

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**SCL HEALTH ST. JAMES MEDICAL GROUP –
BUTTE, LLC;
ST. JAMES HEALTHCARE;
SCL HEALTH – MONTANA; AND
SISTERS OF CHARITY OF LEAVENWORTH
HEALTH SYSTEM, INC.,
AS A SINGLE EMPLOYER¹**

Employer²

and

Case 19-RC-234472

**TEAMSTERS UNION LOCAL NO. 2,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Petitioner

SUPPLEMENTAL DECISION

This matter is before me on remand from the National Labor Relations Board (“Board”).

On March 1, 2019, I issued a Decision and Direction of Election in this matter. After a secret-ballot election, in which a majority of employees voted against representation by Petitioner, Petitioner requested review regarding my decision to exclude Boulder Clinic employees and include telephone operator PSRs³ in the bargaining unit. On October 25, 2019, the Board granted Petitioner’s Request for Review for the purpose of determining the identity of the statutory employer of the employees subject to Petitioner’s Request for Review.

¹ As set forth in this decision, I also find that SCL Health St. James Medical Group – Butte, LLC and Sisters of Charity of Leavenworth Health System, Inc. are joint employers and that St. James Healthcare and Sisters of Charity of Leavenworth Health System, Inc. are joint employers.

² I am correcting the caption in this matter to reflect the proper legal names set forth in exhibits in the record on remand.

³ As explained in the initial decision, in about 2018, several job classifications, including telephone operator, were consolidated into the patient service representative position, which is the classification I included in the instant unit. However, only those patient service representatives who work as telephone operators are at issue in the request for review. Thus, for clarity, I will use the term “telephone operator PSRs.”

A hearing officer of the Board held a remand hearing in this matter and the Medical Group,⁴ the Hospital, and Petitioner subsequently filed briefs with me. As explained below, based on the record and relevant Board law, I find that the SCL Health St. James Medical Group – Butte (“Medical Group”), St. James Healthcare (“Hospital”), SCL Health – Montana, and Sisters of Charity of Leavenworth Health System, Inc. (“SCL Health System”) constitute a single employer within the meaning of the Act. I further find that the Medical Group and the Hospital are each joint employers with SCL Health System. After weighing the complex history and findings of this case, I conclude that upholding the election results is appropriate.

I. PROCEDURAL HISTORY

On January 22, 2019, Petitioner filed the instant petition seeking to represent certain employees of “SCL Health, St. James Medical Group, Rocky Mountain Clinic.”

On January 31 and February 1, 2019, a hearing officer of the Board held an initial hearing in this matter.⁵

On March 1, 2019, I issued a Decision and Direction of Election (“initial decision”) in this matter. In the initial decision, I ordered an election in a unit of all full-time, regular part-time, and per-diem patient service representatives, phlebotomists, licensed practical nurses, medical assistants, medical records clerks, and business coordinators employed by the Employer at its clinics located at 435 S. Crystal Street and 305 Porphyry Street in Butte, Montana. I excluded professionals, physicians, registered nurses, guards and supervisors as defined in the Act. I also excluded those employees working at the Boulder Clinic, because I found them to be employees of the Hospital.

On March 13, 2019, a secret-ballot election was held, in which a majority of employees voted against representation by Petitioner. The Tally of Ballots showed the following results: 26 eligible voters; 0 void ballots; 12 votes cast for participating labor organization; 14 votes cast against participating labor organization; 26 valid votes counted; and 0 challenged ballots.

On March 20, 2019, Petitioner filed objections to the election.

⁴ The brief filed by the Medical Group states only “Employer’s Post-Remand Brief” and does not specifically state on behalf of which entity(ies) the brief was filed, even though the same counsel represents the Medical Group, SCL Health – Montana, and SCL Health System in this proceeding. Given that the brief refers to the Medical Group as the employer, and then separately names SCL Health – Montana and SCL Health System, I assume that the “Employer’s Post-Remand Brief” is filed solely on behalf of the Medical Group.

⁵ To the extent the Medical Group argues that Petitioner waived its right to argue that the employees were employed by another entity other than the Medical Group by failing to raise the issue in the statement of position or initial hearing, I reject this argument. Given the positions taken by the Medical Group’s counsel and operations manager in this matter, the Petitioner could not reasonably have been expected to be on notice of the complex relationships at the outset of these proceedings. Regardless, the question of the statutory employer of the employees is now squarely before me on remand from the Board.

On March 27, 2019, Petitioner filed a Request for Review with the Board, arguing that the initial decision was flawed in that it excluded Boulder Clinic employees and included telephone operator PSRs.

After a preliminary investigation, on April 19, 2019, I issued a Report and Recommendation on Objections,⁶ in which I decided to place the objections in abeyance pending the Board's determination of related issues raised by Petitioner's Request for Review.

On October 25, 2019, the Board issued an order granting Petitioner's Request for Review, as it raised substantial and material issues regarding the Medical Group's relationship to the Hospital and to the Boulder Clinic. The Board noted that these issues, which bear on the identity of the statutory employer of the employees subject to the Request for Review, were not fully raised and litigated, and that there was insufficient evidence to support the finding that the Medical Group does not employ the employees at the Boulder Clinic.⁷

On November 1, 2019, I ordered the reopening of the hearing to adduce additional evidence pursuant to the Board's remand.

On November 8, 2019, the Medical Group filed a Motion for Clarification with the Board, which the Board denied on November 20, 2019.

On November 21, 2019, I issued another order reopening the hearing. The record is clear that for the first time in this extensive procedural history, Hospital counsel was separately served a copy of this order.

On December 12 and 13, 2019, and January 28, 29, and 30, and March 2 and 3, 2020 a hearing officer of the Board held a hearing in this matter pursuant to the Board's remand. Present at the hearing were Union counsel, the Medical Group / SCL Health – Montana / SCL Health System counsel, and Hospital counsel.

On March 17, 2020, Petitioner, the Medical Group, and the Hospital filed briefs in this matter.

On April 16, 2020, I issued to Petitioner, the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System an Order Soliciting Supplemental Briefs requesting briefing on the issue of single employer and/or single integrated enterprise status. On April 29, 2020, the Petitioner, the Medical Group, and the Hospital filed supplemental briefs.

⁶ Although not part of the formal record in this case, I take administrative notice of the Report and Recommendation on Objections that I issued.

⁷ To the extent that the Medical Group and the Hospital contend that the hearing on remand went beyond the scope of the Board's order, I reject this contention. The Board's remand order clearly instructs me to take further appropriate action to determine the statutory employer of the employees subject to the request for review, which are the Boulder Clinic employees and telephone operator PSRs. As demonstrated by the complex interrelationships set forth below, there is simply no way to examine the question of who is the statutory employer without exploring the relationship between the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System.

II. DUE PROCESS

A. Relevant Background

On January 22, 2019, Petitioner filed the instant petition seeking to represent employees of “SCL Health, St. James Medical Group, Rocky Mountain Clinic.” The Hospital was not listed on the petition and thus, pursuant to standard Board policies, was not separately served with a copy of the petition.

On January 31 and February 1, 2019, a hearing officer of the Board held an initial hearing in this matter. At the initial hearing, Petitioner and the Medical Group stipulated that the correct proper name of the employer was St. James Medical Group, which I will note is not any entity’s legal name, and further stipulated that the petition and caption be amended to reflect this name. Beyond the Medical Group’s assertion that the Medical Group was the proper employer, the record is devoid of evidence as to why the parties reached this stipulation in the initial hearing. Only Petitioner and the Medical Group were present at the initial hearing, as when it began there was simply no indication that any other entity was involved. Further, the Medical Group’s operations manager testified extensively regarding the separate operations of the Medical Group and the Hospital, although, as set forth in greater detail below, many of these assertions were subsequently undermined at the hearing on remand. It was at this hearing that the Medical Group’s attorney, who also represents SCL Health – Montana and SCL Health System, first stipulated that the Medical Group was the proper legal employer of all employees at issue, including the Boulder Clinic employees. The Medical Group’s attorney had already taken and continued to take that same position in another representation matter involving the Medical Group and the Montana Nurses Association, Case 19-RC-233533. Although the Medical Group’s attorney now claims he was misinformed as to certain relevant facts, had he gotten proper information from the Medical Group prior to stipulating that the Medical Group employed the Boulder Clinic employees, much confusion could have been avoided in this matter.

On March 1, 2019, I issued the initial decision, and on March 27, 2019, Petitioner filed a Request for Review with the Board. At that juncture, Petitioner argued that the Hospital was the employer of the telephone operator PSRs and thus they should be excluded from the unit. While Petitioner did not serve the Hospital with its Request for Review, neither the Medical Group nor the Hospital cites to any regulations saying that it was required to do so.

On September 19, 2019, the Medical Group, represented by the same attorney as in the instant matter, filed with the Board a Response to a Notice to Show Cause in Case 19-CA-242468, involving a test of the Board’s certification in 19-RC-233533 of the Montana Nurses Association as the representative of certain employees of the Medical Group. In that filing, the Medical Group again took the position that employees at the Boulder Clinic were employees of the Medical Group.

On October 25, 2019, the Board issued an order granting Petitioner’s Request for Review and noted that the issues in the request for review bear on the identity of the statutory employer

of the employees subject to the Request for Review. While the Board's order mentioned the Hospital and its relationship to the Medical Group and the Boulder Clinic, the Board did not separately serve its order on the Hospital.

It is uncontested that on November 21, 2019, prior to the start of the hearing on remand but after issuing several other orders, I issued an order reopening the hearing. As noted above, this order was served on Hospital counsel.

On December 12 and 13, 2019, a hearing officer of the Board held a hearing in this matter pursuant to the Board's remand, with Petitioner counsel, Hospital counsel, and Medical Group-SCL Health – Montana-SCL Health System counsel all present. At the outset of the hearing, the hearing officer made clear that the purpose of the remand was to explore the relationship between the Medical Group, the Hospital, and the Boulder Clinic with respect to the Boulder Clinic employees and the telephone operator PSRs. Hospital counsel, who at this point was both aware of the remand order and present at the Board hearing, never made any motion to be included in any additional manner beyond that of a party at interest.

On January 28, 29, and 30, 2020, a hearing officer of the Board continued to hold a hearing in this matter, with the same counsel present. The record reveals that on January 28, the parties engaged in a lengthy off-the-record conversation related to exploring single employer, single integrated enterprise and joint employer status as part of the hearing on remand. On January 29, the parties summarized their arguments on the record. On January 30, Medical Group-SCL Health – Montana-SCL Health System counsel again raised objections to probing single employer status in the hearing. At the conclusion of the hearing on January 30, the hearing officer afforded all counsel the opportunity to state their positions as to what, if any, additional evidence they wished to enter into the record.

To allow parties ample opportunity to present all evidence they believed I should consider in making my decision in this matter, on March 2 and 3, 2020, over a month after the previous hearing dates, the hearing officer continued holding the hearing on remand. At the conclusion of the hearing, the hearing officer clarified some confusion regarding which joint employer standard the parties should discuss in their post-hearing briefs but did not mention single employer or single integrated enterprise status again.

On March 17, 2020, Petitioner, the Medical Group, and the Hospital filed briefs in this matter.

On April 16, 2020, I issued to Petitioner, the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System an Order Soliciting Supplemental Briefs requesting briefing on the issue of single employer and/or single integrated enterprise status. On April 29, 2020, the Petitioner, the Medical Group, and the Hospital filed supplemental briefs.

B. Parties' Arguments

The Medical Group and the Hospital contend, both at hearing and on brief, that the instant proceedings violated due process. The Hospital argues that it was not provided with sufficient opportunity to participate in the instant matter, as it was not served with the initial petition, decision and direction of election, request for review, order granting the request for review, or report and recommendation on objections, and also had no say in the appropriateness of the unit or election, and that it only appeared as an interested party in the remand hearing in response to a Board subpoena. Both the Medical Group and the Hospital also contend that the Board's own policies and procedures require that a petition be sent to the employer and any other interested parties named on a petition and that as soon as a party's interest becomes apparent that party should be notified of the proceeding and its current status. The Medical Group and the Hospital underscore that there was no notice until partway through the reconvened remand hearing that the scope of the hearing included the relationship between the Hospital, the Medical Group, SCL Health – Montana, and SCL Health System, and that the parties were granted insufficient time to respond to the hearing officer's questions about the relationship between the Hospital and the Medical Group. The Hospital argues that should I find the entities to be interrelated, the representations case process must recommence from the beginning and that no order of election may be issued unless and until the Hospital is given an opportunity to participate in the representation case from the outset.

Both the Medical Group and the Hospital also vehemently contested my request for supplemental briefs on single employer and/or single integrated enterprise status as a flagrant violation of their due process rights.

The Medical Group and the Hospital contend that general case law regarding due process applies to the instant matter, *see, e.g., Int'l Telephone & Telegraph Corp. v. Local 134 Int'l Brotherhood of Elec. Workers*, 419 U.S. 428 (1975), and that this was violated. Both the Medical Group and the Hospital specifically cite to *Roughnecks & Drillers Assn. v. NLRB*, 555 F.2d 732, 735 (9th Cir. 1977), discussed in detail below, to support their argument that, as potential single or joint employers, they have not been given sufficient opportunity to participate in this case.

C. Analysis

When presented with representation case due process arguments, including those arising in the unfair labor practice context, the courts have rejected these arguments. In *NLRB v. Jordan Bus Co.*, 380 F.2d 219 (10th Cir. 1967), the Tenth Circuit upheld the Board's order, which did not address due process. In the unfair labor practice charge at issue in that case, two small bus lines, Jordan Bus Co. and Denco Bus Lines, Inc., which operated routes in Oklahoma, refused to bargain with the union representing certain employees. The Tenth Circuit first upheld the Board's finding that Jordan and Denco constituted a single employer for the purposes of the unfair labor practice charge. The Tenth Circuit then turned to the question of whether Denco was accorded due process in the underlying representation proceedings. In the representation proceeding, the union sought to represent only Jordan bus drivers and accordingly only Jordan

was given notice of the representation hearing. At the start of that hearing, evidence revealed the close relationship between Jordan and Denco and the hearing was then adjourned for two days. The Regional Director immediately sent a “teletype” to both entities giving notice that the hearing was continued two days and that “evidence would be taken on the question whether Jordan and Denco constituted a single employer,” though the teletype to Denco was admittedly misaddressed. Denco’s counsel appeared once the hearing reconvened and contested the sufficiency of two days’ notice, especially since the teletype had been misaddressed and he had learned of the matter that day only due to his close relationship with Jordan’s counsel. *Id.* at 222. The Tenth Circuit highlighted that the Board’s hearing officer noted on the record that Denco’s attorney had indicated he would need time to make all facts available to the Board, and that the hearing officer instructed him that “there was considerable testimony in the record concerning the relationship with Denco and Jordan and suggested to [Denco’s attorney] that upon receiving the record and examining it, if in his opinion Denco was in any way prejudiced by the testimony there being incomplete or contrary to what he may know the facts to be that a motion to reopen the record would at that time be appropriate so that Denco could present any additional evidence necessary to the disposition of the case.” *Id.* at 223. However, the day briefs were due Denco sought additional time to file briefs and a further hearing, though offered no explanation or rationale for such requests; both requests were denied. *Id.* at 223. The Tenth Circuit found that “although the Board’s regulations make no provision for the minimum length of time required between notice and the representation hearing, it is certain that notice on the day of the hearing is not reasonable notice.” *Id.* at 223 (citing *Lane Cotton Mills*, 9 NLRB 952 (1938)). The Tenth Circuit then addressed the Board’s contention that as Jordan and Denco constituted a single employer, notice to one entity served as notice to the other entity. The Tenth Circuit highlighted that this assumes the existence of a single employer status – the very issue to be resolved at the hearing – and Denco is certainly entitled to a reasonable opportunity to present evidence on that issue.” *Id.* 223. However, the Tenth Circuit noted that Denco had not put forth any argument of evidence that would be in disaccord with the witnesses on which the Board relied in finding single employer status. *Id.* at 223. It then concluded that “in the absence of some specific representation that contrary evidence is available, we cannot see any valid grounds for further hearing. Certainly, we cannot say in these circumstances that the Board’s actions operated to deprive Denco of the right to full hearing after notice.” *Id.* at 223-24.

Similarly, in *Potter v. Castle Constr. Co.*, 355 F.2d 212 (5th Cir. 1966), the Fifth Circuit reversed the district court judge’s decision to enjoin counting the ballots of employees of the subsidiary in an election involving the parent company. A union filed a petition seeking to represent employees of the parent company, and the union and the parent company stipulated to an election. At the election, the parent company challenged the ballots of certain employees on the grounds that they were cast by employees of a separate employer, its subsidiary. The Board held a hearing on the determinative challenges, and for the first time discovered the interrelationship between the subsidiary and the parent company. The hearing officer found that the subsidiary and the parent company were a single employer, and thus both were covered by the stipulation and the ballots should be counted. Afterwards, the subsidiary sued in district court, requesting that the Board be enjoined from counting the ballots of the subsidiary’s employees. The subsidiary argued that “for the Board, after the election to include [it] within the bargaining unit [...] would violate due process and the notice provision of the Act.” *Id.* at 215.

The Fifth Circuit, overturning the district court's ruling, found that "the law is clear that the statute does not require stringent adherence to form or technical application of the notice requirement. The notice requirement of the Act is fulfilled where notice is 'actually received and brought to the attention and active consideration of those in responsible direction' of the corporation's business affairs." *Id.* at 215 (citing *NLRB v. McGahey*, 233 F.2d 406 (5th Cir. 1956)). The Fifth Circuit noted that "the purpose of notice in the instant case would have been to allow [the subsidiary] to participate in the election and any necessary Board proceedings," and that "when that aim is satisfied in substantial fact, a technical procedural imperfection will not invalidate the whole proceeding." *Id.* at 215 (citing *McGahey*, 233 F.2d 406). The Fifth Circuit rejected the subsidiary's argument that it had no way to directly test the election for itself, noting that under the Board's regulations "any interested party may move to intervene in the Board's proceedings" and that the subsidiary could have done so at any stage, and certainly after the ballots were cast. The Fifth Circuit found that since the subsidiary failed to avail itself of its rights under the regulations and statute, it was "in no position to complain now." *Id.* at 216.

In *Massey Energy Co.*, 358 NLRB 1643 (2012), the Board found that a parent company was liable as a single employer for unfair labor practices along with its subsidiary, even though single employer status was not alleged in the complaint, as the single employer issue was fully and fairly litigated. The respondent employers argued that the record was incomplete because the parent company did not know that it would have to defend against a single employer contention and thus did not present such a defense at the hearing. The Board noted that it expressly asked the parties to address in supplemental briefs whether it was appropriate to decide the matter on a single employer theory, and respondent employers raised no cognizable defenses to that request nor requested that the record be reopened. The Board underscored that neither respondent employer "has identified any evidence that might have been introduced, or any defense [it] might have raised, had they been aware that the Board might find [them...] to constitute a single employer." *Id.* at 1651. In light of this, the Board found no prejudice for deciding the matter under a single employer theory.

Here, I reject the Hospital's and Medical Group's arguments that due process was violated in the instant case.

Regarding service of the petition, the Region served all entities listed on the petition per its procedures. The Hospital was not listed on the petition at the time, and accordingly not served, because there was no basis for knowing it was involved.

On one hand, the fact that the relationship between the Hospital and the Medical Group was explored extensively at the initial hearing may have warranted including the Hospital at that juncture. On the other hand, however, the Medical Group's main witness at the initial hearing provided testimony that painted a picture of much greater separation between the operations of the Hospital and the Medical Group, which, as set forth below, was largely undercut at the hearing on remand. Moreover, the Medical Group's counsel, who at the initial hearing entered into stipulations regarding the legal name of the employer and the employer of the Boulder Clinic employees, was in the best position to obtain accurate information from his client and present it for consideration at that time. As a result of this partial information, in the initial

decision I did not find the entities to be interrelated and did not believe any further evidence was warranted.

Moreover, the fact that the Hospital was not served on the Board's remand order or the Region's initial orders reopening the record, is not dispositive, as the Hospital was clearly on notice of the hearing on remand before it commenced. Like the subsidiary employer in *Potter*, the Hospital could have moved to intervene under the Board's rules, but failed to do so. Furthermore, as the Medical Group's counsel also represents SCL Health – Montana and SCL Health System, their representative was similarly present for the entire remand hearing.

After the Hospital and the Medical Group contended during the remand hearing that they had not been provided with sufficient time or notice to prepare evidence and argument about the relationships at issue in the instant matter, the hearing officer held an additional two days of hearing more than a month later in order to allow all parties to present whatever remaining evidence they had in this matter. I also allowed all parties ample time to file post-hearing briefs, and even went so far as to solicit supplemental briefs after seeing that the parties failed to address the issue of single employer in their briefs, despite the fact that the hearing officer had specifically discussed those as issues being addressed by the remand.

Neither the Hospital nor the Medical Group cited to case law for the proposition that, where a possible single or joint employer was on notice of and participated in some, but not all, of a representation hearing prior to any certification of a unit, the lack of complete participation violates due process. Furthermore, *Roughnecks & Drillers Assn. v. NLRB*, 555 F.2d 732 (9th Cir. 1977), cited by both the Hospital and the Medical Group, is distinguishable. In that case, the Board had found that Mobil Oil Company had violated the Act when it refused to bargain with the union representing employees of its subcontractor. In 1973, a union filed two representation petitions with the Board, and the one at issue named the subcontractor as the employer. At the representation hearing, the union stipulated that the subcontractor was the employer and the regional director of the Board made the same finding. After the hearing and an election, the Board certified the union as the collective-bargaining representative of certain employees of the subcontractor. In 1974, in anticipation of bargaining, the subcontractor notified Mobil Oil that it would request an increase in its wages and fringe benefits set forth in the contract with Mobil Oil, as it expected wage increases as a part of collective bargaining. Mobil Oil then terminated its contract with the subcontractor, and the union asked Mobil Oil to bargain as a successor employer. Mobil Oil refused, and the union filed unfair labor practice charges. On appeal, the Ninth Circuit addressed the question of “whether Mobil [Oil] could refuse to bargain with the union when it was neither afforded an opportunity to participate in the certification proceedings nor requested by the union to bargain until after Mobil [Oil] terminated its contract with [the subcontractor].” *Id.* at 735. The Ninth Circuit noted that if it were to affirm the Board's finding of joint employer status that resulted in the unfair labor practices at issue, then “the record must reveal that Mobil [Oil] was afforded notice and a timely opportunity to challenge that finding.” *Id.* at 735. The Ninth Circuit found that this did not happen and highlighted that Mobil Oil's first notice of bargaining obligation was a request to bargain as a successor employer, and it was not until the Board issued complaint that Mobil Oil was notified of possible obligations as a joint employer. The Ninth Circuit held that “Mobil [Oil] was entitled to notice and an opportunity to

challenge its status as employer at the Board certification proceedings.” *Id.* at 736. I find that the instant matter is distinguishable from *Roughnecks & Drillers Assn.*, because, like in *Jordan Bus Co.*, the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System have all been afforded opportunity to participate in the representation proceedings and no certification of representative has been issued.

Accordingly, I reject the claims that due process was violated.

III. FACTS

SCL Health System is a Colorado-based non-profit medical system that operates inpatient hospitals and outpatient medical groups through its subsidiaries. In Montana, SCL Health System, through its regional management entity SCL Health – Montana, operates in Billings, Butte, and Miles City, each area with its own inpatient hospital and accompanying outpatient medical group. At issue in the instant petition are two SCL Health System-affiliated entities in Butte, Montana, which are the Hospital and the Medical Group.

A. Ownership

At the initial hearing, the Medical Group’s operations manager testified that the Hospital has owned the Medical Group since about 2013. However, at the hearing on remand, the Hospital’s human resources director (Palmer) testified that the Medical Group and the Hospital are separately owned entities, both part of SCL Health System.

The record contains no evidence regarding the ownership of SCL Health System or SCL Health – Montana.

B. Management

At the initial hearing, the Medical Group’s operations manager testified that the Medical Group and the Hospital have different management. However, record evidence from the hearing on remand shows that management is connected through SCL Health System.

At a corporate governance level, SCL Health System is the Hospital’s sole corporate member. The Hospital’s Amended Bylaws are signed by SCL Health System, as the sole corporate member. Pursuant to the Hospital’s Amended Bylaws, SCL Health System, as the sole corporate member, has explicit power to adopt, amend, or repeal the articles of incorporation and bylaws; appoint the board of directors; to remove, with or without cause, any member of the board of directors; to appoint or remove, with or without cause, the chief administrative officer of the hospital and the president/chief executive officer of any corporation of which the Hospital is a controlling member; to implement corporate goals, policies, and procedures; to approve the acquisition of assets, the incurrence of indebtedness, or the lease, sale, transfer, or assumption of assets pursuant to policies established by the corporate member (again, SCL Health System); to approve the merger, dissolution, or corporate restructuring of the Hospital; to approve the annual strategic plans and operating and capital budgets and deviations thereto for the Hospital; to

transfer assets or require the Hospital to transfer assets to the corporate member (again, SCL Health System) or any entity controlled by, controlling or under common control with the corporate member. The Hospital's bylaws further grant SCL Health System, as the sole corporate member, the authority to appoint the Hospital's chief administrative officer, who shall be subject to the authority of and report to the president and chief executive officer of SCL Health – Montana region. The Hospital's bylaws provide that the Hospital's chief administrative officer shall report regularly to and recommend the annual operating and capital budget to the Hospital's board of directors and to the president and chief executive officer of SCL Health – Montana and report annually to the SCL Health Montana Regional Council on the current state of the Hospital.

The Hospital's Amended and Restated Articles of Incorporation are also signed by SCL Health System, as the Hospital's sole corporate member. The Articles of Incorporation note that the purpose of the Hospital is to carry out the purposes of SCL Health System and grant to SCL Health System, as the sole corporate member, the exclusive power to alter, amend, or repeal the Articles of Incorporations and Bylaws.

The Medical Group's corporate governance documents are not in the record. However, corporate filings with the State of Montana show that the Medical Group is managed by members and list the sole registered business entity name as the Hospital. The record does not contain information about a Medical Group board of directors.

The record also does not contain the corporate governance documents for either SCL Health – Montana or SCL Health System. SCL Health – Montana has a board of directors consisting of 16 people, four of which are the same as the Hospital board of directors. SCL Health System has a board of directors consisting of 17 people, with no overlap to the Hospital or SCL Health – Montana boards of directors.

At a managerial and supervisory level, SCL Health System, SCL Health-Montana, the Hospital, and the Medical Group operate using a "matrix" structure. As a result of this, many of the key managerial and supervisory positions in Montana are individuals who are employed directly by SCL Health System and/or who report directly to individuals out of SCL Health System.

The Hospital's organizational and management structure changed during the course of the instant proceeding. The Hospital President (Doyle), who is employed by SCL Health System and works out of the Hospital, reports to the CEO of the Montana Region (Loveless), who is also employed by SCL Health System, but is located in Billings, Montana. Until December 31, 2019, the Hospital President (Doyle) also reported to the Hospital's governing board.

For the Hospital, reporting to the Hospital President (Doyle) is the regional vice president for mission integration (Neery), who is employed by SCL Health System. Other high-ranking Hospital management officials report directly to SCL Health System in Colorado. The Hospital's vice president chief medical officer (Deffert) is employed by SCL Health System and works out of Colorado. Supervisors and managers in performance excellence, medical staff

services, and care management employed by the Hospital in Butte all report to the vice president chief medical officer at SCL Health System out of Colorado. The Hospital's chief nursing officer and chief operations officer (CNO/COO) (Hoyt) is employed by and reports to SCL Health System and works out of the Hospital. The Hospital vice president of strategy and business (Dennehy) reports directly to the SCL Health System vice president of business development in Colorado. The SCL Health System vice president of finance for the Montana region (Palagi) is employed by SCL Health System and works at the Hospital, and also has two financial analysts in Butte who report to her. All other finance, information technology, and health information management roles are employed by SCL Health System in Colorado. The followings supervisors and managers all work at the Hospital and supervise solely Hospital employees: director of cardiovascular service lines and cardiopulmonary services, the director of nursing for the medical surgical unit, the manager of laboratory services, the supervisor of surgical services, the director of supply chain operations, the supervisor of surgical support, the supervisor of medical imaging, the director of oncology service line, the manager of therapy services, the director of laboratory, the director of surgical services, the director of pharmacy, the director of acute care, the director of emergency services, and the director of spiritual care. The record does not specify which entity employs these individuals. At a minimum, the laboratory and pharmacy managers report directly to SCL Health System in Colorado.

The Medical Group is overseen by the executive vice president and chief clinical officer (Valin). Although the record does not specify who employs the Medical Group's executive vice president and chief clinic officer (Valin), he appears on SCL Health System's organizational chart, is one of nine people who report directly to the president and CEO of SCL Health System, and oversees seven other executives on the SCL Health System on the organizational chart, thus is seems likely that he is employed by SCL Health System. Reporting to the executive vice president are the Medical Group's chief operating officer (Baker) and the vice president chief medical officer (Zavala), both of whom appear on SCL Health System's organizational chart and report to the executive vice president and chief clinical officer (Valin). The regional vice president of operations (Moser), who oversees the Medical Group, as well as the SCL Health medical groups in Billings and Miles City, Montana, is employed by SCL Health System and reports to the chief operating officer. The practice administrator (Paul) reports to the SCL Health System vice president of operations (Moser). Reporting to the practice administrator (Paul) is the clinic manager, who oversees the outpatient clinics, including the Rocky Mountain Clinic, the Boulder Clinic, Summit Lab, St. James Cardiology, St. James OBGYN, and St. James Urology.

Human resources management also follows the matrix structure. At the time of the election, the SCL Health System regional vice president for human resources (Ritchey), who is employed by SCL Health System, oversaw human resources for the hospitals in Montana, specifically St. James in Butte, Holy Rosary in Miles City, and St. Vincent in Billings. The vice president (Ritchey) acknowledged that he learned of the instant petition in the first quarter of 2019, while he was still in his role over the Hospital. On December 1, 2019, the regional vice president for human resources was promoted to the assistant vice president of SCL Health System, and now additionally has executive human resources and oversight authority over both the Hospital and the Medical Group, as well as the other SCL Health System-affiliated hospitals

and medical groups in Montana. The vice president (Ritchey) is based out of Billings, Montana, and reports to the chief human resources officer (Sauntis) out of Colorado. Reporting to the SCL Health System vice president for human resources is the human resources director for the Medical Group (Saunders), who is employed by SCL Health System and is based out of Billings, Montana. She serves as human resources director for all SCL Health System-affiliated medical groups in Montana, including Butte, Billings, and Miles City. The human resources director for the Medical Group provides support for more complex issues to the Medical Group, and day-to-day issues are addressed by the practice administrator and clinic manager. Also reporting to SCL Health System vice president for human resources is the Hospital's senior director of human resources (Palmer). Note that the record is conflicting as to who employs the Hospital's senior director of human resources, as some testimony states she is employed by SCL Health System, but she testified that her paycheck has always been from the Hospital.

As of January 1, 2020, the Hospital and Medical Group organizational structures changed in a shift towards a Montana regional system that includes the SCL Health System affiliated hospitals and medical groups in Billings, Butte, and Miles City. On the hospital side, the regional structure includes the CEO of the Montana Region (Loveless), the regional chief operating officer (Shekan), and the interim regional vice president of human resources (Ritchey). On the medical group side, the Montana regional structure includes the SCL Health System regional vice president of operations (Moser) and the Medical Group's chief medical officer (Zavala). Now, the Hospital President (Doyle) reports to the CEO of the Montana Region (Loveless), who in turn reports to a new regional governing Board for the Montana region that includes operations from Billings, Butte, and Miles City. Also, until December 31, 2019, the Medical Group's regional vice president of operations (Moser) appeared on the Hospital's organizational chart, overseeing the Medical Group, though the Hospital contends that was an error and he was subsequently removed from the organizational chart. The record reveals that the instant hearing was discussed as part of the decision to change the organizational structure.

C. Labor Relations

The Hospital and the Montana Nurses Association are parties to a collective-bargaining agreement, which only mentions the Hospital and does not mention SCL Health System, covering a unit of registered nurses. The Hospital president, who is employed by and reports to SCL Health System, signed the agreement.

The Hospital also has a collective-bargaining relationship with Petitioner for a unit of technical employees and for a unit of food services and housekeeping employees. The collective-bargaining agreements between the Hospital and Petitioner for both the technical unit and the food services and housekeeping unit state that "this agreement is made and entered into between [the Hospital], a Montana corporation located in Butte, Montana, and operated by [SCL Health System]," and Petitioner. In the agreements, the Hospital agreed to provide different health care benefits, retirement benefits, and wages than otherwise provided to Hospital employees, which are discussed below. The Hospital president, who is employed by and reports to SCL Health System, signed the agreements with Petitioner.

When the Hospital engages in collective bargaining, the Hospital negotiating team generally consists of three Hospital managers, all whom are employed by and/or report to SCL Health System – the Hospital senior director of human resources (Palmer), the SCL Health System vice president of finance for the Montana region (employed by SCL Health System) (CFO Palagi), the CNO/COO (employed by SCL Health System) (Hoyt). A Hospital human resources payroll specialist (Manusco) and any relevant Hospital department directors and managers also participate in negotiations as needed. The Hospital president, who is also employed directly by and reports to SCL Health System, has authority to sign the collective-bargaining agreements without approval.

The Hospital president testified generally that SCL Health System is not involved in day-to-day Hospital contract negotiations or grievance processing. However, as noted above, SCL Health System vice president of finance for the Montana region (Palagi) and the Hospital's chief nursing officer/chief operating officer, who are both employed by and report to SCL Health System, are on the Hospital's negotiating committee. Also, if a labor organization files a grievance against the Hospital under one of the collective-bargaining agreements, steps 2 and 3 of the grievance are addressed by the relevant vice president of the "service line," such as the Hospital president (who is employed by and reports to SCL Health System) (Doyle), the Hospital CNO/COO (who is employed by and reports to SCL Health System) (Hoyt), or the Hospital vice president of strategy (Denny).

The Medical Group has a collective-bargaining relationship with the Montana Nurses Association for a unit of registered nurses, as set forth in 19-RC-233533 referenced above. The hearing officer in the instant case took administrative notice of the record in that matter.

The SCL Health System vice president for human resources (Ritchey) testified that he plays a high-level role in labor relations with the Hospital and the Medical Group. The SCL Health System vice president for human resources (Ritchey) testified that he learned of the instant petition in 2019 while he was still in his role as regional vice president for hospitals.

The Medical Group, SCL Health-Montana, and SCL Health System used the same outside counsel for the instant proceeding. The Hospital utilized separate outside counsel in the instant proceeding.

D. Interrelationship of Operations

SCL Health System is the parent corporation of both the Medical Group and the Hospital. The Medical Group refers patients to the Hospital for ancillary testing and for inpatient stays, and the Hospital refers patients to the Medical Group for continued outpatient care.

1. Location and Addresses

SCL Health System, a Kansas corporation, is located in Broomfield, Colorado, though the witnesses and parties frequently referred to it as Denver.

SCL Health – Montana is a Montana corporation, based out of Billings, Montana, at the same address as another SCL Health System-affiliated hospital.

The Hospital, a Montana corporation, is located at 400 S. Clark Street, in Butte, Montana, and has a sign that says “SCL Health St. James.” However, the Hospital’s filings with the Montana Secretary of State, as well as some tax documents, list SCL Health System’s Colorado address as the postal address and principal office address.

The Medical Group, also a Montana corporation, has locations at 435 S. Crystal Street and 305 W. Porphyry St., adjacent to the Hospital and connected to it by a breezeway. The Medical Group pays rent to the Hospital, but the record does not disclose how much rent, whether there is any written agreement about the rent, or whether the rent paid is fair market value. On the Medical Group’s filings with the Montana Secretary of State, it lists its physical address at 400 S. Clark Street, Butte, Montana, which is the Hospital’s physical address, and does not list any of the other Medical Group locations. Like the Hospital, the Medical Group’s filings with the Montana Secretary of State, as well as some tax documents, list SCL Health System’s Colorado address as the postal address and principal office address.

2. Finances

At the initial hearing, the Medical Group’s operations manager testified that the Hospital and the Medical Group have separate accounting services and bookkeeping services and separate bank accounts. However, the record on remand reveals that this is only partially the case.

The Medical Group and the Hospital have their own tax identification numbers and file their own taxes. The record reveals that the Medical Group and the Hospital do have separate bank accounts, however SCL Health System oversees the bank accounts.

Beyond that, however, the finances of the Medical Group and Hospital are at least to some extent integrated into those of the other entity and of SCL Health System. SCL Health System has separate centralized accounting groups for hospitals and medical groups and performs all accounting for SCL Health System-affiliated entities, including the Hospital and the Medical Group. The Hospital and the Medical Group each have different “process level” identification codes for proper accounting. The record contains no evidence that either the Medical Group or the Hospital pays SCL Health System for these accounting services.

Net operating incomes include an evaluation of all of SCL Health System’s operations in Montana, as well as each individual SCL Health System-affiliated entity. In fact, the record shows that the Medical Group is unable to generate a profit, and the profit comes from “downstream revenue” at the Hospital.

The record reveals that SCL Health vice president of finance for the Montana region (Palagi) works at the Hospital but is also responsible for the Medical Group's finances.⁸ The record also suggests that the Medical Group's finances are handled by the SCL Health System office in Colorado. The SCL Health System regional vice president of financial services convenes "senior leadership" from the Hospital and the Medical Group, which includes the Hospital president and then either the Medical Group's chief medical officer (Zavala), the SCL Health System regional vice president of operations (Moser) (employed by SCL Health System), or the Medical Group practice administrator, to review financials collectively. During these senior leadership meetings, the SCL Health System vice president of finance for the Montana region (Palagi) reviews consolidated net operating income and individual financials for the Medical Group and the Hospital.

Loans are also interrelated. The record establishes that the purpose of consolidating financials is so that SCL Health System can borrow money against the highest amount of revenue and assets and receive a benefit from a credit standpoint. The Hospital cannot go directly to lenders to seek financing for projects. Instead, the Hospital seeks the funds from SCL Health System, which in turn seeks outside financing. The Hospital borrows money from SCL Health System every year, although the record does not reveal the nature or extent of the terms of borrowing. For example, the Hospital is currently borrowing 5 million dollars from SCL Health System to build a CATH lab. The Medical Group was not part of the collateral for the CATH lab project. There is no evidence that the Medical Group has borrowed money from SCL Health System. The SCL Health System vice president of finance for the Montana region (Palagi) noted that if a new clinic were to be built in Butte, it would use both the Medical Group and the Hospital revenues.

Budgets are interrelated. The Hospital puts together a recommended budget, which it submits to SCL Health System to be approved by the SCL Health System finance committee and governing board. For the Medical Group, the SCL Health System-affiliated medical groups in Montana have a specific budget, of which the Medical Group receives a portion, which is approved by SCL Health System regional vice president of operations (Moser). Once the operating budgets are established, the Medical Group practice administrator and the Hospital president each have general discretion for transactions up to a certain amount – \$5,000 for the Medical Group and \$100,000 for the Hospital. Above those amounts, SCL Health System must sign the contract for and approve the transaction. Labor is considered an operating expense.

Billing is also interrelated. For example, after receiving care at the Hospital, patients receive one bill from the Hospital and a separate bill from the Medical Group for physician services provided at the Hospital.

Hospital liability insurance policies are handled by SCL Health System's vice president of risk management in Colorado.

⁸ SCL Health System's regional vice president of finance testified that St. James Physician Billing, LLC is another legal name for the Medical Group and that they are the same thing. However, the record lacks additional evidence on this other entity.

3. Policies

At the initial hearing, the Medical Group operations manager (Chiamulera) testified that Medical and Hospital employees were subject to different workplace policies. However, record evidence on remand reveals that many SCL Health System policies apply to both Medical Group and Hospital employees.

Medical Group and Hospital employees use SCL Health System's intranet site, referred to as the "Landing," to access workplace information. The "Landing" has a page called "PolicyTech," which is a central repository of all policies.

Medical Group employees are primarily subject to SCL Health System policies, including the SCL Health System attendance policy and family medical leave policy. While the Medical Group practice administrator has discretion to develop local policies to complement SCL Health System policies, any such local policies cannot conflict with SCL Health System policies.

Hospital employees are also subject to many SCL Health System policies, including the SCL Health System attendance policy and family medical leave policy. The Hospital can also create certain policies locally, and has done so, but any local policies must be approved by SCL Health System. Additionally, the Hospital's onboarding policy for new employees and familiarizing them with relevant policies is specific to the Hospital.

4. Benefits

At the initial hearing, the Medical Group operations manager (Chiamulera) testified that the Hospital and Medical Group have separate benefits, including separate workers' compensation insurance and group insurance. However, the record on remand reveals that SCL Health System generally provides the same benefits to both Hospital and Medical Group employees who are not represented by unions.

For medical insurance, non-represented Hospital and Medical Group employees are part of the same, self-funded SCL Health System plan administered by Cigna. SCL Health System determines employee premiums for the health insurance plan.

For retirement, the SCL Health System 401(k) and retirement savings plans run by Fidelity are available to non-represented Hospital and Medical Group employees. However, Hospital employees represented by Petitioner can participate both in the SCL Health System plan and in a Teamsters retirement plan.

The SCL Health System employee assistance program is available to Medical Group and Hospital employees.

SCL Health System has a self-insured workers' compensation plan that covers both the Hospital and the Medical Group. All workers compensation claims are handled by a dedicated workers' compensation department at SCL Health System.

The Medical Group and the Hospital both use the same third-party FMLA vendor to handle FMLA claims.

5. Recruiting and Hiring

At the initial hearing, the Medical Group operations manager testified that the Hospital and the Medical Group have separate hiring processes. However, the record on remand reveals extensive interrelationship between the Hospital, the Medical Group, and SCL Health System for recruiting and hiring employees.

The Hospital president (Doyle) testified that hiring occurs at the local level unless it is for a “matrix” position with SCL Health System. However, the record reveals that both Hospital and Medical Group employees are recruited by the same SCL Health System recruiter, who is not based in Montana. The letter of employment offer for both Hospital and Medical Group employees comes from the SCL Health System recruiter, who determines the wage rate for the offer based on experience level.

For Hospital vacancies, the “senior leadership team” approves new positions for the Hospital. Then, the supervisor who needs the position works with the SCL Health System recruiter in Colorado to post the position. As part of the hiring process, the Hospital contracts with the Medical Group to have a nurse practitioner or physician’s assistant perform physical assessments for new Hospital employees. The Medical Group sends a bill to the Hospital for those services, but the record does not reveal the cost or how the cost was determined. The Hospital’s employee health nurse checks immunizations for new employees.

For the Medical Group, SCL Health System helps create the Medical Group’s job descriptions. Some evidence suggests that the Medical Group’s practice administrator puts in a request for hiring authority for new positions, and gets it approved by his supervisor, SCL Health System’s vice president of operations for the Montana region. However, other evidence suggests that as long as the Medical Group’s practice administrator is within the operating budget, hiring is within his control.

Physicians, most of whom are employed by the Medical Group, but also perform work at the Hospital, undergo a different hiring process overseen by the Physician Approval Team, which is a group out of SCL Health System. Then, the SCL Health System vice president of finance for the Montana region (Palagi) reviews and approves every physician agreement.

At a managerial level, the Medical Group’s practice administrator was hired by the SCL Health System vice president of operations (Moser).

6. Training and qualifications requirements

Both Hospital and Medical Group employees have certain ongoing requirements that can be fulfilled at the Hospital. For example, Medical Group employees can take their basic life

support class (CPR, advanced life support, pediatric life support) every two years as part of their licensing requirements. Additionally, both the Hospital and Medical Group require employees to receive annual flu shots. The Hospital tracks which employees of both the Hospital and the Medical Group have gotten flu shots, and then sends email reminders to all employees of both entities who had not received flu shots reminding them of the policy and informing them that flu shots are available at both the Medical Group and the Hospital. Medical Group employees can receive a flu shot from the Hospital employee health nurse free of charge. Although contractors also need flu shots, they are not permitted to use the Hospital employee health nurse for flu shots. The Hospital also sends other training reminders, such as annual bloodborne pathogens training requirements, to Medical Group employees.

7. Discipline and discharge

The record contains limited evidence regarding discipline and discharge. While the record suggests that primary responsibility over discipline and discharge for Hospital and Medical Group employees rests with their direct supervisors, it lacks detailed evidence supporting this. The record reveals that Hospital supervisors and managers have no disciplinary or discharge authority over Medical Group employees, and vice versa.

Due to the “matrix” structure, the record is less clear with respect to SCL Health System’s disciplinary and discharge authority over the Medical Group and the Hospital. The Medical Group’s human resources director (Saunders), who is employed by SCL Health System, has the authority to discipline and terminate Medical Group employees, but the record does not reveal any circumstances in which she has exercised this authority. Similarly, the SCL Health System vice president of human resources (Ritchey) has a human resources oversight function, but the record does not demonstrate that he exercises actual control over discipline or discharge.

8. Wages

In initial offer letters, the SCL Health System recruiter includes the initial wage rate for a new employee.

The senior leadership team, discussed above, which includes the Hospital president, and either the Medical Group regional chief medical officer (Zavala), SCL Health System regional vice president of operations (Moser), or the Medical Group practice administrator (Paul), makes determinations about whether wages should be increased. The record contains no evidence regarding any authority of the senior leadership team over the amount of raises, when raises should occur, or who should receive the raises. Per the SCL Health System vice president of finance for the Montana region (Palagi), senior leadership makes the ultimate decision because they are responsible for delivering the net operating income and must examine each entity individually when doing so.

9. Hours of Work

The record lacks specific evidence showing that the Medical Group, the Hospital, or SCL Health System play any role in establishing hours of employees of the other entity. For example, the Medical Group's practice administrator determines staffing levels and scheduling for Medical Group employees. Medical Group employees request sick and vacation time through the KRONOS system for approval by the Medical Group's operations manager (Flint).

10. Transfers and Interchange

At the initial hearing, the Medical Group operations manager testified that there is no interchange or transfer between Medical Group employees and Hospital employees, except with respect to the Boulder Clinic, discussed below. However, at the hearing on remand, the record revealed that while most Medical Group and Hospital employees do not work at the other location, some work at both or have moved between both entities.

Most notably, physicians and other mid-level care providers, such as physician assistants, are generally employed by the Medical Group but are also credentialed and privileged at the Hospital. While it appears that Medical Group physicians perform work at the Hospital regularly, the record does not explore the details of the frequency with which they do so. To interact with Hospital patients, the Medical Group physicians and mid-level care providers must be credentialed at the Hospital, which is a process run by the Hospital. The record shows that the Hospital uses Medical Group physicians for on-call services to ensure adequate Hospital staffing levels. The record indicates that the Hospital compensates the Medical Group for these services, and that this is therefore considered a Hospital expense. The record reveals that the Hospital oversees Medical Group physicians providing services at the Hospital but does not detail the nature or extent of the oversight. Medical Group physicians working at the Hospital have access to the Hospital doctors' lounge.

If a Hospital employee transfers to the Medical Group, the Hospital human resources manager (Larsen) reviews the necessary certifications to ensure that the employee is qualified for the role at the Medical Group.

Prior to 2016, the Hospital's "lean facilitator," whose role was to find solutions to gaps in care, performed her role for both the Hospital and the Medical Group. Then, in 2016, when her Hospital role was no longer going to exist, she transferred to become the Medical Group's operations manager. However, the record did not disclose whether she had to apply for the Medical Group job.

The Hospital's human resources director began working at the Hospital, then worked as regional human resources director within the SCL Health System, and then again switched to working at the Hospital. She testified that throughout all of those changes, she was always paid by the Hospital.

Transfer and interchange involving Boulder Clinic employees and telephone operator PSRs are discussed below.

11. Human Resources

SCL Health System, as part of the “matrix” system discussed above, provides human resources support for both the Medical Group and the Hospital. For example, the Medical Group practice administrator (Paul) and the clinic manager (Flint) handle all day-to-day human resources matters for Medical Group employees. If they cannot resolve the issue and have questions, the practice administrator reaches out to the Medical Group’s human resources director, an SCL Health System employee based out of Billings.

SCL Health System handles all payroll for both the Medical Group and the Hospital, as well as for the other SCL Health System affiliated entities in Montana. Each entity has its own codes for payroll to ensure proper accounting. All employees use the KRONOS time system for getting paid. The record does not establish that either the Medical Group or the Hospital pays SCL Health System for its payroll services.

Employee personnel files for both the Medical Group and the Hospital are maintained electronically at SCL Health System in Colorado, from which each entity has electronic access to its own employees’ files. The employee evaluation form for the Medical Group, which is an “SCL Health” form, states that a hard copy must be sent to SCL Health System in Colorado. All Medical Group and Hospital employees use a Lawson ID number for the human resources system; this number does not change if an employee moves between the Medical Group and the Hospital. Employee identification numbers also do not change if employees transfer between the Medical Group and the Hospital.

All employees use badges for secure access and for timekeeping. When an employee moves between the Hospital and the Medical Group, SCL Health System is notified of the update to ensure proper access and payroll. The Medical Group’s human resources director, an SCL Health System employee, can use her badge to access the Hospital’s administrative offices.

The Hospital’s human resources director is a “crucial conversations” trainer for the Hospital, the Medical Group, and another Montana organization affiliated with SCL Health System. As a trainer, the Hospital human resources director serves as a resource for teaching managers how to communicate more effectively.

12. Miscellaneous Operations

The Medical Group, the Hospital, and SCL Health System all use email addresses ending in @sclhealth.org. There are different email lists for employees of the Medical Group and the Hospital.

The Hospital’s website is www.stjameshealthcare.org. SCL Health System’s website is www.sclhealth.org. The Medical Group has a website, though it is unclear what the address is,

that is affiliated with and branded as an SCL Health System website and is managed in Colorado. The Medical Group does not employ a network specialist but instead uses SCL Health System's information technology resources. The record contains no evidence showing the Medical Group compensates SCL Health System either for its website management or network specialist services.

The Hospital and the Medical Group use the EPIC electronic medical records system.

SCL Health System legal department serves both the Medical Group and the Hospital.

In the Hospital's Montana Secretary of State filings, the Medical Group is listed as an "assumed business name."

The Hospital and the Medical Group have separate certifications with the Centers of Medicare and Medicaid.

The Hospital has a pharmacy for inpatients with a certification specific to the Hospital. The Medical Group does not have a pharmacy.

Regarding equipment, the record does not reveal generally shared supplies. The sole example was that the Medical Group borrows wheelchairs from the Hospital on a limited basis.

E. Boulder Clinic

The Boulder Clinic is a very small clinic located about 35 miles outside of Butte, Montana. At the time of the initial hearing and initial decision, there were one LPN and one patient service representative employed at the Boulder Clinic. At the time of the hearing on remand, there were one LPN and one business coordinator employed at the Boulder Clinic.

At the initial hearing, Petitioner and the Medical Group initially stipulated to exclude the licensed practical nurse and patient services representative employed at the Boulder Clinic, because the Boulder Clinic was a separate employer. However, Petitioner and the Medical Group subsequently modified their earlier stipulation and agreed that due to a sufficient community of interest, the employees of the Boulder Clinic should be included in any unit. Despite that stipulation, I excluded the Boulder Clinic employees as employees of the Hospital.

Immediately prior to the initial hearing, I also issued a decision in Case 19-RC-233522 involving the Medical Group and the Montana Nurses Association. In that hearing, Medical Group's counsel, which is the same counsel as the instant case, took the position that the Medical Group employed the employees of the Boulder Clinic.

The record evidence shows that in 2014, the Hospital entered into a management services agreement with Elkhorn Mountain Health Services, Inc. d/b/a the Boulder Medical Clinic, for the Hospital to provide management services staff for the Boulder Clinic. Then on June 1, 2018, the Hospital purchased the Boulder Clinic. The Hospital president recommended purchasing the

Boulder Clinic but, as it was a capital purchase, the decision was ultimately made by the SCL Health System business development committee and capital committee, located in Colorado.

When the Hospital owned and operated the Boulder Clinic, it considered the Boulder Clinic to be a department of the Hospital and under the Hospital's accounting unit. When the Boulder Clinic fell within the Hospital's accounting unit, SCL Health System's vice president of finance for the Montana region received monthly financial reports from the hospital accounting group at SCL Health System in Colorado that included Boulder Clinic financials within the Hospital financials.

During that time, Hospital human resources performed functions related to Boulder Clinic employees. Boulder Clinic employees were subject to Hospital code of conduct and policies, however, as noted above, some Hospital policies are those of SCL Health System. Recruiting for new Boulder Clinic employees was done by SCL Health System out of Colorado. Offer letters for positions at the Boulder Clinic referred to both the Hospital and SCL Health System. Boulder Clinic employees had Lawson ID numbers for the human resources computer system. For 2018, Boulder Clinic employees received a W-2 in the Hospital's name, with the SCL Health System address in Colorado.

There is some contradicting evidence regarding this time period about how coverage occurred if a Boulder Clinic employee was on vacation or called in sick. A Hospital human resources director testified generally that when the Boulder Clinic was under Hospital's purview, either a Hospital employee would cover or they would reshuffle the patients. However, at the initial hearing, the Medical Group operations manager (Chiamulera) testified that if a Boulder Clinic LPN is out, the Medical Group sends up support coverage. A Medical Group medical assistant corroborated this testimony, noting that within the year prior to the initial hearing she had filled in twice at the Boulder Clinic. Per the medical assistant, each time she filled in she received a call the day before from the Medical Group operations manager and then the next morning picked up a rental car provided to her with all of the paperwork already completed. Then, when she arrived at the Boulder Clinic, she performed work as a medical assistant, such as taking vitals and background information and answering phones.

During the time that Boulder Clinic employees' wages and benefits were paid out of the Hospital budget, the Boulder Clinic employees reported to the Medical Group operations manager and had weekly huddles with her. The Medical Group operations manager also visited the Boulder Clinic once per month. The Medical Group operations manager explained that this was a service the Medical Group was providing to the Hospital but was unaware of any contract with the Hospital to provide such a service. The Medical Group operations manager testified that she had been instructed to do this by the practice administrator when she started her job. There is no evidence of any Hospital manager involved in the day-to-day operations of the Boulder Clinic.

At no time was the Boulder Clinic LPN listed on the seniority list for Petitioner's Hospital technical unit, which includes LPNs, and no union dues or fees were remitted from the Boulder Clinic LPN's paycheck.

In about fall or winter 2018, talk began of transitioning the Boulder Clinic employees from the Hospital's umbrella to that of the Medical Group. At the initial hearing in early 2019, the Medical Group operations manager testified that that the Medical Group may purchase the Boulder Clinic from the Hospital, but that there were no definitive plans for that and no proposed date to do so.

On July 25, 2019, the Hospital president and the Medical Group's executive vice president and chief clinical officer entered into an assignment and assumption agreement regarding the Boulder Clinic. The agreement notes that it is "in consideration of the obligations contained herein and for other good and valuable consideration," however the record is silent as to what such consideration was. According to the Hospital president, this change in management was done because the Medical Group was in a better position to manage an outpatient clinic. The Hospital president did not know if the Hospital still owned the Boulder Clinic. A Hospital vice president testified that this agreement meant that financial services, occupational services, marketing and communication, human resources, quality assurance, compliance and risk management, patient records, and medical coding services were to be provided by the Medical Group.

After the execution of this agreement, on August 5, 2019, Boulder Clinic medical records were transferred over to the Medical Group. On August 11, 2019, which was the start of the next pay period, Boulder Clinic employees were transferred over to the Medical Group. However, internal payroll coding records show that Boulder Clinic employees were not coded internally under the Medical Group until November 5, 2019.

Once the Hospital ceased operating the Boulder Clinic in August 2019, Hospital human resources no longer had a role with those employees, and human resources responsibility shifted over to the Medical Group.

The record reveals only limited changes for Boulder Clinic employees after the move under the Medical Group. For example, this required switching over medical systems and putting new signs on the building. Boulder Clinic employees were then subject to Medical Group human resources. For 2019, Boulder Clinic employees received W-2s from both the Hospital and the Medical Group, both with the Hospital address in Butte, Montana.

Once the Boulder Clinic fell within the Medical Group's accounting unit, SCL Health System's vice president of finance for the Montana region received monthly reports from the medical group accounting team at SCL Health System in Colorado that included Boulder Clinic financials within a department of the Medical Group.

Even after this change in management, on September 12, 2019, the Medical Group's attorney filed a brief with the Board in 19-CA-242468, which tested the certification of the Montana Nurses Association as the collective-bargaining representative of registered nurses in Case 19-RC-233533. In that brief, the Medical Group stated that it had four locations around Butte, Montana, including the Boulder Clinic. Now, the Medical Group attorney takes the

position that he was provided with faulty information regarding ownership and operation of the Boulder Clinic.

F. Telephone Operator PSRs

Prior to the initial hearing, until about January or February 2019, though it is unclear from the record until exactly when, both the Hospital and the Medical Group each employed their own telephone operator PSRs who answered phones and scheduled patients. During the time that the Hospital employed its own telephone operator PSRs, the Hospital generally had four telephone operator PSRs on staff who worked in the Hospital building. During that same time, the Medical Group also had its own telephone operator PSRs on staff who worked in the outpatient clinic check-in area in the building adjacent to the Hospital.

Then, prior to the initial hearing, though again it is unclear exactly when the change occurred, the Medical Group and the Hospital jointly determined that all telephone operator PSRs would be moved to the Medical Group to take calls for both the Hospital and the Medical Group. Telephone operator PSRs who had been working out of the Hospital had to apply for telephone operator PSR positions at the Medical Group and go through the hiring process. Then starting in about January or February 2019, though dates in the record are somewhat varied, all telephone operator PSRs worked out of the Medical Group and were supervised by Medical Group managers.

Now, the telephone operator PSRs work on varied shifts during the timeframe of 7 a.m. to 7 p.m., and the Hospital's emergency room takes Hospital calls from 7 p.m. to 7 a.m. When the telephone operator PSRs arrive at 7 a.m., they check to ensure the Hospital's on-call schedule is up to date and send it by fax to the 15 Hospital departments that receive it. Then, the telephone operator PSRs turn on the phones for the Hospital, and only answer Hospital calls from 7 a.m. to 8 a.m. At 8 a.m., the telephone operator PSRs turn on the Medical Group clinic phones and start answering phones and doing scheduling for the Medical Group. At some point in the late morning, a telephone operator PSR specifically assigned to answer phones for the Hospital arrives, and the other telephone operator PSRs cover those calls until that time. At 5 p.m., the telephone operators cease answering Medical Group calls, and from 5 p.m. to 7 p.m. only answer Hospital calls. At 7 p.m., the telephone operator PSRs route the Hospital calls back to the Hospital's emergency room until the next morning. The Hospital's emergency room also answers Hospital phones on weekends. If telephone operator PSRs are busy and need to take a lunch break or use the restroom, they call over to the Hospital emergency room to see if they can take the phones for a short amount of time.

Telephone operator PSRs greet callers differently for Hospital and Medical Group calls, at the instruction of Medical Group management. For Hospital calls, the telephone operator PSRs say "Thank you for calling St. James. How can I help you?" or "St. James Healthcare." For Medical Group calls, the telephone operator PSRs say "St. James Medical Group. How can I help you?"

Telephone operator PSRs answer hundreds of calls per day and estimated that at least half of the calls answered are for the Hospital. The record shows that the Hospital pays the Medical Group for its call answering services. However, beyond an assertion that the phone answering services are paid at market rate, the record lacks evidence of the rate of compensation for these services or how the rate is calculated. In fact, the Medical Group's counsel acknowledged on the record that he did not know if it was a good deal or a bad deal, and generally asserted that there was a negotiated arm's length transaction.

Payroll and tax records showing which entities paid the telephone operator PSRs during the relevant timeframe are somewhat difficult to unpack. For one telephone operator PSR always working out of the Medical Group internal payroll records always coded her under the Medical Group and her 2018 and 2019 W-2s are solely in the name of the Medical Group. However, for four phone operator PSRs who worked out of the Hospital prior to working out of the Medical Group internal records show that it was only in late January and early February 2019, after the filing of the instant petition but before the election, that they were internally coded under the Medical Group. These phone operator PSRs each have a single 2018 W-2 in the name of the Hospital but two 2019 W-2s, one in the name of the Hospital and one in the name of the Medical Group. As there are no official weekly payroll documents in the record, only internal spreadsheets, it is impossible to know the exact date that the Medical Group began paying the telephone operator PSRs.

One witness worked at the Hospital and then at the Medical Group as a telephone operator PSR. This witness testified that she was informed by her Hospital supervisor that she would be moving from the Hospital over to the Medical Group. She testified that she applied for the Medical Group job through the SCL Health System website but did not have to interview for the position. Other testimony suggests that she had to go through the complete hiring process, including an interview and an updated background check. The record reveals that the Hospital supervisor initiated the change of employment in the employee's human resources record, selected from a drop-down list to change the supervisor, and chose the new supervisor at the Medical Group from the computer system. Then, the Medical Group's human resources approved the transfer.

Another witness has permanently transferred between the Medical Group and Hospital on multiple occasions, working first in the Hospital kitchen and laundry, then in the Medical Group as a telephone operator PSR, then again in the Hospital kitchen as a food services supervisor. The employee testified that when she applied for the position as a Medical Group phone operator, she did so through "Taleo," which is an application on SCL Health System's intranet "Landing" site that allows employees to look through internal jobs within SCL Health System. She applied, submitted a resume, interviewed for the position, and received an offer of employment from the SCL Health System recruiter. She did not attend any new hire training when she began employment with the Medical Group. Of note, the employee continued to work as needed as a Hospital dietary aide after she began working as a Medical Group phone operator. However, she testified that she never received two separate paychecks during that time, even though she had to clock in separately with a different supervisor to be put in at the correct pay rate for the dietary aide work. When the employee began working as a Medical Group phone

operator, the Hospital's human resources manager provided her with an updated Medical Group badge.

IV. ANALYSIS

The Board's order on remand presents the questions of the relationship between the Medical Group and the Hospital and the identity of the statutory employer of the employees subject to the Request for Review, namely the Boulder Clinic employees and the telephone operator PSRs. Answers to these questions, however, must take into account the complex interrelationship between the Medical Group, the Hospital, SCL Health-Montana, and SCL Health System. As set forth below, I find that the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System are a single employer within the meaning of the Act. I find that the Medical Group and the Hospital are each joint employers with SCL Health System, but not with one another. As a result, I conclude that the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System have, at all material times, been the employer of the employees at issue in the instant matter.

A. Single Employer

1. Legal Standard

The term “single employer” applies to situations where apparently separate entities operate as an integrated enterprise in such a way that “for all purposes, there is in fact only a single employer.” *NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1122 (3d. Cir. 1982). The principal factors the Board considers in determining whether the integration is sufficient for single-employer status are the extent of: (1) interrelation of operations; (2) centralized control of labor relation; (3) common management; and (4) common ownership or financial control. *See, e.g., Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255, 256 (1965); *South Prairie Constr. Co. v. Operating Engineers Local 627*, 425 U.S. 800, 802 fn. 3 (1976); *Spurlino Materials, LLC*, 357 NLRB 1510, 1515 (2011); *Mercy Hosp. of Buffalo*, 336 NLRB 1282, 1283–1284 (2001); *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000); *Mercy Gen'l Health Partners*, 331 NLRB 783 (2000).

The most critical of these factors is centralized control over labor relations. Common ownership is not determinative in a single-employer status in the absence of such a centralized policy. *Mercy Gen'l Health Partners*, 331 NLRB 783, 784 (2000); *see AG Comm. Systems Corp.*, 350 NLRB 168, 169 (2007). A determination of single-employer status does not determine the appropriate bargaining unit.

The Board has regularly found acute care hospitals and other health care institutions to constitute single employers with one another or with their parent corporations. *See, e.g., Beverly California Corp.*, 326 NLRB 232 (1998); *Pathology Inst., Inc.*, 320 NLRB 1050 (1996); *Hospital San Rafael, Inc.*, 308 NLRB 605 (1992); *The Child's Hospital*, 307 NLRB 90 (1992).

For example, in *Northern Montana Health Care Ctr., a subsidiary of Northern Montana Health Care, Inc.*, 324 NLRB 752 (1997), the Board upheld the administrative law judge's finding that a non-acute long-term patient care center, a hospital, and their parent corporation constituted a single employer. The Board, citing to *Britt Metal Process*, 322 NLRB 421 (1996), noted that in addition to finding that the single-employer status of all three entities was adequately pled, the issue was also fully litigated. *Id.* at 752 n.3. The parent corporation was the parent corporation of several subsidiaries, including the hospital, the center, and a foundation. *Id.* at 757. The judge found that:

“All members of the [parent corporation] family are eleemosynary corporations and share a variety of common goals and aspects. The president and chief executive officer of [parent corporation] holds the same positions respecting corporate subsidiaries including the center and the hospital. Much of the administration, human resources, recordkeeping, and support services of the various entities are done at least to some extent by hospital staff under contract with the other entities. Further, as a result of common planning, the corporate family contemplates a centralizing modernization in the coming years which will bring the entities into a more integrated operation on a common site.” *Id.* at 757.

The center argued that some of the employees in the unit in question had been contracted to a separate employer, which was another subsidiary of the parent corporation, and the General Counsel alleged that the entities constituted a single employer. The judge found that there was little doubt that as to employees working at the center, the hospital, the center, and the parent corporation are a single employer. The judge noted that beyond common ownership, common president, and chief executive officer, the entities have a common personnel department and centralized control of labor relations. The judge highlighted, as an example, that the hospital's vice president of human resources is responsible for labor relations at the center, the hospital, and another subsidiary of the parent company and was personally involved in the process of hiring employees. The judge further found that the center, the hospital and the parent company were “inextricably connected,” in that the center acquired the predecessor employer as a result of the parent company's plans, and the center was “serving simply as a corporate vessel to operate the facility.” *Id.* at 760. The judge noted the center was acquired as part of a plan to merge the facility with the hospital and that a current determination that the entities will merge their facilities and operations into a common, unified operation in the future renders the current interests of the center, the hospital and their parent corporation sufficiently close that a single-employer finding would be compelled even absent the other supporting factors. *Id.*

In *Avanti Health System, LLC*, 357 NLRB 1661 (2011), a parent corporation health system owned and operated several acute care hospitals, a holding company, a management company, and a newly acquired acute-care hospital. The Board upheld the administrative law judge's finding that the entities at issue constituted a single employer within the meaning of the Act. The parent corporation intended to purchase, own, and operate the hospital through a bankruptcy sale. However, due to lending issues, the purchase was instead completed through subsidiaries and holding companies of the parent corporation. The judge noted that the parent

corporation's website stated that, through its subsidiaries, it owned and operated acute-care hospitals and related healthcare businesses. The managers of one of the hospitals operated directly by the parent corporation were also in charge of the daily operations at the newly acquired hospital, divided their time between the two hospitals, and signed checks on behalf of the newly acquired hospital. At the instruction of the parent corporation, the policies of the already owned hospital were applied to the employees at the newly acquired hospital. The hospitals had the same chief nursing officer and chief financial officer. The judge found that the parent corporation, through its management staff at the hospital it already owned, clearly exercised actual and active control over the newly acquired hospital.

In *Mercy Gen'l Health Partners Amicare Homecare*, 331 NLRB 783 (2000), the Board overturned the Regional Director and found that two corporate subsidiaries were not a single employer with one another in the context of a self-determination election. The Board determined that while the subsidiaries shared common ownership by the parent corporation, they each had completely separate management structures that did not interact. Moreover, the employees of each entity were subject to separate personnel policies, were separately supervised, and did not interchange with one another. Of note, while the two subsidiaries shared an office space and a phone number, one entity leased office space and equipment from the other in a formal agreement. Significantly, the Board highlighted that the corporate parent "exercise[d] virtually no control" over either subsidiary and there was no evidence of any control over the other entity. *Id.* at 785.

2. Parties' Positions

The Medical Group and the Hospital both argue that there is no single employer relationship between the Medical Group, the Hospital, SCL Health-Montana, or SCL Health System, in that, *inter alia*, they have different human resources departments, onboarding process, labor relations counsel, policies, budget, spending authority, bank account, tax ID, building, address, signage, officers, and managers. The Medical Group and the Hospital both further argue that solely the Hospital employed the Boulder Clinic employees at the time of the election, and that solely the Medical Group employed the telephone operator PSRs at the time of the election. Both cite to *Brown v. Fred's Inc.*, 484 F.3d 736 (8th Cir. 2007) for the proposition that "there is a 'strong presumption that a parent company is not the employer of its subsidiary's employees, and the courts have found otherwise only in extraordinary circumstances.'" *Id.* at 739.

Conversely, Petitioner contends that the entities constitute a single employer within the meaning of the Act.

3. Analysis

I find that the record evidence establishes that the Medical Group, the Hospital, and SCL Health System constitute a single employer and single integrated enterprise within the meaning of the Act. Although the record contains only limited evidence regarding SCL Health – Montana, I find that in light of its integrated relationship with SCL Health System, it is appropriate to include it in the single-employer finding.

a. Medical Group and SCL Health System

The record evidence establishes that the Medical Group and SCL Health System are a single employer within the meaning of the Act.

i. Common Ownership

Common ownership weighs in favor of single employer status, despite the fact that many details regarding ownership of the entities in question are absent from the record. At the initial hearing, the record revealed that the Hospital, which is an SCL Health System entity, has owned the Medical Group since about 2013. However, at the hearing on remand, the record implied that the Medical Group was owned by SCL Health System. The Medical Group and the Hospital also imply that SCL Health System owns the Medical Group, and neither contends that the Hospital owns the Medical Group. Despite the lack of details, I find that as all ownership options involve SCL Health System, this weighs in favor of finding that common ownership exists.

ii. Common Management

I also conclude that the Medical Group and SCL Health System share common management. The SCL Health System regional vice president of operations (Moser) who oversees the Medical Group as well as the other SCL Health System affiliated medical groups in Montana is employed by SCL Health System and reports to SCL Health System's chief operating officer. The SCL Health System regional vice president of operations (Moser) hired and manages the Medical Group's practice administrator, establishing a strong managerial connection between the entities. Similarly, for human resources, the Medical Group's human resources director (Saunders) is an SCL Health System employee who also serves as the human resources director for the other SCL Health System-affiliated medical groups in Montana. She has the authority to discipline and terminate employees, but the record does not reveal if she has exercised this authority. The Medical Group human resources director reports to the regional vice president of human resources (Ritchey) who is also employed by SCL Health System. The record establishes that day-to-day control over management resides with the Medical Group's practice administrator and clinic manager, who in turn are overseen by or report to the SCL Health System managers identified above. I find that this level of involvement in the managerial chain, especially when coupled with a lack of ultimate authority or control by the Medical Group over numerous aspects of its own operation, discussed in detail below, weighs in favor of finding common management between the Medical Group and SCL Health System.

iii. Labor Relations

The Medical Group and SCL Health System also share centralized control of labor relations. In the instant hearing, the same outside counsel represented both the Medical Group and SCL Health System. The Medical Group has refused to bargain with the Montana Nurses

Association, its only unionized employees, *see* Case 19-CA-242468, and the record does not include other evidence regarding labor relations.

Given the lack of bargaining history for the Medical Group, I find it relevant that SCL Health System maintains extensive human resources oversight and/or authority over Medical Group employees' terms and conditions of employment, such as wages, benefits, work rules, discipline, and discharge. While it is true, as the Medical Group contends, that there is no evidence that SCL Health System mandates benefits be adopted by the Medical Group, there is likewise no evidence that the Medical Group has ever deviated from SCL Health System benefits.

Thus, I find that the Medical Group and SCL Health System share centralized labor relations, which supports finding of single-employer status.

iv. Interrelation of Operations

Interrelation of operations overwhelmingly favors finding that the Medical Group and SCL Health System constitute a single employer. While the Medical Group argues that it has total autonomy with respect to day-to-day operations, and that SCL Health System plays no role, the record evidence undercuts this contention.

The Medical Group's official filings with the Montana Secretary of State list SCL Health System's Colorado address as the Medical Group's postal address and principal office address, as do the 2018 W-2s in the record. The Medical Group and SCL Health System use the same @sclhealth.org email addresses. The Medical Group uses SCL Health System's information technology resources and legal department, but does not need to pay for such services, which further supports a finding of interrelated operations.

Interrelated finances also weigh heavily in favor of single employer status. While the Medical Group has its own budget for which its managers are responsible, that budget is carved out of a budget for all SCL Health System-affiliated medical groups in Montana and overseen by the SCL Health System regional vice president of operations (Moser). Moreover, the fact that SCL Health System includes the Medical Group's assets when it seeks loans weighs further in favor of interrelationship of operations. The Medical Group's practice administrator has authority to enter into transactions only up to \$5,000, and above that amount the transaction must be approved by and entered into by SCL Health System. Further, when Medical Group and Hospital senior leadership gather to discuss and make decisions about finances, including wages and whether to grant raises, this meeting includes the Hospital president (employed by SCL Health System), SCL Health System vice president of operations (Moser), the Medical Group's vice president chief medical officer (Zavala), and/or the Medical Group's practice administrator. I reject the Medical Group's argument that because there is no evidence that the senior management team controls or directs the amount of wage increases, the timing of wage increases, or what classifications would be impacted, it does not support finding that a single-employer relationship exists. To the contrary, whether to grant a wage increase in the first place is a fundamental question relating to terms and conditions of employment and establishes a

relationship between the Medical Group and SCL Health System. Even assuming *arguendo* that it did not, I find that given the remaining direct financial control by SCL Health System over the Medical Group, finances firmly establish an interrelationship of operations.

Policies also establish an interrelationship of operations, as SCL Health System policies apply to Medical Group employees and are available to Medical Group employees on the SCL Health System intranet “Landing” website. While the record establishes that the Medical Group practice administrator has the discretion to develop local policies, any such policies cannot conflict with SCL Health System policies, thus supporting a finding of interrelationship of operations.

Benefits similarly weigh in favor of a single-employer finding, as the record establishes that SCL Health System’s medical insurance, 401(k) and retirements savings plans, employee assistance plan, and workers’ compensation plan apply to or cover Medical Group employees. I am not persuaded by the Medical Group’s argument that there is no evidence that SCL Health System mandates the use of common benefits and that I should therefore not find interrelated operations, as there is likewise no record evidence showing that the Medical Group has ever exercised any discretion and chosen not to apply SCL Health System benefits to its employees. Moreover, the instant case is distinguishable from *Sprinkler Fitters Local Union 699*, 365 NLRB No. 83 (May 23, 2017), cited by the Medical Group. In that case the parent corporation did negotiate large-scale benefits for its subsidiaries, but each subsidiary made its own decisions regarding employee benefits and the costs of the chosen plan. *Id.* There is no evidence that any of that occurs here.

Recruiting and hiring also support a single employer finding, as an SCL Health System recruiter recruits future Medical Group employees and sets the wage rate in their offer letters. Although the record contains some contradictory evidence as to whether the Medical Group practice administrator can decide alone to post new positions for the Medical Group, or whether he needs approval from his manager, who is employed by SCL Health System, I do not find this to be dispositive given the overwhelming additional evidence regarding interrelationship of operations. Moreover, I find it significant that the Medical Group does not even have the authority to hire its own physicians, since the Physician Approval Team, which is an internal SCL Health System group, hires the physicians employed by the Medical Group. The Medical Group’s primary purpose is to provide medical care to the public, but it cannot hire its own physicians. It is difficult to imagine outside control of anything more fundamental to its purpose.

Human resources administration also supports my conclusion that the Medical Group and SCL Health System are a single employer. SCL Health System handles all payroll and timekeeping for the Medical Group, maintains electronic personnel files for the Medical Group, and utilizes a Lawson ID number for each Medical Group employee that remains with employees even if they move to another SCL Health System-affiliated entity. Since the Medical Group does not pay SCL Health System for or otherwise have control over these services, this establishes such a deep interrelationship with SCL Health System that it appears that the Medical Group simply could not function without SCL Health System providing cost-free services and support. This case is thus distinguishable from *Sprinkler Fitters Local Union 699*, 365 NLRB No. 83

(May 23, 2017), cited by the Medical Group, as in that case although the parent corporation provided IT services, network services, and financial services, including auditing, accounting, and bonding to its subsidiaries, each subsidiary paid the parent corporation for its pro rata share of the services. That is clearly not the case here, as the record contains no evidence of the Medical Group paying SCL Health System for the services it receives.

v. Conclusion

I conclude that common ownership, common management, centralized control of labor relations, and interrelation of operations all weigh in favor of finding that the Medical Group and SCL Health System are a single employer within the meaning of the Act.

Of note, I reject the Medical Group's contention that a presumption exists that a parent company is not the employer of its subsidiaries, as the sole case cited by the Medical Group, *Brown v. Fred's, Inc.*, 494 F.3d 736 (8th Cir. 2007), does not involve the Act. Even assuming *arguendo* that such a presumption did exist in Board law, I find that the extensive interrelationship set forth above overcomes any such presumption and warrants a finding of single-employer status.

b. Hospital and SCL Health System

I find that the Hospital and SCL Health System are a single employer within the meaning of the Act.

i. Common ownership

Common ownership weighs in favor of the single-employer status, as the record reveals that the Hospital's sole corporate member is SCL Health System. The phrase "sole member" is "the term parallel in the not-for-profit world to shareholder in the for-profit world," *Pathology Inst., Inc.*, 320 NLRB 1050, 1054 (1996), meaning that SCL Health System is the sole owner of the Hospital. Accordingly, ownership weighs in favor of single-employer status.

ii. Common Management

Common management weighs strongly in favor of finding that the Hospital and SCL Health System constitute a single employer. At a corporate governance level, SCL Health System is the Hospital's sole corporate member, and exercises extensive corporate authority over the Hospital. At the management level, the "matrix" structure essentially means that SCL Health System oversees all aspects of the Hospital. The Hospital's president is employed by SCL Health System and reports to the CEO of the Montana region, who is also employed by SCL Health System. Similarly, the Hospital's CNO/COO is employed by and reports to SCL Health System. The fact that the Hospital's highest-ranking decision makers are employed by SCL Health System and report to SCL Health System weighs overwhelmingly in favor of single-employer status. While the record reveals that other lower-level supervisors and managers are employed by the Hospital, they nevertheless report up through managers employed by SCL

Health System. Given that the Hospital's highest-ranking on-site decision makers are employed by SCL Health, this offsets the fact that lower-level supervisors and managers are employed by the Hospital and solely supervise Hospital employees. On balance, I conclude that common management weighs heavily in favor of single-employer status.

iii. Centralized Control of Labor Relations

Centralized control of labor relations further supports finding that the Hospital and SCL Health System constitute a single employer. The Hospital president, who is employed by SCL Health System, signs collective-bargaining agreements on behalf of the Hospital. In fact, one collective-bargaining agreement in the record notes that the agreement is with the Hospital, which the agreement identifies as being a Montana corporation operated by SCL Health System. The Hospital's negotiating committee includes the chief nursing officer/chief operating officer and the regional vice president for financial services, both of whom are also employed by SCL Health System. Steps two and three of the grievance process are also handled by the Hospital president or the chief nursing officer/chief operating officer, who are both employed by and report directly to SCL Health System. Thus, contrary to the Hospital's contentions, it is simply impossible to separate SCL Health System from the Hospital's labor relations. This direct involvement by SCL Health System in collective-bargaining and grievance processing further undercuts any argument by the Hospital that SCL Health System does not exercise influence over wages, hours, or working conditions, as the collective-bargaining agreements by their very nature cover these exact issues.

While the Hospital and SCL Health System used different outside counsel in this matter and for other labor relations guidance, I find that this is outweighed by the other evidence set forth above establishing a centralized control of labor relations. Similarly, to the extent that Hospital counsel identifies, on brief, that it could put forth limited additional evidence to establish that there is no central control of labor relations, I believe that, even assuming this were true, the remaining interrelationship in labor relations set forth above would outweigh it.

In sum, I conclude that centralized labor relations weighs in favor of finding that the Hospital and SCL Health System are a single employer.

iv. Interrelation of Operations

Interrelation of operations also supports finding that the Hospital and SCL Health System constitute a single employer.

The Hospital's mission is to operate as a health care and service organization affiliated with SCL Health System and to otherwise support and carry out SCL Health System's charitable health care mission. The Hospital used SCL Health System's Colorado address on its filings with the Montana Secretary of State and on its 2018 W-2s. The Hospital uses @sclhealth.org email addresses. The Hospital's finances are deeply intertwined with those of SCL Health System, as SCL Health System oversees Hospital finances, must authorize any transactions above \$100,000, uses Hospital revenue as equity for loans, analyzes Hospital profits as part of

the overall budget of Montana operations, and incorporates the Hospital into its liability insurance policies. Also significant is the fact that the Hospital cannot obtain loans from financial institutions on its own, but rather must borrow money from SCL Health System on undisclosed terms, and SCL Health System in turn borrows money from financial institutions. I find that the Hospital's inability to manage and decide important aspects of its own finances independently weighs heavily in favor of single employer status with SCL Health System, who retains control and authority over all such functions.

SCL Health System policies apply to Hospital employees who can access policies through SCL Health System's intranet "Landing" website under "PolicyTech." The Hospital can and does promulgate its own policies, but any local policies must be approved by SCL Health System, thus further supporting a single employer finding.

Benefits similarly support finding single-employer status, as SCL Health System's health insurance, 401(k) and retirement savings plan, employee assistance program, and workers' compensation coverage generally apply to Hospital employees. In its brief, the Hospital made much of the fact that the Hospital has deviated from the SCL Health System benefits in its collective-bargaining agreements. However, I do not find this to be controlling, because, as discussed above, the collective-bargaining agreements are negotiated by a team that includes SCL Health System managers and is approved by the Hospital president, who is employed by and reports to SCL Health System.

SCL Health System's authority over recruiting and wages at the Hospital further compels a single employer finding. The Hospital's senior leadership team, which again consists of individuals employed by SCL Health System, approves the creation of new job openings at the Hospital and determines when existing hospital employees should receive wage increases, supporting a finding that SCL Health System is intricately involved in the operations of the Hospital. The SCL Health System recruiter posts the positions, recruits candidates, determines wage rates based on the candidates' experience levels, and ultimately sends the offer letters to new Hospital employees; there is no evidence the Hospital pays SCL Health System for performing these services. SCL Health System is thus inextricably involved in these key aspects of operations and employment of Hospital employees.

Human resources administration additionally supports my conclusion that the Hospital and SCL Health System are a single employer. SCL Health System handles all payroll and timekeeping for the Hospital, maintains electronic personnel files for Hospital employees, and utilizes a single Lawson ID number for Hospital employees that remains with the employees even if they move to another SCL Health System-affiliated entity. This all supports a finding of interrelationship and interdependence, especially given that there is no evidence that the Hospital pays SCL Health System for performing any of these crucial services.

Finally, the Hospital holds itself out as an SCL Health System-affiliated entity, but not as SCL Health System. Given the other aspects of interrelated operations set forth above, I do not find this to be determinative.

v. *Conclusion*

I find that the overwhelming evidence, particularly common management, centralized control of labor relations, and interrelation of operations, establishes that the Hospital and SCL Health System constitute a single employer within the meaning of the Act.

c. Medical Group and Hospital

I find that the Medical Group and the Hospital are a single employer within the meaning of the Act given their integration through SCL Health System.

i. *Common ownership*

Common ownership weighs in favor of finding that the Hospital and the Medical Group are a single employer, as the conflicting evidence shows either the Hospital owns the Medical Group or SCL Health System is affiliated with both entities, both of which establish common ownership.

ii. *Common Management*

Common management between the Hospital and the Medical Group weighs in favor of single-employer status. At a Montana level, SCL Health System managers oversee both the Hospital and the Medical Group, but there are several levels of other managers between the shared management and the entities. Although the record contains limited evidence about the involvement of these common managers in the operations of either the Hospital or the Medical Group, their oversight ability nevertheless establishes shared common upper-level management through SCL Health – Montana and SCL Health System.

While the Medical Group and Hospital argue that no managers, officers or directors of either entity play roles in the operations of the other entity, I find that the record evidence does not support this argument. The most significant common management between the Hospital and the Medical Group relates to the Boulder Clinic employees. I find it compelling that during the time period before the Hospital and the Medical Group entered into an agreement regarding the operation of the Boulder Clinic, the Medical Group operations manager supervised Boulder Clinic employees by holding meetings with them and visiting the facility, without any specific agreement or compensation for doing so. I will note that although the record lacks specific detail about the nature of the supervisory authority exercised over the Boulder Clinic employees, it is nevertheless relevant and compelling given that the record does not establish that any Hospital supervisor or manager otherwise supervised the Boulder Clinic employees during that time. Managers from one entity simply do not supervise the employees of another entity without a management agreement if the entities truly have an arm's length relationship. Moreover, as discussed below, the leadership team acting on behalf of the Hospital and Medical Group makes collective decisions regarding finances for both of these SCL Health System-affiliated entities, thus undercutting any argument that there is no impact of any overlap in upper-level management. Additionally, Hospital supervisors can initiate transfers of employees to the

Medical Group by simply going into the computer system and selecting the new Medical Group supervisor from a drop-down menu, something that could not be achieved by employers separated by an arm's length.

Sprinkler Fitters Local Union 699, 365 NLRB No. 83 (May 23, 2017), cited by both the Hospital and the Medical Group, is distinguishable. In *Sprinkler Fitters*, the Board adopted the administrative law judge's conclusion that three subsidiaries and their parent company did not constitute a single employer. The judge noted that the presidents of each subsidiary reported to the parent company, but there was otherwise no overlap of managers or supervisors among the subsidiaries and each entity operated independently. *Id.* slip. op. at 3. The judge highlighted that each entity had its own human resources who reported internally to the subsidiary's senior management, and the parent company provided guidance on ERISA and tax laws, but the subsidiaries could otherwise adopt their own workplace policies. *Id.* Here, managers from one entity help make financial decisions involving the other, and supervisors oversee employees of the other. Furthermore, the level of guidance provided to both the Hospital and the Medical Group by SCL Health System far exceeds that provided by the parent company to its subsidiaries in *Sprinkler Fitters*.

Accordingly, I find that common management weighs in favor of single-employer status.

iii. *Centralized Control of Labor Relations*

Centralized control of labor relations also weighs in favor of finding that the Hospital and the Medical Group constitute a single employer, especially in light of their integration through SCL Health System. The Hospital has its own outside counsel for the instant matter and for general labor relations support, but the Medical Group, SCL Health – Montana, and SCL Health System all used the same counsel in this case. As I find above that the Hospital and SCL Health System are a single employer, this relationship connects labor relations counsel among all entities at issue. Moreover, the role and oversight of the same SCL Health System managers in the terms and conditions of employment for both Medical Group and Hospital employees that are core to labor relations, discussed below, further weighs in favor of finding that centralized labor relations exists. In sum, I find that as both the Medical Group and the Hospital are a single employer with SCL Health System, this interrelationship establishes centralized labor relations.

iv. *Interrelation of Operations*

Both the Hospital and the Medical Group are affiliated with SCL Health System. The Medical Group refers patients to the Hospital, and the Hospital refers patients to the Medical Group. The Medical Group lists its address as the Hospital address on both its Montana Secretary of State filings and its 2019 W-2s, weighing heavily in favor of interrelated operations. Both the Hospital and the Medical Group use @sclhealth.org email addresses, also showing integration.

Finances also establish an interrelationship between the Hospital and the Medical Group. Although the Hospital and Medical Group have separate bank accounts and tax IDs, SCL Health

System manages the overall finances and aggregates the Hospital and the Medical Group for financial purposes, including loans.

Policies also weigh in favor of interrelated operations, as many SCL Health System policies apply to both Hospital and Medical Group employees, which employees from both entities can access on SCL Health System's intranet "Landing" website. Although the Hospital does have numerous policies that apply solely to Hospital employees, this does not negate the fact that many SCL Health System policies apply to employees of both the Hospital and the Medical Group.

Similarly, the application of SCL Health System's health insurance, 401(k) and retirement savings plans, employee assistance plan, and workers' compensation plan to employees of both the Hospital and the Medical Group weighs in favor of interrelated operations. While, as noted by the Medical Group and the Hospital, some union-represented Hospital employees have different health and retirement benefits, this represents only a small number of employees.

Hiring also establishes an interrelation of operations. While the Hospital and the Medical Group each authorize the creation of positions for hire in their respective organizations, the same SCL Health System recruiter recruits new employees for both. Additionally, the Hospital contracts with the Medical Group to have a nurse practitioner or physician's assistant perform physical assessments for new Hospital employees.

I note that physicians who work at the Hospital, including those who are on-call for the Hospital, are for the most part employed by the Medical Group, which weighs in favor of finding an interrelation of operations. This interrelationship is even made known to the public, as when patients receive Hospital care, they then receive a Hospital bill and a Medical Group bill for physician services. The fact that the Hospital pays the Medical Group for physicians providing call services, although compensated at an unknown rate, still shows integration and interdependence between the entities.

Other shared SCL Health System services also support a finding of interrelated operations. This includes the fact that SCL Health System provides payroll and legal services and manages employee files for both the Hospital and the Medical Group, without requiring either entity to pay for these services.

The limited sharing of materials, such as occasionally borrowing a wheelchair, weighs against interrelated operations.

Operations at the Boulder Clinic strongly favor a finding of interrelated operations. As noted above, the Medical Group operations manager supervised Boulder Clinic employees at the time they were still paid by the Hospital and considered by the Hospital to be Hospital employees. Moreover, during that time, Medical Group employees were sent by Medical Group supervisors to cover absences of Boulder Clinic employees. While it is true, as the Medical Group and the Hospital contend, that there are only two examples of such interchange, there are

no specific examples of the Hospital sending any employees to cover at the Boulder Clinic. Accordingly, I find that this limited example weighs in favor of establishing interrelated operations. Moreover, I note that the transition of the Boulder Clinic from Hospital management to Medical Group management suggests an interrelation of operations, as the medical records transferred on August 5, the employees transferred payroll the following pay period, and the internal payroll coding records show a switch to the Medical Group in November. No party has provided any explanation showing how such a staggered transition could occur absent a strong interrelation of operations. Finally, the fact that the Medical Group's attorney persistently held out the Boulder Clinic employees to the Board as Medical Group employees during the time period the Hospital considered them to be Hospital employees suggests an interrelationship of operations, as completely separate employers would not plausibly be confused about which entity employed which employees.

I also conclude that the shared use of the telephone operator PSRs further supports a finding of interrelated operations, as although the record shows payment for such services, it lacks specific evidence, beyond general assertions, that such services were paid for at a fair market value. Moreover, the record does not provide any detail about whether the Hospital compensates the Medical Group when the emergency room covers phones when the telephone operator PSRs need to take a break during the day, which further supports an interrelationship of operations. Finally, although it appears that the Hospital telephone operator PSRs had to undergo a complete application and hiring process to work at the Medical Group, which weighs against an interrelation of operations, the fact that the Hospital supervisor initiates the change of employment by going into the internal computer system and selecting the new Medical Group supervisor from a drop down list weighs heavily in favor of finding that the operations are interrelated.

Accordingly, I find that the operations of the Hospital and the Medical Group are sufficiently interrelated to weigh in favor of finding single-employer status.

v. *Conclusion*

I find that common ownership, centralized labor relations, common management, and interrelationship of operations weigh in favor of finding that the Hospital and the Medical Group constitute a single employer in light of their integration through SCL Health System. Although centralized labor relations is considered to be the most important factor, I find it of limited use here given the lack of labor relations history at the Medical Group. Moreover, I find that the record evidence regarding the remaining factors, especially interrelationship of operations, outweighs the limited evidence of direct centralized control of labor relations by showing a lack of an arm's length relationship.

I thus conclude that the Hospital and the Medical Group are a single employer within the meaning of the Act and a single integrated enterprise with SCL Health System.

d. SCL Health – Montana

Although the record contains limited evidence about SCL Health – Montana, I nevertheless conclude that SCL Health – Montana, as an intermediary SCL Health System-affiliated entity between the Medical Group and the Hospital at the local level, and SCL Health System at the corporate level, is encompassed in any finding of single-employer status. This is especially true given that the record reveals that the shift to streamline management through SCL Health – Montana was undertaken at least in part in response to the instant petition.

Regarding ownership, the record does not reveal who owns SCL Health – Montana, however it is clear that it is part of SCL Health System’s corporate structure between local-level Montana hospitals and medical groups and SCL Health System in Colorado.

Regarding management, the record establishes that four of the 16 people on SCL Health – Montana’s board of directors also sit on the Hospital’s board of directors. Similarly, some upper-level Medical Group managers also hold the same role with SCL Health – Montana, and some SCL Health – Montana managers are employed by or hold the same role with SCL Health System. This weighs in favor of finding common management.

Regarding labor relations, the record does not contain extensive evidence regarding labor relations for SCL Health – Montana. However, it is clear that senior leadership both at the Medical Group and the Hospital, some of whom are employed by SCL Health System, report through SCL Health – Montana as well as SCL Health System.

Regarding interrelation of operations, SCL Health – Montana is an intermediate management entity between the community-level SCL Health System-affiliated entities, such as the Hospital and the Medical Group, and SCL Health System as a parent corporation. Although there is a lack of extensive specific evidence regarding SCL Health – Montana, the limited evidence does establish that SCL Health System aggregates many of its financial and other operations decisions at the Montana level through SCL Health – Montana. Accordingly, I find that this weighs in favor of finding that an interrelationship of operations exists.

In sum, I find that SCL Health – Montana is an integral intermediate entity between the Medical Group and the Hospital at the local level and SCL Health System as their parent corporation. Accordingly, I conclude that it is appropriate to include SCL Health – Montana in my findings that the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System are all a single employer and single integrated enterprise.

B. Joint Employer

The Board law on joint employer status is currently undergoing change. Accordingly, I analyze the question of whether the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System are joint employers under both the standard set forth under the Board’s case law and that established by the Board’s new rule. As set forth below, I find that the Medical Group and the Hospital are each a joint employer with SCL Health System. I find there is

insufficient evidence to show that the Medical Group and the Hospital are joint employers with one another, or that SCL Health – Montana is a joint employer with any other entity at issue. Although the parties dispute which standard applies in the instant matter, I find the outcome in the instant case to be the same under either standard.

1. *Legal Standard*

a. Case Law Standard

In *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery*, 362 NLRB 1599 (2015), the Board restated the joint-employer standard and adopted the following joint employer test: “The Board may find that two entities . . . are joint employers of a single work force if they are both employers within the meaning of the common law, and if they share or codetermine those matters governing the essential terms and conditions of employment.” Under *Browning-Ferris*, the Board did not require direct and immediate control over the other entity but found instead that indirect control could establish joint employer status.

b. Joint Employer Rule

On February 26, 2020, the Board issued its final joint employer rule, which went into effect on April 27, 2020. The rule states as follows:

§ 103.40 Joint Employers.

(a) An employer, as defined by Section 2(2) of the National Labor Relations Act (the Act), may be considered a joint employer of a separate employer’s employees only if the two employers share or codetermine the employees’ essential terms and conditions of employment. To establish that an entity shares or codetermines the essential terms and conditions of another employer’s employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees. Evidence of the entity’s indirect control over essential terms and conditions of employment of another employer’s employees, the entity’s contractually reserved but never exercised authority over the essential terms and conditions of employment of another employer’s employees, or the entity’s control over mandatory subjects of bargaining other than the essential terms and conditions of employment is probative of joint-employer status, but only to the extent it supplements and reinforces evidence of the entity’s possession or exercise of direct and immediate control over a particular essential term and condition of employment. Joint-employer status must be determined on the totality of the relevant facts in each particular employment setting. The party asserting that an entity is a joint employer has the burden of proof.

The rule defines “essential terms and conditions of employment” as “wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.”

2. *Parties’ Positions*

The Medical Group and the Hospital argue that no joint employer relationship exists between the Medical Group, the Hospital, SCL Health-Montana, or SCL Health System. The Medical Group and the Hospital both argue that no other entity has direct control over the wages, benefits, scheduling, hiring, discharge, discipline, and supervision of employees, as this is all done by their respective administration and managers. Both the Medical Group and the Hospital argue that the Board’s new joint employer rule is the applicable standard in this case.

Conversely, Petitioner contends that the entities at issue constitute a joint employer. Petitioner argues that the Board’s case law governs, as it was in effect at the time of the filing of the petition and the election at issue.

3. *Analysis*

a. Medical Group and SCL Health System

I find that the Medical Group and SCL Health System constitute a joint employer both under the Board’s case law and under the Board’s new rule.

Regarding hiring, the record establishes that SCL Health System possesses and exercises actual control in hiring Medical Group employees. The SCL Health System recruiter is generally responsible for recruiting Medical Group employees, including setting their initial wage rates in their offer letters; this rises to the level of active and actual control over hiring. Even more significantly, SCL Health System’s Physician Approval Team oversees the hiring process for all physicians employed by the Medical Group and the SCL Health System regional vice president for financial services approves all physician hiring agreements, again demonstrating actual and direct control over hiring. This case is thus distinguishable from *Flagstaff Med. Ctr.*, 357 NLRB 659 (2011), cited by the Medical Group, in which the Board found no joint employer status where the subcontractor merely participated in interviews and recommended applicants for hire, but did not retain final authority over the hiring decision.

Regarding benefits, the record similarly establishes that SCL Health System possesses and exercises direct control over the benefits of Medical Group employees. I reject the Medical Group’s argument that there is no evidence SCL Health System mandates their use to the Medical Group, as it does not cite to any examples in which it has deviated from the SCL Health System benefits and instead cites only to the Hospital as having done so. Contrary to the Medical Group’s argument, this does not support finding that SCL Health System lacked final authority with respect to the benefits of Medical Group employees. Moreover, the Medical Group does not appear to have exercised any discretion over employee rates for these benefits, again establishing actual control by SCL Health System over benefits.

Regarding wages, SCL Health System possesses some authority over Medical Group employees. The SCL Health System recruiter sets the wage rates of new Medical Group employees in their offer letters. Moreover, the Senior Leadership Team, which includes managers employed by SCL Health System, determines whether Medical Group employees' wages should be increased. It is true, as the Medical Group argues, that there is no evidence that SCL Health System controls or directs the timing of the increase or what classifications would receive it. Regardless, I find that the decision-making authority about whether to institute wage increases at all is sufficient to establish a joint employer relationship, and thus distinguishes the instant matter from the cases cited by the Medical Group. *See, e.g., Goodyear Tire and Rubber Co.*, 312 NLRB 674 (1993) (finding an agreement to provide wage reimbursement in a "cost plus" contract insufficient to establish joint employer relationship with respect to wages); *Hychem Constructors, Inc.* 169 NLRB 274 (1968) (finding a "cost plus" agreement with respect to wages insufficient to establish a joint employer relationship).

Regarding discipline and discharge, the record establishes some control by the Medical Group's director of human resources, who is employed by SCL Health System, over Medical Group employees. The record reveals that although the practice administrator and operations manager, both employed by the Medical Group, have authority over day-to-day human resources matters, the director of human resources nevertheless retains disciplinary authority over Medical Group employees. The record is void of evidence regarding whether and how the Medical Group has disciplined or discharged employees, either with or without the involvement of the human resources director. In light of this, I find that discipline and discharge meet the joint employer standard under the Board's case law, but not under the Board's new rule.

Regarding hours of work, supervision, and direction, the record does not reveal evidence of control by SCL Health System over the Medical Group. However, the joint employer standard does not require that I find all factors to be met in order to determine that multiple entities constitute a joint employer within the meaning of the Act.

Moreover, I reject the Medical Group's argument that the Medical Group has total autonomy with respect to day-to-day operations, and that the SCL Health System plays no role whatsoever, as the above analysis undercuts these contentions and shows extensive control by SCL Health System over Medical Group employees' terms and conditions of employment.

In sum, I find that the Medical Group and SCL Health System are joint employers within the meaning of the Act under both the Board's case law and the Board's new joint-employer rule.

b. Hospital and SCL Health System

I conclude that the Hospital and SCL Health System also constitute joint employers within the meaning of the Act.

SCL Health System exercises actual control over the hours of work, discharge, discipline, wages, and benefits of Hospital employees by virtue of the collective-

bargaining agreements negotiated and signed by managers employed by SCL Health System, as the agreements clearly address and govern these core terms and conditions of employment. I also find that these collective-bargaining agreements undercut the Hospital's contention that SCL Health System is not involved in employees' working conditions. I additionally reject the Hospital's argument that because benefits and compensation are determined through bargaining with each union, the Hospital must retain local control over and authority in order to make such decisions. As the record reveals, those who negotiated and adopted the Hospital's collective-bargaining agreements are employed by and report to SCL Health System, a fact the Hospital ignores in its brief. This clearly establishes actual control over terms and conditions of employment and undercuts any argument of separate, independent authority by the Hospital to deviate from SCL Health System negotiated standards in collective-bargaining agreements.

SCL Health System also exerts actual control over hiring Hospital employees, through both the SCL Health System recruiter and the Physician Approval Team that hires all doctors. I thus reject the Hospital's argument that SCL Health System plays no role in hiring and conclude that hiring establishes a joint employer relationship under either legal standard.

Similarly, the record establishes that SCL Health System further exercises its influences over Hospital employees' wages both when the SCL Health System recruiter sets wage rates in new employees' initial offer letters and when the senior leadership team determines whether wage increases should be granted.

Benefits also establish that SCL Health System and the Hospital are joint employers. All Hospital employees use either SCL Health System benefits or benefits from a collective-bargaining agreement negotiated and signed by individuals employed by SCL Health System. The Hospital argues that the collective-bargaining agreements show that it retains local control over benefits. However, as noted above, this argument is not persuasive, because those agreements are negotiated and adopted by individuals employed by and reporting to SCL Health System.

Regarding supervision and direction, the record establishes that Hospital supervisors and managers are involved in direct day-to-day supervision and direction of Hospital employees. However, these Hospital supervisors and managers eventually report up through SCL Health System-employed managers who work onsite at the Hospital, as part of the "matrix" system.

In sum, I conclude that the Hospital and SCL Health System are joint employers within the meaning of the Act, under both the Board's case law and the Board's new joint-employer rule.

c. Medical Group and Hospital

I conclude that the Medical Group and the Hospital are not joint employers within the meaning of the Act.

The record establishes that the Medical Group had some supervisory oversight over Boulder Clinic employees, who both the Hospital and the Medical Group contend were employed by the Hospital at the time of the election. While the Medical Group claims that the Hospital's human resources director testified that Boulder Clinic employees were supervised by the Hospital, the transcript pages cited do not support this contention and the record does not reveal active supervision of Boulder Clinic employees by anyone at the Hospital. Moreover, neither the Hospital nor the Medical Group addresses the fact that at the initial hearing, the Medical Group operations manager testified that she held weekly telephonic huddles with the Boulder Clinic employees and visited once a month, all while the record reveals no other day-to-day supervision or visits by any Hospital supervisor or manager. It is significant that there was no agreement in place requiring the Medical Group to provide the Hospital with this supervision service, but rather the Medical Group operations manager had simply been instructed to perform this duty by the Medical Group practice administrator. However, it is problematic that the record does not provide detail regarding the nature or scope of the Medical Group operation manager's supervision of the Boulder Clinic employees, such as what was discussed in the huddles and on-site visits and what, if any, action she could take if she believed Boulder Clinic employees were not performing sufficiently well. Considering this lack of specific record evidence, I am compelled to find that supervision and direction of the Boulder Clinic employees fails to establish that the Medical Group and the Hospital were a joint employer at the time of the election. I note that there have been subsequent changes to the Boulder Clinic's management, and the record does not establish that this same interrelated supervision and direction existed at the time of the remand hearing.

Joint control over wages is likewise problematic. For example, regarding wages, the Senior Leadership Team establishes whether both Medical Group and Hospital employees will obtain wage increases. This is somewhat confusing, however, as the Senior Leadership Team consists solely of the Hospital president (who is employed by and reports to SCL Health System), the SCL Health System regional vice president of operations (Moser), the Medical Group Chief Medical Officer (Zavala), and/or the Medical Group's practice administrator. As there is no Hospital employee on the Senior Leadership Team, I find that this does not establish Hospital control over the Medical Group. While it could support finding that the Medical Group has control over Hospital employees, as the decision is part of a joint committee and the record lacks specific information about their decision-making process, I am wary to find that this alone warrants finding that a joint-employer relationship exists.

The record fails to establish any joint control over benefits, hours of work, hiring, discharge, or discipline between the Hospital and the Medical Group. Thus, none of these factors supports a finding that the entities constitute a joint employer.

In sum, I conclude that the Medical Group and the Hospital are not joint employers within the meaning of the Act.

d. SCL Health – Montana

I conclude that the record contains insufficient evidence to establish whether SCL Health – Montana is a joint employer with any of the other entities at issue.

C. Health Care Rules

The Medical Group, citing to no controlling case law, argues that the Board’s healthcare rules, 29 CFR 103.30, 54 Fed. Reg. 16336 – 16348 (1989), preclude me from finding joint or single employer status and creates a presumption against finding joint employer status in this matter. I reject this argument.⁹

As noted above, the Board has a long history of finding that acute care hospitals have joint or single employer relationships with other non-acute care entities, including parent corporations. *See, e.g., Northern Montana Health Care Center, a subsidiary of Northern Montana Health Care, Inc.*, 324 NLRB 752 (1997); *Avanti Health System, LLC*, 357 NLRB 1661 (2011). This makes clear that I am not precluded by the existence of the health care rules from finding a single or joint employer status between the Hospital and non-acute care entities.

Moreover, the Board has elected not to apply its health-care rules in exceptional circumstances where an acute-care hospital is a single employer with another non-acute care entity. In *The Child’s Hosp.*, 307 NLRB 90 (1992), an acute-care hospital, nursing home, and their parent corporation were found to be a single employer. The Board specifically addressed whether the rules governing acute-care hospitals applied in the extraordinary circumstances at issue, as acute-care hospitals are covered by the rules, but nursing homes are not. The Board concluded that, given the circumstances presented there, including the integrated support services provided to both the hospital and the nursing home by their parent corporation, “it would not be feasible or sensible to automatically apply the rule,” and decided not to apply the rule. *Id.* at 92. *See also The Child’s Hosp.*, 310 NLRB 560 (1993) (Board affirmed the Regional Director’s finding that a unit of registered nurses at the hospital and the nursing home was an appropriate unit under the health care rules due to the circumstances of the case); *Virtua Health, Inc.*, 344 NLRB 604 (2005) (the employer, a comprehensive regional medical system that included four acute care hospitals, a non-acute-care hospital, a mobile intensive-care unit, a free-standing surgical facility, an ambulatory services center, a cardiac performance center, a family health center, a women’s center, and a home-health services unit, contended that the health-care rules applied to systems of health care services that include acute-care hospitals, but the Regional Director and union argued the rule was inapplicable. The Board declined to reach the issue.).

⁹ I note that the Medical Group’s attorney raised a similar argument in its brief in Case 19-CA-242468, and the Board did not find the argument to be persuasive.

Accordingly, I conclude that my findings are consistent with the standards for the health care industry under the Act.

V. IMPLICATIONS ON THE ELECTION

The Board's remand requires, as I have done herein, a review of the relationships between the entities possibly constituting the statutory employer of the employees at issue. As set forth above, I have found that, at all relevant times, the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System are a single employer and single integrated enterprise within the meaning of the Act, and that the Medical Group and the Hospital are each joint employers with SCL Health System.

The question then becomes what, if any, implications these findings have on the representation case before me and the election held on March 13, 2019. I conclude that it is appropriate to uphold the results of the election in the instant circumstances.

A. Parties' Positions

The Medical Group argues that any single or joint employer finding is not determinative of the outcome. In support of its position, the Medical Group cites to *Miller & Anderson, Inc.*, 364 NLRB No. 39 (2016) for the proposition that a union could seek to represent employees of a company that hired temporary workers as well as those jointly employed by the temporary agency without the consent of both employers. Based on this case, the Medical Group argues that if a single or joint employer relationship existed, Petitioner could therefore still represent a unit that included the telephone operator PSRs and the Boulder Clinic employees. The Medical Group further contends that assuming *arguendo* a single or joint employer relationship existed, the telephone operator PSRs would still be allowed to vote, which they did, and this only leaves the two Boulder Clinic employees who were excluded from the original vote. However, per the Medical Group, even if both Boulder Clinic employees voted for Petitioner at an election, Petitioner would still not prevail given the tally of ballots. Accordingly, the Medical Group concludes that the Board should uphold the results of the election and that a new election is not warranted.

The Hospital argues that as no single or joint employer relationship exists, the Board should confirm the results of the election and issue a decision holding that no such relationship exists for the employees subject to the Request for Review.

Petitioner requests that the Board set aside the election and hold a new election. Petitioner further takes the position that as many of the employees that voted in the first election are no longer employed in the petitioned-for unit, it will be necessary to determine who will be eligible to vote in the new election, which may require investigation and another hearing.

B. Analysis

With this complex procedural and factual history, I contemplated whether to uphold the results of the original election, to order a rerun election, or to dismiss the petition. I determine that upholding the results of the original election is the most appropriate outcome given the highly unusual circumstances of this case.

In concluding that upholding the original election results is warranted, I am guided in part by the Board's decision in *Mercy General Health Partners*, 331 NLRB 783 (2000), which is distinguishable from the instant case. In *Mercy General*, a union filed a petition for a self-determination election involving home health employees employed by one employer to be included in an existing unit with licensed practical nurses and home health aides employed by another employer. The Acting Regional Director determined that both employers, which were subsidiaries of the same parent corporation, constituted a single employer and ordered the self-determination election. However, the Board overturned the Regional Director and found that the two entities were not a single employer. As a result, the Board ordered a rerun election, in part because the ballot indicated that employees were employed by both entities as a single employer, "which is inaccurate and misidentifies the employing entity." *Id.* at 786. Moreover, the Board determined that in light of the self-determination characteristics of the election, if the Board certified the results without treating the entities as a single employer, then "the unit as certified would differ substantially in the character and scope from the unit in which the election was conducted." *Id.* at 786. The instant case is distinguishable for several reasons. First, essentially opposite to *Mercy General*, at the time of the instant election the ballot referenced solely the Medical Group,¹⁰ and the single and joint employer findings came into play only after the election was held. It is true that, like *Mercy General*, the ballot did not properly identify the statutory employer of the employees since it failed to list the Hospital, SCL Health – Montana, or SCL Health System. However, this is not dispositive as there is no reason to believe that this resulted in any confusion on the part of the employees who voted and does not otherwise change the outcome here. Second, unlike *Mercy General*, the unit is not being certified, and thus there cannot be a substantial change in character or scope from the unit in which the election was conducted.

One factor weighing against upholding the election results is the possible disenfranchisement of the Boulder Clinic employees, as the two Boulder Clinic employees employed at the time of the election who I had excluded from the unit were not included on the original voter list and did not vote subject to challenge. However, the inclusion of the Boulder Clinic employees in the unit, as set forth below, would not have altered the election results, since the Tally of Ballots showed that 12 votes were cast for Petitioner and 14 votes were cast against. Thus, even assuming *arguendo* the Boulder Clinic employees had voted, and voted in favor of representation by Petitioner, this would have resulted in a tie vote of 14 votes in favor and 14 votes against. The Board's longstanding election procedures specify that "a tie vote will mean that the union has not won, because it has not achieved majority." *NLRB Casehandling Manual*

¹⁰ The ballot listed the Medical Group's d/b/a, rather than its legal name. However, as there is no confusion regarding that reference, I do not find it to be determinative.

Part II, Sec. 11340.4. Accordingly, even had the Boulder Clinic employees exercised their right to vote and done so in Petitioner's favor, Petitioner would still not have secured the majority of valid votes cast necessary to represent employees in the petitioned-for unit.

Of note, I do not rely on the Board's decision in *Miller & Anderson, Inc.*, 364 NLRB No. 39 (2016), cited by the Medical Group in support of its argument that I should uphold the election results, in reaching this conclusion. In *Miller & Anderson*, the Board overturned precedent and reverted to a prior standard under Board law, concluding that "employer consent is not necessary for units that combine jointly employed and solely employed employees" of a "single user" employer, which is an employer who employs its own employees and those provided by a "supplier employer." *Id.* at slip op. at 20. This situation is completely distinguishable, as the Medical Group, the Hospital, and SCL Health System are neither "single user" employers nor "supplier employers."

In sum, I conclude that in the instant circumstances, it is appropriate to uphold the results of the election.

VI. APPROPRIATENESS OF THE UNIT

Even though I conclude that it is appropriate to uphold the election results, I nevertheless examine whether the unit in which I previously directed the election is still appropriate in light of the above decisions regarding single and joint employer status. I find that it is not, and therefore amend the unit description to include the Boulder Clinic address.

With respect to the telephone operators PSRs, the Medical Group and the Hospital continue to argue that they were properly included in the unit as Medical Group employees. I find that nothing in the record on remand has altered my conclusion that the telephone operator PSRs were appropriately included in the unit. As they were already included and had the right to vote in the election, any single and joint employer findings do not impact their ability to vote or the unit description and is not determinative in the case at hand.

However, I excluded the Boulder Clinic employees from the unit in my initial decision because I found that they were employed by the Hospital, not the Medical Group. The parties' positions regarding the appropriateness of including Boulder Clinic employees have been in flux. At the outset of the initial hearing, Petitioner and the Medical Group initially stipulated that any unit should only include the Medical Group's two Butte locations, because the Boulder Clinic was a separate employer and the Medical Group's Montana Tech facility had no potential unit employees. However, at the end of the initial hearing, Petitioner and the Medical Group stipulated that the Boulder Clinic employees, which at the time of the election included one licensed practical nurse (LPN) and patient service representative, should be included in any unit since they shared a sufficient community of interest with the rest of the petitioned-for unit due to their similar duties, responsibilities, and training. Petitioner also contended in its Request for Review that the Boulder Clinic employees should be included in the unit. Now, on brief after the hearing on remand, the Medical Group and the Hospital argue the Boulder Clinic employees were properly excluded as they were employed by the Hospital at the time of the election, while

Petitioner argues they should have been included all along. At no point in these proceedings did Petitioner amend the petition to include the Boulder Clinic facility.

Because I initially excluded the Boulder Clinic employees due solely to now-overtaken findings about their statutory employer, the single and joint employer findings may impact their inclusion in the unit, as now an appropriate unit may, but is not required to, include the Boulder Clinic employees. *See Kiewit Sons' Co.*, 231 NLRB 76 (1977) (generally, in a single and joint employer context, consideration of the scope of the unit examines employee community of interest).

There is a presumption in Board law in favor of a petitioned-for single facility. This presumption can be rebutted if there is a central control over daily operations and labor, similarity of employee skills, functions, and working conditions, the degree of employee interchange, the distance between locations, and the bargaining history, if any. *J & L Plate*, 310 NLRB 429 (1993). This presumption does not apply where a petitioner seeks a multi-facility unit. *Capital Coors Co.*, 309 NLRB 322, 322 n. 1 (1992). Instead, when presented with a petitioned-for multifacility unit, the Board will determine whether the unit is appropriate based on a variant of the community of interest test, examining the following factors: employees' skills, duties, and working conditions; functional integration of business operations, including employee interchange; geographic proximity; centralized control of management and supervision; bargaining history; and extent of union organizing and employee choice. *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 2 (2016). The Board has not extended its standard in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), which I relied on in the initial decision, to multi-facility questions. *See Clifford W. Perham, Inc.*, 2018 WL 329938 (2018) (denied review of regional director's decision relying on the Board's traditional multi-facility community of interest analysis, and declining to rely on the regional director's analysis pursuant to *Specialty Healthcare & Rehabilitation Center*, 357 NLRB No. 83 (2011), *enfd. Kindred Nursing Center East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), *overruled by PCC Structural, Inc.*, 365 NLRB No. 160 (2017)).

Here, Petitioner did not initially petition for multiple locations or otherwise indicate that there were multiple locations at issue. Instead, the petition listed only 400 S. Clark Street, in Butte, Montana, which is the Hospital's address and neither of the addresses I included in the unit description. At the initial hearing, Petitioner then stipulated that the unit should include the Medical Group's two addresses in Butte, neither of which had been mentioned on the petition, and specifically agreed to exclude the Boulder Clinic employees, albeit under the misunderstanding that the Medical Group was not involved in the employment of Boulder Clinic employees. Then, as noted, Petitioner and the Medical Group agreed to include the Boulder Clinic employees in the unit based on a shared community of interest. Finally, in its request for review, Petitioner argued that I erred by excluding the Boulder employees. In essence, it appears that while Petitioner initially petitioned for a single-facility unit, it is now petitioning for a multifacility unit in the hearing on remand, even though Petitioner never sought to amend the petition to reflect this change.

I find that the multifacility analysis is appropriate in the instant circumstances, and that even assuming *arguendo* the single facility presumption applied, it has been overcome by the record evidence and that a multifacility unit is appropriate.

Specifically, the Boulder Clinic employees share similar, if not identical, skills, functions, and duties with their counterparts at the Medical Group's Butte clinics, as they all hold the same licensing and background. The Boulder Clinic employees report to the same supervisors as those with the same positions at the Medical Group's Butte clinics. Medical Group employees from the Butte clinics cover at the Boulder Clinic when employees are absent from work. While the Boulder Clinic is 35 miles away from the Butte locations, it is the only one of the remote outpatient facilities that has employees in the classifications at issue. There is no bargaining history either for the Medical Group's Butte locations or for the Boulder Clinic. I find that these factors alone weigh sufficiently in favor of finding a multilocation unit to be appropriate and should include the Boulder Clinic employees along with those employees and locations I have already found to be appropriately included in the unit.

In sum, I find that the unit should include the Boulder Clinic employees and will amend the unit in accordance with that finding.

VII. CONCLUSION

Based on the record evidence and applicable case law, I find that the Medical Group, the Hospital, SCL Health – Montana, and SCL Health System constitute a single employer and single integrated enterprise within the meaning of the Act, and that the Medical Group and the Hospital are each joint employers with SCL Health System.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹¹
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.

¹¹ As I noted in the initial decision, the Medical Group is an employer engaged in commerce within the meaning of the Act. Since I find that the Hospital, SCL Health – Montana, and SCL Health System are a single employer with the Medical Group, they also meet the Board's jurisdictional standards. See *Ridgewood Health Care Center, Inc.*, 367 NLRB No. 110 (2019) (citing *Precision Industries*, 320 NLRB 661, 667 (1996) (where one entity of a single-employer is subject to the Board's jurisdiction, all entities part of that single employer are subject to the Board's jurisdiction)).

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

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

Included: All full-time, part-time, and per-diem patient service representatives, phlebotomists, licensed practical nurses, medical assistants, medical records clerks, and business coordinators employed by the Employer at its clinics located at 435 S. Crystal Street, in Butte, Montana; 305 W. Porphyry Street, in Butte, Montana; and 214 Main Street, in Boulder, Montana.

Excluded: Professionals, physicians, registered nurses, and guards and supervisors as defined in the Act.

VI. CERTIFICATION OF RESULTS

Consistent with my findings in this matter, an order overruling objections and a certification of results of election will issue subsequent to this decision.

VII. 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.

Case 19-RC-234472

Dated at Seattle, Washington, this 3rd day of June, 2020.

RONALD K. HOOKS

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