

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

ERP INTERNATIONAL

Employer

and

Case 28-RC-254977

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LOCAL LODGE SC711**

Petitioner

DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under §9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of §3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.¹

I. SUMMARY

The Employer supplies medical personnel including but not limited to, Pharmacy Technicians, Nurses, Physical Therapy Technicians, and Radiology Technicians, to the United States Air Force for use at its Nellis Air Force Base medical facilities. The Employer is engaged in the operation of a hospital pharmacy and satellite pharmacy facilities at Nellis Air Force Base, Nevada . The Satellite Pharmacy is located approximately 1.4 miles away from the Mike O'Callaghan Medical Center, and serves individuals and families affiliated with Nellis Air Force Base. At the Satellite Pharmacy, the Employer employs Pharmacy Technicians who are responsible for filling outpatient prescriptions and prescriptions from off-base healthcare providers. At the Main Hospital Pharmacy, the Employer employs Pharmacy Technicians who are responsible for filling prescriptions for patients who are being discharged from the hospital. The Pharmacy Technicians at the Main Hospital Pharmacy can also fill prescriptions for anyone who walks up to the pharmacy kiosk, but Pharmacy Technicians are instructed to direct anyone who is not being discharged from the hospital or who is seeking a refill to the Satellite Pharmacy to reduce the amount of patient traffic at the Main Hospital Pharmacy.

I have carefully reviewed and considered the record evidence and the arguments of the parties at both the hearing and in the written memorandum of points and authorities submitted

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of §9(c)(1) and §2(6) and (7) of the Act.

before the close of the hearing. Consistent with the position of Petitioner, I find that, based on the record evidence, the Board's definition of acute care facilities under Rule 103.30, and the Board's community of interest standard, the Satellite Pharmacy is not an acute care facility, the petitioned for unit is an appropriate unit, and the Employer has not met its burden of demonstrating that a multiemployer unit would be appropriate in this case. Thus, I have directed an election in the petitioned-for-unit.

Below, I have set forth the record evidence relating to the Employer's operations and the relevant community of interest factors; an analysis of the Board's community of interest standard as applied to the facts of this case and my conclusions in that regard; and the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. Background

The Employer provides various types of medical or healthcare technicians and nurses to the United States Air Force to staff its medical facilities throughout the United States, including Nellis Air Force Base. The Employer has approximately 120 employees at Nellis Air Force Base, all of whom are at Nellis Air Force Base, the Employer supplies Pharmacy Technicians for the Mike O'Callaghan Medical Center Pharmacy (Hospital Pharmacy) and Satellite Pharmacy (Satellite Pharmacy). (Tr. 85:14) The Employer supplies nurses and technicians for the radiology and imaging, physical therapy, occupational therapy, neurology, and pharmacy departments at Nellis Air Force Base medical facilities. (Tr. 85:10-14) Pharmacy Technicians are hired by the Employer, and then assigned to a facility and specific shifts by the Air Force. (Tr. 108:1-15) Pharmacy Technicians remain with their assigned facility except on rare occasions when the Hospital Pharmacy is closed for the day and Pharmacy Technicians assigned to the Hospital Pharmacy are sent to work at the Satellite Pharmacy. (Tr. 116:13-19)

B. The Facilities

The Mike O'Callaghan Medical Center is a full-service hospital located at 4700 Las Vegas Blvd N, Nellis AFB, NV 89191 and has hundreds of beds and several clinics. 80% of patients at the Mike O'Callaghan Medical Center stay for fewer than 30 days.

The Mike O'Callaghan Medical Center contains a pharmacy which serves patients who receive outpatient treatment at the hospital, and patients being discharged from the hospital. The Hospital Pharmacy is staffed by Pharmacists and Pharmacy Technicians, and is open 24 hours a day. If a patient comes to the Hospital Pharmacy for a refill or with a prescription from a provider not affiliated with the hospital, the Pharmacy Technicians are expected to fill the prescription and direct the patient to the Satellite Pharmacy for future refills and non-hospital affiliated prescriptions. (Tr. 107:18-22)

The Satellite Pharmacy is located approximately 1.4 miles away from the Mike O'Callaghan Medical Center, adjacent to the Nellis AFB Veterinary Treatment Facility, One Nevada Credit Union, United States Post Office, and across the street from Community College

of Southern Nevada. (UX 1) The Satellite Pharmacy fills refills for patients who have already been discharged from the hospital, some patients who have received outpatient care at the hospital, and patients who have received prescriptions from off-base healthcare providers. (Tr. 58:7-14) The Satellite Pharmacy does not carry any consumer goods or over the counter products and does not process payment of any kind.² The Satellite Pharmacy is open Monday through Friday from 8:00 a.m. to 5:00 p.m.

The Satellite Pharmacy was specifically created to move refills and non-hospital affiliated prescriptions out of the Hospital Pharmacy, thereby reducing the number of prescriptions that need to be filled and dispensed at the Hospital Pharmacy. (Tr. 58:7-14; 107:18-22)

C. Community of Interest Factors

1. Departmental Organization

The Hospital Pharmacy has separate inpatient and outpatient pharmacies, which are staffed by different employees. The inpatient side of the Hospital Pharmacy is staffed exclusively by military personnel and only deals with prescriptions for patients receiving inpatient treatment in the hospital. The outpatient side, which is staffed by the contractors, handles prescriptions for patients receiving outpatient treatment at the hospital or patients who are being discharged after receiving inpatient treatment. All patients are then directed to the Satellite Pharmacy for any subsequent refills.

The Satellite Pharmacy does not have separate departments and, based on the very limited testimony offered at the hearing, appears to be staffed entirely by Pharmacy Technicians supplied by the Employer and directly provides services only to outpatients and other members of the public.

2. Skills and Training

Employees are hired by the Employer without a specific assignment to the Hospital Pharmacy or the Satellite Pharmacy. All Pharmacy Technicians are required to have the same skills at the time of hire, including professional certifications and 12 months' experience as a full-time technician within the past 36 months. (Tr. 38:24-40:2) Once Pharmacy Technicians have been hired, they are trained to perform the same functions of filling prescriptions and dispensing medication using the equipment at the Hospital Pharmacy and the Satellite Pharmacy. Both facilities use the same kiosks and equipment, and Pharmacy Technicians have the same responsibilities for checking in with patients and dispensing prescriptions to patients.

The Satellite Pharmacy has a drive-thru and a special machine used for processing prescription refills, neither of which is available at the Hospital Pharmacy. (109:4-6) Only

² Any patient filling a prescription at the Satellite Pharmacy is affiliated with the United States Air Force and is therefore a beneficiary of Tricare. Individuals covered under Tricare do not have any copay for prescriptions, consequently there is no payment to process.

employees assigned to the Satellite Pharmacy are trained on using the refill machine and operating the drive-thru pharmacy window.

3. Job Functions

The job functions performed by Pharmacy Technicians at the two locations at Nellis are very similar. Pharmacy technicians are primarily responsible for interacting with patients and filling prescriptions – functions that must be performed at both pharmacies. The distinction in employees' work across the two facilities lies in the nature of the prescriptions handled at each facility, and the equipment used to stage and verify prescriptions at the Satellite Pharmacy. (Tr: 108:17-109:6)

4. Functional Integration

Neither party presented any evidence to show that Pharmacy Technicians from the Hospital Pharmacy and from the Satellite Pharmacy rely upon each other to do their jobs. Routine stock checks are the closest that the Pharmacy Technicians at these two facilities come to relying on one another. In the event that the Hospital Pharmacy does not have a particular medication in stock, Pharmacy Technicians do contact the Satellite Pharmacy to determine whether or not they have the medication in stock, but the Pharmacy Technicians do not arrange for the Satellite Pharmacy to send the medication over to the Hospital Pharmacy, they send the patient to the Satellite Pharmacy to have the prescription filled.(Tr. 109:7-110:1) I find that the limited stock checks that the pharmacists perform at their respective facilities is insufficient to demonstrate the functional integration of the two facilities. Moreover, I find that the practice of sending patients to the Satellite Pharmacy when the Hospital Pharmacy is unable to fulfill the needs of the patient, rather than coordinating the transfer of medication to the Hospital Pharmacy, weighs against finding an integration of the two facilities or an overwhelming community of interest between Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

5. Contact and Interchange

While there was some evidence presented that the Pharmacy Technicians could, theoretically, be transferred between the Hospital Pharmacy and the Satellite Pharmacy, none of the witnesses could recall a single instance when such a transfer actually occurred.³ Such transfers would be at the discretion of the United States Air Force, and are, therefore, outside of the Employer's control.

Contact between Pharmacy Technicians at the Hospital Pharmacy and the Satellite Pharmacy is similarly limited. On a handful of Family Days each year, the Hospital Pharmacy is closed for the day and Pharmacy Technicians at the Hospital Pharmacy are sent to work out of the Satellite Pharmacy for the day, to allow them to complete their weekly hours. (Tr. 105:3-23)

³ The Employer's Health Administrator speculated that transfers between the Satellite Pharmacy and the Hospital Pharmacy all the time, but was not able to point to a specific example and admitted he lacked personal knowledge to support that speculation. (Tr. 191:6-17)

Family Days occur at the discretion of the Base Commander and, consequently, are outside of the Employer's control. (Tr. 150:18-23) Neither party presented any evidence of the Satellite Pharmacy contacting the Hospital Pharmacy for a stock check.

6. Terms and Conditions of Employment

Working conditions are similar at the Hospital Pharmacy and the Satellite Pharmacy. Pharmacy Technicians at both locations have seats and can choose to work from a seated or standing position, employees at both locations walk over to a set of windows to interact with patients, and the work hours for employees at each facility are the same. Employees at the Hospital Pharmacy and the Satellite Pharmacy are also subject to the same disciplinary policies.

The Hospital Pharmacy is open 24 hours a day, while the Satellite Pharmacy hours are limited to 8:00 a.m. to 5:00 p.m., but Pharmacy Technicians supplied by the Employer are not responsible for any overnight coverage at the Hospital Pharmacy. (Tr. 33:14)

The Satellite Pharmacy is generally busier and fills more prescriptions than the Hospital Pharmacy, but the Employer does not offer shift differentials or bonuses for working at the Satellite Pharmacy. The Satellite Pharmacy has a more relaxed dress code than the Hospital Pharmacy. Pharmacy Technicians at the Satellite Pharmacy are not required to wear scrubs to work, while Pharmacy Technicians at the Hospital Pharmacy are required to wear scrubs every day. (Tr. 116:21) There is no evidence in the record indicating whether those scrubs are provided by the Employer. Satellite Pharmacy Technicians wear business casual attire. (Tr. 117:1-2) Both facilities appear to participate in "casual Fridays."

7. Shared Supervision

At the Employer level, all 120 employees at Nellis Air Force Base employed by the Employer fall under the supervision of a single individual who serves in a Health Services Administrator and Human Resources role for the Employer, in addition to his primary responsibilities for HIPAA compliance and training. (Tr. 77:22-79:3) That individual does not have regular interactions with employees and does not oversee employees' day to day work. Pharmacy Technicians' day to day work is overseen by military personnel, who would notify the Employer in the event that there was a disciplinary matter. (Tr. 77:22-78:8; 108:1-15) None of the witnesses who testified at the hearing could recall a time when the military personnel who oversee day to day operations had referred a disciplinary issue to the Employer, or when the Employer had disciplined one of the Pharmacy Technicians.

III. ANALYSIS

A. Acute Care Facility Standard

Rule 103.30, the Health Care Rule, clearly defines acute care facilities as "either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average

length of patient stay is less than thirty days.” 29 C.F.R. § 103.30; *American Hospital Assn. v. NLRB*, 499 U.S. 606, 610 (1991) The Health Care Rule is applied hospitals that provide long term care, outpatient care, and psychiatric care, and rehabilitative care but does not apply to facilities that function primarily as psychiatric hospitals or rehabilitation hospitals. 29 C.F.R. § 103.30

In cases involving acute care facilities, the Health Care Rule dictates the appropriate units petitioners can seek to represent. The Health Care Rule defines eight appropriate units that a petitioner may seek to represent in acute care facilities and limits petitioners to those eight units unless they can demonstrate that there are extraordinary circumstances warranting approval of a non-conforming unit. The Health Care Rule further requires extraordinary circumstances to permit a unit of five or fewer employees.

B. Conclusions About the Two Facilities

The Hospital Pharmacy and the Satellite Pharmacy are located 1.4 miles apart on Nellis Air Force Base and are not part of a large combined medical campus. The Hospital Pharmacy is located inside the Mike O’Callaghan Medical Center, while the Satellite Pharmacy is located in between a veterinary clinic and a credit union, on streets with numerous other retail establishments, and educational facilities. Furthermore, the witnesses’ testimony clearly established that the Satellite Pharmacy was established specifically to move refills and prescriptions from off-base healthcare providers out of the Hospital Pharmacy. There is virtually no evidence that Hospital Pharmacy Technicians and Satellite Pharmacy Technicians have regular contact, nor is there any evidence that Hospital Pharmacy Technicians are assigned to perform work at the Satellite Pharmacy on any regular basis. Consequently, I find that the Hospital Pharmacy and Satellite Pharmacy are separate and distinct facilities for the purposes of this matter.

The Satellite Pharmacy is located in a building which houses several other medical practice groups, but does not share office space or resources with any of those medical practice groups. The Satellite Pharmacy is, essentially, a freestanding pharmacy, comparable to off-base pharmacies that are available to and frequented by civilians.⁴ For these reasons, I find that the Satellite Pharmacy is a separate facility from the Hospital Pharmacy, and that the Satellite Pharmacy is not an acute care facility.

C. Single Facility Presumption

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and

⁴ While the parties also presented evidence that the Satellite Pharmacy does not sell consumer goods, the absence of over the counter medication, shelf stable food items, and other consumer goods does not render the Satellite Pharmacy any less independent of the Mike O’Callaghan Medical Center.

working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

The Board has made clear that “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption.” *California Pacific Medical Center*, 357 NLRB No. 21, slip op. at 2 (2001) (internal citations omitted). Thus, “centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.” *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (internal citations omitted). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees’ day-to-day working lives.

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facilities through temporary transfer or assignment of work. However, a significant portion of the work force must be involved, and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a 1-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. *Dayton Transport Corp.* 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra.

D. Community of Interest Standard

Under current law the Board examines whether employees in a petitioned for unit are organized into a separate department, have distinct skills, training, and job functions, perform distinct work, are functionally integrated with the Employer’s other employees, have frequent contact with other employees, interchange with other employees, have distinct terms and conditions of employment, and are separately supervised. *PCC Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017) The fact that a group or several groups of employees may have some different interests does not alone render a combined unit inappropriate if there is otherwise a sufficient community of interest among all of the employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). See also *Brand Precision Services*, 313 NLRB 657 (1994)

If the petitioned-for unit satisfies these standards, the burden is on the employer to demonstrate that any additional employees it seeks to include share an overwhelming community of interest with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417, 421, 422 (D.C. Cir. 2008)). Employees share an overwhelming community of interest where the petitioned for unit fractures an appropriate unit by seeking only an arbitrary segment of that unit without any rational basis for including some but not all of the employees in the appropriate unit. *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

When applying the community of interest test, the Board does not require that a petitioner seek to represent the most appropriate unit for the purpose of collective bargaining, only that the petitioned for unit be an appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950).

E. Community of Interest Factors

1. Departmental Organization

The evidence presented in this case indicates that the Hospital Pharmacy is divided into inpatient and outpatient functions, and that employees are assigned specifically to either inpatient or outpatient work, while the Satellite Pharmacy does not have any internal divisions that could be considered departmental divisions. Additionally, while the Hospital Pharmacy and the Satellite Pharmacy both fill outpatient prescriptions, there was no evidence presented to show that the outpatient Pharmacy Technicians at the Hospital Pharmacy and the Satellite Pharmacy Technicians are connected through any type of cross-facility department.

In view of the organizational structure described by the witnesses at this hearing⁵, I find that this factor weighs against finding that there is an overwhelming community of interest between the Hospital Pharmacy Technicians and the Satellite Pharmacy Technicians.

2. Skills and Training

Employees in the petitioned for unit have received the bulk of their training before they are hired by the Employer and are trained on the use of specific machines at their work locations once they begin their employment. This on the job training is largely the same, although Satellite Pharmacy Technicians are trained on the use of the refill machine and operation of the drive-thru window while the Hospital Pharmacy Technicians are not.

In view of the employees’ comparable skills and similar on the job training, I find that this factor weighs in favor of finding a community of interest between Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

⁵ Neither party offered an organizational chart as an exhibit during the hearing, consequently no such chart is available as part of the record in this matter.

3. Job Functions

Employees at the Hospital Pharmacy and the Satellite Pharmacy are all responsible for interacting with patients and filling prescriptions, although there is a clear division in the type of patients and prescriptions at each of these facilities. Employees at the Hospital Pharmacy are primarily dealing with patients who are being treated at or have just been discharged from the hospital and filling prescriptions that patients will need after they leave the hospital. Employees at the Satellite Pharmacy, meanwhile, are primarily engaged in refilling prescriptions and filling prescriptions from off-base or non-hospital affiliated healthcare providers.

Considering the similarity of the job functions (interacting with patients and filling prescriptions), I would find that this factor weighs slightly in favor of finding a community of interest between Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

4. Functional Integration

The parties presented no evidence of functional integration between the Hospital Pharmacy Technicians and the Satellite Pharmacy Technicians. The Hospital Pharmacy Technicians and Satellite Pharmacy Technicians are located in different facilities, use entirely different workstations and equipment, and fill different prescriptions. There is an absence in the record of evidence that Hospital Pharmacy Technicians and Satellite Pharmacy Technicians rely upon each other to perform their job functions.

Based on the evidence that the Hospital Pharmacy Technicians and Satellite Pharmacy Technicians do not rely on each other in any way to perform their work, I find that this factor weighs heavily against finding an overwhelming community of interest between the Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

5. Contact and Interchange

Pharmacy Technicians at the Hospital Pharmacy and the Satellite Pharmacy have virtually no contact or interchange. While there was some evidence presented that suggests that the United States Air Force could choose to transfer Pharmacy Technicians between the two facilities, there is an absence of evidence that demonstrates that there have been any such transfers during the time that the Employer has held this contract, or perhaps ever.

There is occasional contact between the Pharmacy Technicians at the two facilities, when the Employer sends Hospital Pharmacy Technicians to the Satellite Pharmacy to complete their weekly hours on Family Days rather than giving them the day off. The record suggests that this is not a function of necessity but is instead how the Employer chooses to handle employees' regularly scheduled hours when the Hospital Pharmacy is closed for the day. Furthermore, the record indicates that Family Days are relatively infrequent.

Given the limited nature of contact between the Hospital Pharmacy Technicians and Satellite Pharmacy Technicians, and the absence of any evidence of interchange between

employees at the two facilities, I find that this factor weighs against finding an overwhelming community of interest between the Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

6. Terms and Conditions of Employment

The working conditions at the Hospital Pharmacy and Satellite Pharmacy have some similarities. The facilities seem to be laid out similarly and contain similar equipment, but the workflow at the two locations is markedly different. The Satellite Pharmacy fills far more prescriptions than the Hospital Pharmacy, due to the Hospital Pharmacy's policy of referring patients to the Satellite Pharmacy for refills. The Satellite Pharmacy also has more limited hours of operation in which to fill those prescriptions, whereas the Hospital Pharmacy is open 24 hours a day, presumably due to its function of servicing inpatient medication needs.

The focus on refilling prescriptions and serving outpatient customers at the Satellite Pharmacy also results in additional responsibilities for Satellite Pharmacy Technicians, who have to know how to operate a refill machine and are required to serve patients at the Satellite Pharmacy's drive thru window, in addition to the duties required of Pharmacy Technicians at the Hospital Pharmacy. Hospital Pharmacy Technicians are not trained on either of these job functions.

The standalone location of the Satellite Pharmacy also gives employees a more flexible dress code. While Hospital Pharmacy Technicians are required to wear scrubs to work each day, Satellite Pharmacy Technicians have a business casual dress code and observe casual Fridays.

Considering this evidence, I find that this factor weighs against finding an overwhelming community of interest between Hospital Pharmacy Technicians and Satellite Pharmacy Technicians.

7. Shared Supervision

While the employees at both facilities are supervised by the same person within the Employer's corporate structure, that individual oversees all 120 employees, including nurses and a variety of different types of technicians, employed by the Employer at Nellis Air Force Base. Furthermore, that individual serves in a Human Resources type role, and does not oversee employees' day to day work. Hospital Pharmacy Technicians' day to day work is overseen by the military personnel staffing the Hospital Pharmacy, while the Satellite Pharmacy Technicians' day to day work is overseen by military personnel staffing the Satellite Pharmacy. In the event that the military personnel overseeing Pharmacy Technicians' work felt that disciplinary action was appropriate, they would contact the Human Resources official employed by the Employer, who would ultimately issue the discipline to the Pharmacy Technician, but there is no evidence that the Employer has issued discipline to any Pharmacy Technician at Nellis Air Force Base.

In light of the separate day to day supervision of Hospital Pharmacy Technicians and Satellite Pharmacy Technicians, I find that this factor weighs against finding that the Hospital

Pharmacy Technicians and Satellite Pharmacy Technicians share an overwhelming community of interest.

F. Conclusions Regarding Community of Interest and the Scope of the Unit

While the similarities in the work performed by Pharmacy Technicians at the Hospital Pharmacy and the Satellite Pharmacy do lend themselves to finding that some of the community of interest factors weigh in favor of finding a community of interest between the Pharmacy Technicians at these two facilities, I find that the Employer has not met its burden to establish that these employees share such an overwhelming community of interest as to require the inclusion of the Hospital Pharmacy Technicians in the proposed bargaining unit. Further, in the absence of any significant evidence of interchange, I find that the Employer has not met its burden to overcome the single facility presumption.

G. Single Employer Presumption

Single employer units are presumptively appropriate, and the burden is on the party seeking a multiemployer unit to demonstrate that there is a history of multiemployer bargaining and an unequivocal intent by the employer to be bound by the outcome of group bargaining. *Sands Point Nursing Home*, 319 NLRB 390 (1995). Where there is a history of both single employer bargaining and multiemployer bargaining the Board seeks to balance the stability of collective bargaining relationships with employee free choice. *Centra, Inc., d/b/a Cent. Transp., Inc., & Cent. Cartage Co. & Truck Drivers Union Local 407, Affiliated with the Int'l Bhd. of Teamsters, AFL-CIO, Petitioner*, 328 NLRB 407, 408 (1999) See also, *Albertson's, Inc.*, 307 NLRB 338 (1992); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). In some instances, the Board has even found that a lengthy history of multiemployer bargaining was not determinative when benefits and stability which can result from multiemployer bargaining had not inured to the benefit of employees. *Centra, Inc., d/b/a Cent. Transp., Inc., & Cent. Cartage Co. & Truck Drivers Union Local 407, Affiliated with the Int'l Bhd. of Teamsters, AFL-CIO, Petitioner*, 328 NLRB 407, 409 (1999); *Burns International Security Service*, 257 NLRB 387, 388 (1981).

In this case, the Employer has not presented any evidence to show that there is a history of multiemployer bargaining involving this proposed unit. Absent any such evidence, the Employer has not met its burden to show that a multiemployer unit would be appropriate in this case.

IV. CONCLUSION

I find that the petitioned for unit of Pharmacy Technicians at the Employer's Satellite Pharmacy facility constitutes an appropriate unit.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate unit (the Unit):

INCLUDED: All full time and regular part time Pharmacy Technicians employed by the employer in the Nellis AFB Satellite Pharmacy Bldg #340 located at Nellis Air Force Base, Las Vegas NV.

EXCLUDED: All managers, other Pharmacists, Dietitians and all other professional employees, guards and supervisors as defined by the Act.

There are approximately 4 employees in the Unit found appropriate.

V. 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 International Association of Machinists and Aerospace Workers, Local Lodge SC711.

A. Election Details

I have determined that a mail ballot election will be held. Although, at the hearing, both parties requested a manual election, after the hearing closed, it became known that community spread of COVID-19 was occurring throughout the United States, including in Clark County Nevada, where the parties requested that the manual election be held. Moreover, the Governor of the State of Nevada issued State of Nevada Executive Order 2020-010, "Declaration of Emergency Directive 010 Stay at Home Order," requiring that people limit their time away from their place of residence or property except to conduct or participate in certain essential activities or functions or to use services or products provided by essential business services, with certain limited exceptions. The conduct of a mail ballot election is necessary to allow the Unit employees to express their preferences concerning union representation without delay while also ensuring the health and safety of the Unit employees, the party representatives, Agency employees, and the community at large.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. **At 2:00 p.m. on Monday, May 11, 2020**, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. 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 **Monday, May 18, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 28 Office at (602) 640-2160 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their ballots to National Labor Relations Board, Region 28, Las Vegas Resident Office, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada using the pre-addressed return envelope by no later than **Tuesday, May 26, 2020**.

All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest possible date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received at the Regional Office, prior to the counting of the ballots. Each party may have one representative attend the count by video conference. A meeting invitation for the video conference will be sent to counsel for the parties prior to the count. No party may make a video or audio recording or save any image of the count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, April 25, 2020**, 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 present in the United States.

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(1) 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 **Tuesday, May 5, 2020**. 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 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 at Phoenix, Arizona this 1st day of May 2020.

Cornele A. Overstreet

Cornele A. Overstreet, Regional Director