The health center manager.

19 Q At the Littleton facility is there any day when every
20 clinician and HCA is scheduled to work?

21 A No. We have -- do you want me to go on --

22 Q Yes.

23 A -- or you want to ask?

24 Q No.

25 A We have, I believe, ten staff and on any given day either

1 Q They're going somewhere.

2 A Yeah.

3 Q Tahiti or a conference, right?

4 A Uh-huh. Oh, not Tahiti.

5 Q So do you know who attends those, I mean, other than the
6 fact that your health care manager disappears and you assume is
7 attending this meeting, do you know who else attends those
8 meetings?

9 A I really don't.

10 Q Okay. You've -- you've been asked -- and you sat through
11 your -- your colleagues prior testimony about referrals so I
12 want to focus your attention about that. And there's been some
13 questioning about where you might refer somebody to and I think
14 that if you have a Colorado patient who needs particular
15 surgical services, you might refer that person to a surgical
16 center in Colorado, correct?

17 A Yes.

18 Q That was your testimony?

19 A Yes.

20 Q And -- and that's patient driven, correct?

21 A Right. Yes.

22 Q I mean, obviously --

23 A Right.

24 Q -- you're not going to send a Colorado patient down
25 to -- down to New Mexico to a surgical center when you have

1 four of them up here, correct?

2 A Correct.

3 Q Just like you wouldn't refer a New Mexico patient, who
4 needed a surgical center or services from a surgical center to
5 one of the surgical centers in Colorado, because one of those
6 exist in Albuquerque, correct?

7 A Uh-huh.

8 Q Yes?

9 A Correct.

10 Q Okay.

11 MR. FREDERICKSON: That -- that's all I have. Thank you.

12 HEARING OFFICER SAVELAND: Thank you.

13 MR. ROSENBLATT: I -- don't go anywhere.

14 **REDIRECT EXAMINATION**

15 Q BY MR. ROSENBLATT: How often are these town hall
16 meetings?

17 A I believe they're quarterly.

18 Q And are -- and if I understand your testimony, they're not
19 mandatory attendance?

20 A I don't know.

21 Q And --

22 A Yeah, I -- I don't -- I don't -- I don't believe it's
23 mandatory.

24 Q Okay.

25 A There's no penalty when I've missed them.

1 be -- do you know if that has to do with your experience or
2 with your location?

3 THE WITNESS: Not location.

4 HEARING OFFICER SAVELAND: Not location. Okay.

5 THE WITNESS: Other random factors I would say.

6 HEARING OFFICER SAVELAND: Yeah, I'm sorry. I guess -- I
7 guess I should --

8 THE WITNESS: No, you know --

9 HEARING OFFICER SAVELAND: -- ask do you know --

10 THE WITNESS: -- it's when you were hired --

11 HEARING OFFICER SAVELAND: -- if there's a locality pay?

12 THE WITNESS: No -- no.

13 HEARING OFFICER SAVELAND: Okay. And then in terms of
14 your daily -- daily operations, I guess I haven't heard
15 anything yet, in terms of what does supervision look like on a
16 daily basis? Are you being supervised or not? Can you kind of
17 give us a little bit of background on that?

18 THE WITNESS: So as far as any, like, administrative
19 tasks, it's the health center manager.

20 HEARING OFFICER SAVELAND: Okay.

21 THE WITNESS: You know, whether you show up for work; are
22 you nice; do you work --

23 HEARING OFFICER SAVELAND: Right.

24 THE WITNESS: -- as a team player, you know, all that is
25 the health center manager.

1 Q Okay. But all contact with any supervision or management
2 was with the on-site manager at the two locations?

3 A Correct.

4 Q And then how did you work out the scheduling and the
5 actual what day you transfer?

6 A That was negotiated between the Littleton manager and the
7 Stapleton manager.

8 Q Okay.

9 A And then I was told your last day as a Stapleton employee
10 is whatever day that was.

11 Q So how often in Littleton do you work -- how many days a
12 week?

13 A Four days a week; Wednesday through Saturday.

14 Q And in answer to a question that Ms. Saveland asked, is it
15 all -- the whole time that center is open on those four days?

16 A Yeah, I'm scheduled open to close, unless there's a
17 particular circumstance.

18 Q Okay.

19 A Uh-huh.

20 Q And on the days you're scheduled is everyone who works at
21 Littleton working that day? I mean every staff -- let me say
22 that -- that was a poorly directed question. Is every staff
23 who has a home base of Littleton assigned on any of those four
24 days?

25 A I'm sorry. I still don't understand what --

1 Q Strike that. I wouldn't have answered. Someone else
2 already answered for Littleton so. What other site -- do you
3 work at any other sites besides Littleton?

4 A Yes.

5 Q But you're not considered a float, correct?

6 A I'm not on the float team.

7 Q Okay.

8 A I float on my own essentially.

9 Q Okay. And is that true for others also?

10 A Yes.

11 Q Okay. And what sites did you -- in the last year, what
12 sites have you worked at?

13 A So I've worked in the clinic in Glenwood Springs, Aurora,
14 Parker before it closed, Denver Stapleton, Boulder, Greeley, I
15 think that takes care of it.

16 Q Okay. And I want to focus on Glenwood Springs for a
17 second. How often do you go to Glenwood Springs?

18 A Roughly about once a month.

19 Q And for how long when you go once a month?

20 A Typically, I will work three days there. There have been
21 occasions where I've worked the whole week -- all five days.

22 Q So if your work -- what are the three days you typically
23 work there?

24 A Monday, Tuesday, Wednesday.

25 Q So -- or if you work the whole week or you work the three

1 days, that would cover time when you're scheduled to work in
2 Littleton too, correct?

3 A Correct. Uh-huh.

4 Q So what happens; you -- they change your schedule to allow
5 you just to work in Glenwood?

6 A Yes.

7 Q As an HCA do you ever refer patients to another clinic?

8 A Yes.

9 Q How often?

10 A Weekly for sure.

11 Q And why would you do that?

12 A Mainly because it's a service that we don't provide at our
13 site, as B. mentioned the surgical procedure, we don't do at
14 Littleton so those folks would have to be referred to another
15 surgical sites.

16 Q Okay. And at Glenwood do you ever refer people to other
17 sites too?

18 A Occasionally. If someone needs a suction procedure, they
19 may be referred to the Front Range. I've seen that happen.
20 There's also patients though that they refer to other Glenwood
21 Springs providers --

22 Q Okay.

23 A -- that are not part of Planned Parenthood.

24 Q Okay. And do you ever refer anyone to go to outside the
25 Denver Metro area when you refer them?

1 A Other than Colorado Springs and Fort Collins, no.

2 Q Okay. So you refer people as far south as Colorado
3 Springs, as far north as Fort Collins?

4 A Correct.

5 Q Okay. Did you participate in training in Colorado Springs
6 for HCAs?

7 A Yes, as needed, I've been requested by the professional
8 training department to travel and train HCAs.

9 Q And when you trained those in Colorado Springs who was
10 present for that training?

11 A The HCAs of that clinic and their health center manager.

12 Q So the HCAs in Colorado Springs?

13 A Correct.

14 Q We've talked about training within the clinic. We've
15 heard about the clinician conferences. Is there any national
16 training where people from all over the country who are members
17 of -- or employees of Planned Parenthood participate?

18 A Not an in-person training that I'm aware of, but there are
19 trainings through the affiliate risk management system that my
20 understanding is they're nationwide.

21 Q Okay. When was the last time you were evaluated?

22 A The last time I remember being evaluated was February of
23 2016.

24 Q And who evaluated you?

25 A My health center manager at the time at Stapleton.

1 current manager in Littleton and so it's a combined effort of
2 the three of us --

3 HEARING OFFICER SAVELAND: Okay.

4 THE WITNESS: -- what her needs are; what my manager can
5 allow --

6 HEARING OFFICER SAVELAND: Right.

7 THE WITNESS: -- and then what I would like to do.

8 HEARING OFFICER SAVELAND: Okay. But it sounds like it's
9 a -- it's a pretty stable scheduling situation? You're not
10 just going to different places on the fly sort of thing without
11 any notice?

12 THE WITNESS: That happens too, but --

13 HEARING OFFICER SAVELAND: Okay.

14 THE WITNESS: -- not for long distances.

15 HEARING OFFICER SAVELAND: Okay.

16 THE WITNESS: So if perhaps, like, say a clinician called
17 in sick, I might instead be asked to go and work in Aurora to
18 help them out instead of completing my shift at Littleton.

19 HEARING OFFICER SAVELAND: Okay. have you ever
20 been -- have you ever worked or floated over in Alamosa?

21 THE WITNESS: I have not been to Alamosa.

22 HEARING OFFICER SAVELAND: Or Durango?

23 THE WITNESS: I have not been to Durango.

24 HEARING OFFICER SAVELAND: Or Cortez?

25 THE WITNESS: Have not been to Cortez. In fact, those are

1 the only Colorado clinics I've never visited.

2 HEARING OFFICER SAVELAND: Okay. So you've been to
3 Steamboat then?

4 THE WITNESS: Oh, you know what, I'm sorry. I have not
5 been to Steamboat. I have been to Granby. I have not been to
6 Salida.

7 HEARING OFFICER SAVELAND: Salida?

8 THE WITNESS: That's right. Yeah.

9 HEARING OFFICER SAVELAND: All right. When you work at a
10 different location when you're over in Glenwood Springs are you
11 paid the same hourly rate as you are in Littleton?

12 THE WITNESS: Yes.

13 HEARING OFFICER SAVELAND: Okay. That's all I have.
14 Anybody else?

15 MR. ROSENBLATT: Huh-uh.

16 MR. FREDERICKSON: No.

17 MR. ROSENBLATT: Thank you.

18 HEARING OFFICER SAVELAND: I think you're excused.

19 THE WITNESS: All right. Thanks.

20 HEARING OFFICER SAVELAND: Thank you.

21 Do you have any additional witnesses?

22 MR. ROSENBLATT: Oh, wait -- wait -- wait.

23 HEARING OFFICER SAVELAND: Oh.

24 MR. ROSENBLATT: A., I forgot to do this.

25 THE WITNESS: Oh, okay.

1 location.

2 Q Okay, so you may have answered all my questions right
3 there.

4 A Okay.

5 Q So the manager then interviews, does an onsite interview,
6 correct?

7 A Correct.

8 Q And the manager can decide not to hire for their clinic
9 that particular HCA?

10 A In consultation with their regional director.

11 Q Okay.

12 A Yeah.

13 Q Okay. And is the same process true with the clinicians
14 and quality management -- quality management sends it to the
15 manager, the manager then interviews the person and in
16 consultation can decide not to hire the particular clinician
17 for their center?

18 A That is correct. We have overridden those decisions
19 before.

20 Q Okay.

21 A And when there's consultation, we have overridden those
22 and placed employees.

23 Q How often do you think you override it?

24 A Not very often.

25 Q Okay. And the same with HCA? It's not very often?

1 deadly sins, and the manager determined had to get him off the
2 premises or her off the premises immediately, does the manager
3 have the discretion to do that?

4 A No.

5 Q The manager can't -- if someone -- if they -- like someone
6 assault, they have to call HR to get approval to send them off?

7 A Yes. Yes.

8 Q Okay.

9 A Whether -- yes.

10 Q Okay. And if somebody calls in sick for a day, where do
11 they call?

12 A They call their manager.

13 Q And if somebody wants to schedule vacation, who do they
14 talk to about scheduling a vacation?

15 A Their manager.

16 Q And if somebody wants to take -- go to a doctor's
17 appointment, you know, a pre-scheduled doctor's appointment,
18 who do they talk to about that?

19 A Their manager.

20 Q The purchases in this centralized warehouse, is that --
21 are those also sent to Nevada?

22 A Yes.

23 Q You did mention about it. Is that also sent to Nevada?

24 A Yes. Yeah.

25 Q So Nevada doesn't purchase any of the products in Nevada?

1 from?

2 A The first line of approval is their supervisor. The next
3 line of approval is their next level supervisor, and then the
4 third line of approval and final approval is through human
5 resources.

6 Q So unlike FMLA or ADA, it starts with the first line
7 supervisor --

8 A That's --

9 Q -- for that type of --

10 A That's correct.

11 Q -- fellow. Now, I'm going to do this very quickly. And
12 HR functions that you said are the same throughout the
13 organization you said worker's comp, FMLA, unemployment, ADA
14 accommodations, payroll, personnel records, layoffs, COBRA,
15 benefits, recordkeeping, rates of pay, setting rates of pay,
16 policies re hiring, termination layoff recall, straight time
17 versus overtime. Methods to record time as to all of those you
18 said they're the same in all three states, correct?

19 A Yes.

20 Q It all went through the HR, correct?

21 A Yes.

22 Q It's also all employees it's this -- it's the same,
23 correct?

24 A That is correct.

25 Q So it includes call center, it includes employees in other

1 departments.

2 A That is correct.

3 Q Exhibit 18, he asked you about employee -- well, let me
4 just understand Exhibit 18 for a second. So the first line is
5 the employee who received the discipline, or you call it
6 performance correct, correct?

7 A The first line or the first column?

8 Q The first column, I'm sorry.

9 A Yes. That's the employee.

10 Q And then the second column is the employee's title,
11 correct?

12 A That's correct.

13 Q The third is the location where the employee committed the
14 offense.

15 A That's where their location is.

16 Q Well, for a traveler what would it list?

17 A It would list RS --

18 Q Oh, okay.

19 A -- medical services.

20 Q So, okay. All right. The fourth is the supervisor who
21 administered the discipline and then with the fifth line with
22 the advice from HR, correct?

23 A That's correct.

24 Q So when it's an HC manager is the on-site manager at the
25 particular health care center, correct?

1 Q Well, this is not what was requested. We could go to what
2 was requested. This is your exhibit so I'm trying to
3 understand your exhibit. Is this all float HCAs who worked in
4 Colorado during this time period?

5 A During this time period, yes.

6 Q Okay. And it's all float HCAs who worked not in Colorado
7 during this time period, correct?

8 A Yes, those who are designated as float within their title.

9 Q Now B.C. (sic throughout) is a float, right?

10 A B.C. is a traveling HCA.

11 Q All right. So he would've been -- he should be included
12 in here because he -- because this includes floats and
13 traveling, right?

14 A No, he reports to a different supervisor so he wouldn't
15 have been on this timesheet. He doesn't report to this
16 department.

17 Q Who does B.C. report to?

18 A The traveling manager, S.H.

19 Q So -- but show does M.S. report to?

20 A S.H., the --

21 Q Okay.

22 A I'm sorry, B.C. I may have misspoke there. B.C. reports
23 to Ag.H., the regional director. M.S. reports to S.H --

24 Q Okay.

25 A -- traveling manager.

1 Q So B.C. does not report to the same supervisor as all the
2 other travelers and floats.

3 A In this case, no.

4 Q In any case no, right? I mean, B.C. does not report --

5 A No.

6 Q That is a correct statement, correct? B.C. does not
7 report to the same supervisors as all the other travelers and
8 floaters.

9 A No.

10 Q And you said that he had traveled eight times to Cortez,
11 Stapleton, and Durango. In what time period?

12 A In the last year.

13 Q And how many --

14 A Since January.

15 Q How many times to -- well, January's less than a year.

16 A Yes.

17 Q That's six months. Since --

18 A We were talking about --

19 Q -- January? Or since last August?

20 A I don't know. I'd have to confirm that.

21 Q And are there records that show that?

22 A That was communicated through an email.

23 Q Okay.

24 A But likely that is --

25 Q So you haven't seen a record that shows that he's worked

1 Q There's another reference to Durango below it?

2 A Durango again June 2nd and June 23rd.

3 Q We've already talked about this employee from Santa Fe Sb.

4 HEARING OFFICER SAVELAND: Do you have any more questions?

5 MR. FREDRICKSON: I don't.

6 HEARING OFFICER SAVELAND: Do you have any follow-up

7 questions just based on --

8 MR. ROSENBLATT: Yeah, but I need a second.

9 HEARING OFFICER SAVELAND: Sure. Go off the record

10 (Off the record at 4:58 p.m.)

11 HEARING OFFICER SAVELAND: When you're ready, let us know.

12 Okay. Petitioner.

13 **RECROSS-EXAMINATION**

14 Q BY MR. ROSENBLATT: How long has B.C. been employed by

15 Planned Parenthood?

16 A I would have to confirm that with another document but
17 about a year.

18 Q About one year?

19 A Uh-huh.

20 Q And does he work five days a week?

21 A He is full time.

22 Q So he works five days a week. Is that, generally, what
23 full time is?

24 A Full time for us means that they work 37 and a half hours.
25 That can mean a variety of things.

1 Q Okay.

2 A It could mean a few days, longer hours.

3 Q So he's regularly scheduled every week.

4 A That's correct.

5 Q And according to that document in his regular schedule in
6 the last year, those are three times that he worked in
7 Stapleton.

8 A In Stapleton, yes.

9 Q And the two times or four times in Durango and, otherwise,
10 he's working in New Mexico, correct?

11 A Other than those times?

12 Q Yes.

13 A To my knowledge, yes.

14 Q Okay.

15 MR. ROSENBLATT: I have no other questions.

16 HEARING OFFICER SAVELAND: Okay. Employer, do you have
17 any --

18 MR. FREDERICKSON: No.

19 HEARING OFFICER SAVELAND: -- follow-up on that?

20 Okay. Does the Employer intend to provide any more
21 witnesses or present any more witnesses?

22 MR. FREDERICKSON: No, not at this time.

23 HEARING OFFICER SAVELAND: Does the Petitioner have any
24 additional evidence at this time?

25 MR. ROSENBLATT: No.

1 to election.

2 MR. ROSENBLATT: That's correct.

3 HEARING OFFICER SAVELAND: Okay. Is that everything for
4 that?

5 MR. ROSENBLATT: Yeah.

6 HEARING OFFICER SAVELAND: For your unit? Okay.

7 MR. ROSENBLATT: I mean I'm not making my closing
8 argument. You --

9 HEARING OFFICER SAVELAND: No, no --

10 MR. ROSENBLATT: -- just asked me my position.

11 HEARING OFFICER SAVELAND: -- no, no.

12 MR. ROSENBLATT: Okay.

13 HEARING OFFICER SAVELAND: This is just restating the --
14 it's all very --

15 MR. ROSENBLATT: I didn't want to be waiving anything.

16 HEARING OFFICER SAVELAND: It's all very long and tedious.
17 So Employer, please.

18 MR. FREDERICKSON: Our position has not changed.

19 HEARING OFFICER SAVELAND: Okay. And so your position,
20 just to be clear, is that the only appropriate unit is an
21 employer wide unit to include all locations in Colorado, New
22 Mexico and Nevada.

23 MR. FREDERICKSON: Correct.

24 HEARING OFFICER SAVELAND: Correct? Okay. All right.

25 Well, you already answered my question about proceeding to

1 there's evidence of interchange between them. Whereas Durango,
2 Cortez, Alamosa and New Mexico sites are each more than twice
3 the distance from the Denver main office. So geographic
4 proximity supports the petitioned-for unit. And geographic
5 proximity would also support a unit of all of Colorado over a
6 unit that includes Nevada, because Nevada is not geographically
7 proximate to anyone, except Nevada.

8 Bargaining history. We agree there is no bargaining
9 history, so that's not a factor.

10 So, finally, the extent of Union organization and employee
11 choice: As the Board has stated many times, including in
12 Specialty Healthcare, naturally the wishes of the employees are
13 a factor in a Board conclusion upon a unit. Pittsburgh Plate
14 Glass Company v NLRB 313 U.S., 146, at page 156.

15 So, therefore, as the Board has made clear, they consider
16 the employees' wishes, as expressed by the petition, as a
17 factor, although we recognize, not a determinant factor. But
18 it's another factor that goes -- that favors the unit as
19 petitioned.

20 So for all of these reasons, weighing all of these
21 factors, we believe the factors strongly support the petition
22 for a unit, and clearly show that we have petitioned for an
23 appropriate unit. And that's all we need to show.

24 Now, the question was asked to me, my position on
25 Specialty Healthcare. I think, without even analyzing

1 Specialty Healthcare, we win, because I believe the evidence
2 shows that under no circumstances is the only appropriate unit
3 all three states. So therefore, it is an appropriate unit
4 within Colorado, and that is the analysis as far back in time
5 as the Board has been considering this.

6 However, if Specialty Healthcare does apply, then once you
7 have found this to be an appropriate unit -- if Specialty
8 Healthcare does apply, then the Employer is unable to show an
9 overwhelming community of interest, which means there is no
10 legitimate basis upon which to exclude certain employees from
11 the larger unit because of traditional community of interest
12 factors. The Board has said that means they have to overlap
13 almost completely. And, without a doubt, there is no doubt
14 that on interchange, they do not overlap almost completely.
15 There is no real -- virtually no interchange with Nevada, and
16 there's almost no interchange with New Mexico in the past year.
17 So therefore, the Employer, if Specialty Healthcare applies,
18 cannot meet the heavy burden of showing that the only
19 appropriate unit has to include -- that the unit has to include
20 Nevada and New Mexico.

21 For these reasons, we request that the election be
22 directed and the petitioned for unit or, alternatively, the
23 unit just involve Colorado. Thank you.

24 HEARING OFFICER SAVELAND: Thank you. Employer.

25 MR. FREDRICKSON: Thank you.

1 So, obviously, our position is that the petitioned for
2 unit is not the appropriate unit in this case. It's been a
3 moving target since the initial petition was filed. It went
4 from all the clinics in Colorado to a subset of those clinics
5 in Colorado. Now I hear that the Union is now willing to
6 consider all of Colorado again.

7 They argue for a multi-facility unit, so there's no
8 presumption for them that attaches here. The only
9 presumptively appropriate unit is the one that we've proposed,
10 which is -- I'm not sure what Mr. Rosenblatt was talking about
11 when he said -- oh, he said, "We're not asking for a wall-to-
12 wall unit." We are asking for an Employer wide unit of RNs,
13 APNs and HCAs. And when an Employer does that, that's
14 presumptively appropriate. So if there are any presumptions
15 that attach here, they favor the Employer, not the Union.

16 I agree that it's the eight-factor test that applies,
17 though I have the factors in a little bit different order,
18 because I was relying on sort of the case that started it all,
19 which is the Alamo Rent-a-Car case, 330 NLRB, 897. It's a 2000
20 case that's older than Mr. Rosenblatt's case, but it recites
21 essentially the same factors, just in a slightly different
22 order. So I'm going to go through that order instead.

23 If you're talking about a multi-facility unit, then you've
24 got to look at the employee skills and duties. And we believe
25 that the evidence couldn't be clearer that the duties are the