Federacion Puertorriqueña de Trabajadores (the Petitioner) initially petitioned to represent a unit of respiratory therapy technicians employed by Ashford Presbyterian Community Hospital (the Employer). In response to the petition the Employer filed a timely Statement of Position, raising a single issue – that the petitioned-for unit was not appropriate unit in view of National Labor Relations Board policy regarding units in the health care industry, and that because the respiratory therapy technicians employed by the Employer share a community of interest with the unit of employees already represented by the Petitioner as set forth in the below-described collective-bargaining agreement between the parties, the petition

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1 As stipulated by the parties, the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (the Act).
2 The parties stipulated, and I find, that the Employer has been engaged in the operation of an acute care hospital located in San Juan, Puerto Rico, and that the Employer annually receives gross revenues in excess of $250,000 from the operation of the hospital and annually purchases and receives goods and services valued in excess of $50,000 directly from points outside the Commonwealth of Puerto Rico. I further find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act and is subject to the jurisdiction of the National Labor Relations Board (the Board).
3 At the hearing the Employer stated that it “withdrew” its Statement of Position and the Statement of Position was not included in the record. However, I take official notice of the Statement of Position that was timely filed by the Employer on August 24, 2018.
should be dismissed. The referenced collective-bargaining agreement between the Employer and the Petitioner, which was submitted by the Employer with its Statement of Position, and a copy of which is in evidence, is effective by its terms from January 1, 2018 through December 31, 2021. That agreement sets forth the terms and conditions of employment of the following unit of employees:

All licensed practical nurses, licensed nurses, senior practical nurses, nurse phlebotomists, laparoscopic technicians, operating room technicians, orthopedics technicians, telemetry technicians, physical therapy assistants, EKG technicians, radiological technologists, radiologic technologists specializing in mammography, CTI, and MRI, PACS technicians, sterile supply technicians, pharmacy assistants, and orderlies, employed by the Employer, Hospital Presby doing business as Ashford Presbyterian Community Hospital, in its hospital in San Juan, Puerto Rico, pursuant to the certification from the National Labor Relations Board in Case 24-RC-6643.

On August 28, 2018, a hearing officer of the Board held a hearing in this matter.\(^4\)

At the hearing, the Petitioner adopted the position taken by the Employer in its Statement of Position and agreed to seek representation of a voting group of the Employer’s respiratory therapy technicians through an *Armour-Globe*\(^5\) self-determination election, pursuant to which the respiratory therapy technicians employed will be included in the above-described existing bargaining unit of technical employees that is already represented by the Petitioner if the Petitioner wins the election. The respiratory therapy technicians will remain unrepresented if the Petitioner loses the election. The Petitioner contends that based on Section 103.30 of the Board’s Rules and Regulations, the petitioned-for unit comprised of respiratory therapy technicians should be included in the existing bargaining unit of technical employees. The Petitioner claims that allowing a residual unit consisting only of respiratory therapy technicians would contravene Board’s Rules and Regulations regarding appropriate collective-bargaining

\(^4\) The hearing officer’s rulings are free from prejudicial error and are hereby affirmed.
\(^5\) *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).
units in the health care industry. There are approximately 11 respiratory therapy technicians in
the voting group sought by the Petitioner.

At the hearing, the Employer changed its position and objected to an Armour-Globe
election, contending as follows: the respiratory therapy technicians constitute a separate
appropriate unit; the respiratory therapy technicians do not share a community of interest with
the aforementioned existing unit; an Armour-Globe election may only be conducted pursuant to a
stipulation between the parties; and that if the Petitioner wins such an election, the Employer will
improperly be required to apply the terms of the existing collective-bargaining agreement to the
respiratory therapy technicians and will not be permitted to bargain about those terms. The
Employer expressed concern that application of the contract terms to the respiratory therapy
technicians would cost it approximately $20,000. The Employer did not raise any of these
arguments in its Statement of Position.

Because the Petitioner agreed with the Employer's initial position, and no additional
issues were timely raised by the Employer, pursuant to Section 102.66(d) of the Board’s Rules
and Regulations, the Employer was precluded from raising or litigating the issues that it raised at
the hearing and that it failed to raise in its Statement of Position. The parties also stipulated that
if an election is directed, the voting group or unit shall include all regular full-time and part-time
respiratory therapy technicians employed by Employer at its hospital located in San Juan, Puerto
Rico; excluding all other employees, guards and supervisors as defined in the Act.

I have carefully considered the record and the arguments presented by the parties on the
issues before me. For the reasons discussed below, I am directing a self-determination election in
the voting group of respiratory therapy technicians.
I. Facts:

On December 15, 1983, before the Board implemented its current rule regarding appropriate bargaining units in acute care hospitals, the Petitioner was certified as the representative of the following unit of the Employer’s employees in Case 24-RC-6643:6

All licensed practical nurses, operating room technicians, orthopedic technicians, cytology technicians and X-ray technicians employed by the Employer at its hospital in Santurce, Puerto Rico; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

As stated above, the current collective-bargaining agreement between the Employer and the Petitioner, includes the following unit description:

All licensed practical nurses, licensed nurses, senior practical nurses, nurse phlebotomists, laparoscopic technicians, operating room technicians, orthopedics technicians, telemetry technicians, physical therapy assistants, EKG technicians, radiological technologists, radiologic technologists specializing in mammography, CTI, and MRI, PACS technicians, sterile supply technicians, pharmacy assistants, and orderlies, employed by the Employer, Hospital Presby doing business as Ashford Presbyterian Community Hospital, in its hospital in San Juan, Puerto Rico, pursuant to the certification from the National Labor Relations Board in Case 24-RC-6643.

Thus, since the issuance of the certification of representative to the Union, the original unit of technical employees has been modified, but based on the positions in the current unit, other than with respect to orderlies, it appears that job classifications now in the unit are technical employees. As noted above, the Employer has not claimed otherwise, and initially took the position that the respiratory therapy technicians shared a community of interest with the employees in the existing unit. There is no evidence that there are any technical employees employed by the Employer who are unrepresented other than the respiratory therapy technicians.

6 The Hearing Officer took administrative notice of the Certification of Representative issued in Case 24-RC-6643.
II. Analysis

An Armour-Globe election permits unrepresented employees sharing a community of interest with an already represented unit of employees to vote and decide whether they wish to be added to the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 N.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

When the incumbent union seeks to add a group of previously unrepresented employees to its existing unit, and no other labor organization is involved the Board conducts a self-determination election. In such an election, if a majority of the employees vote against representation, they are considered as indicating a desire to remain unrepresented, but if a majority votes for the petitioner they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. *Warner-Lambert Co.*, 298 NLRB 993 (1990).

On April 21, 1989, the Board determined the appropriate units for acute-care hospitals in a rulemaking proceeding. *Health Care Unit Rules*, 284 NLRB 1515, et seq. The Board established eight appropriate bargaining units in acute care hospitals in its Final Rule on Collective Bargaining Units in the Health Care Industry, 29 CFR Part 103.30(a), to avoid undue proliferation of bargaining units and a splintering of the workforce by occupations and professions found within the industry. The Board’s Rule states that, except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to Section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

- (1) All registered nurses.
- (2) All physicians.
- (3) All professionals except for registered nurses and physicians.
(4) All technical employees.
(5) All skilled maintenance employees.
(6) All business office clerical employees.
(7) All guards.
(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

Thus, all technical employees are an appropriate unit in acute care hospitals.

Since the passage of the health care amendments to the Act in 1974, the Board has found respiratory therapy technicians to be technical employees, and the Employer has not claimed otherwise. See Barnert Memorial Hospital Center, 217 NLRB 775, 775, fn. 7 (1975); Trumbull Medical Center, 218 NLRB 796, 797 (1975); William W. Backus Hospital, 220 NLRB 414, 418 (1975); St. Elizabeth's Hospital of Boston, 220 NLRB 325, 327 (1975).

Section 103.30(c) of the Health Care Unit Rules provides that, when a petition for a new unit is filed, the Board shall find appropriate only units which comport, insofar as practicable, with one of the eight appropriate units. In St. Vincent Charity Medical Center, 357 NLRB 854 (2011), in a situation similar to the situation in this case, the Board directed an Armour-Globe election. More specifically, the Board found that a self-determination election would not run afoul of the Rules or lead to undue proliferation of units. Thus, the Board determined that the petitioned-for voting group of phlebotomists constituted an appropriate voting group that shared a sufficient community of interest with an existing nonconforming unit to permit a self-determination election. 357 NLRB at 854-857. In this regard, the Employer’s contention that a self-determination election may not be directed is without merit, as is its assertion that it will be “automatically” required to apply the economic terms and other terms of the collective-bargaining agreement to the respiratory therapy technicians if the Petitioner wins the election. Rather, if the Petitioner wins the election the Employer will have the obligation and right to meet
and bargain with the Petitioner with respect to the wages, hours, and other terms and conditions of employment of the respiratory therapy technicians, as a part of the existing unit.

In this case, the petitioned-for voting group is comprised of respiratory therapy technicians who are residual to the existing unit that is overwhelmingly comprised of technical employees. As set forth in the Board’s Rules, all technical employees of acute care hospitals share a community of interest. If the Employer’s respiratory therapy technicians choose to be represented by the Petitioner, they belong in the same bargaining unit with the Employer’s technical employees who are already represented by the Petitioner. Accordingly, I find that the petitioned-for respiratory therapy technicians share a community of interest with the employees in the existing unit and constitute an appropriate voting group for a self-determination election.

III. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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

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

C. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

D. No collective-bargaining agreement covers the employees in the petitioned-for unit, and no other bar exists to conducting an election.

E. 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.
F. The following employees of the Employer constitute an appropriate voting group for purposes of the self-determination election directed herein:

All full-time and regular part-time respiratory therapy technicians employed by the Employer at its hospital in San Juan, Puerto Rico; excluding all other employees, guards and supervisors as defined in the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above voting group will be deemed to have indicated their desire to be included in the existing bargaining unit of technical employees represented by the Petitioner. If a majority of the valid ballots are not cast for representation, the employees in the above voting group will be deemed to have indicated their desire to remain unrepresented.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The ballot will ask:

*Do you wish to be represented for purposes of collective bargaining by Federacion Puertorriquena de Trabajadores?*

If a majority of valid ballots are cast for the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing unit of technical employees employed at Ashford Presbyterian Community Hospital who are currently represented by Federacion Puertorriquena de Trabajadores. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated that the employees in the voting unit desire to remain unrepresented.

A. Election Details

The election will be conducted by manual ballot on September 20, 2018, from 6:30 a.m. to 7:30 a.m. and from 2:30 p.m. to 3:30 p.m. at the Employer's premises, in the Conference
Room of the Department of Institutional Programs, 1451 Avenida Ashford, San Juan, Puerto Rico. Ballots will be in Spanish. The ballots will be counted immediately following the close of the last poll by the Board agent.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending August 30, 2018, 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. 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 September 11, 2018. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015.

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

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.
No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, in Spanish, 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.

**V. RIGHT TO REQUEST REVIEW**

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

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

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


David Cohen, Regional Director
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