

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

**MULTICARE HEALTH SYSTEM d/b/a DEACONESS HOSPITAL<sup>1</sup>**

**Employer**

**and**

**Case 19-RC-268341**

**SEIU HEALTHCARE 1199NW**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

MultiCare Health System d/b/a Deaconess Hospital (Employer) operates an acute care hospital and clinics in Spokane, Washington. SEIU Healthcare 1199NW (Petitioner) filed a petition October 29, 2020<sup>2</sup> seeking to include a voting group via an *Armour-Globe* self-determination election to its existing unit of technical employees employed at the Employer's facility (existing unit). The voting group sought by the Petitioner consists of all full-time, part-time, and per diem Perinatal Ultrasound Techs employed in its Maternal Fetal Medicine Clinic (MFMC). There are currently three employees in this group, and the existing unit has about 213 employees.

It is not disputed that the Petitioner seeks a proper self-determination election: the parties stipulated, and I so find, that the petitioned-for employees constitute a distinct, identifiable segment of the Employer's unrepresented employees so as to constitute an appropriate voting group, as, among other items, these employees work in the same physical location, share the same supervision, are the only ones in this classification, and have duties that are distinct from other classifications.

The Employer asserts that the petitioned-for employees lack a sufficient community of interest with the unit employees in the hospital inpatient technical unit and should be in a separate outpatient unit. The Petitioner argues to the contrary that these

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<sup>1</sup> I grant the parties' Joint Motion to have the petition and other formal documents in this matter amended to correctly reflect the names of the parties as set forth herein.

<sup>2</sup> All dates hereinafter are in 2020 unless indicated otherwise.

employees share a proper community of interest with the existing technical bargaining unit, which includes both in-patient and out-patient job classifications.<sup>3</sup>

A videoconference hearing was held before a Hearing Officer of the National Labor Relations Board on November 23. The parties filed their respective post-hearing briefs with me after the conclusion of the hearing.<sup>4</sup>

Based on the record as a whole and the parties' briefs, as well as for the reasons set forth below, I find that inasmuch as the employees sought by the Petitioner comprise an identifiable, distinct segment of the workforce that shares a community of interest with the existing technical unit, I have directed the petitioned-for self-determination election among all full-time, part-time, and per diem Perinatal Ultrasound Techs employed in its Maternal Fetal Medicine Clinic. The parties stipulated to a mail-ballot election.

## **BACKGROUND**

MultiCare Health System operates a large multi-facility network of healthcare institutions, including the Employer's acute care hospital and clinics in Spokane, Washington at issue in this matter. The Employer's Spokane "campus" consists of Deaconess Hospital (Hospital), and the Deaconess Health and Education Center (DHEC), as well as a number of medical offices and other clinics.<sup>5</sup> The Hospital and the DHEC are connected by a fourth floor skybridge.<sup>6</sup> The DHEC contains the Maternal Fetal Medicine Clinic (MFMC) as well as a number of other clinics and offices.

The Petitioner has represented certain employees in a unit of technical employees since 2002. At that time, the Hospital was part of Empire Health Systems, but was subsequently purchased by Community Health System in 2007, which operated the Hospital in conjunction with the Rockwood Clinic System and Valley Hospital, another acute care hospital in Spokane, under the Rockwood Health System name with each facility retaining its respective separate identity.

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<sup>3</sup> In reaching my conclusions, I do not rely on Petitioner's argument in its post-hearing Statement of Position that the Board's *Health Care Rules* 29 CFR § 103.30 providing that nonprofessionals at an acute care hospital have a presumptive community of interest with all other nonprofessionals compel inclusion of the PUTs in the existing unit. Even assuming for the sake of argument this might be an appropriate consideration in this case, I do not find the record evidence sufficient to determine whether the existing unit is conforming or non-conforming, and — outside this statement on brief — the parties have not reached a stipulation on, or addressed the nature of, the Unit as it relates to the Healthcare Rule.

<sup>4</sup> The videoconference hearing in this matter was heard *ad seriatum* with Case 19-RC-268298, which requests a self-determination election in another unit at this facility and is addressed in a separate decision.

<sup>5</sup> Much of this background information is contained in my Decision in Case 19-UC-244614 issued September 25, 2019: I grant the parties' motion that I take administrative notice of certain facts contained therein.

<sup>6</sup> The entirety of the Employer's campus consisting of the Hospital and the DHEC will collectively be referred to herein as the Employer's facility. References to only the Hospital or only the DHEC will be indicated accordingly.

In 2017, MultiCare purchased Rockwood Health System, including the Employer's facility, and the parties negotiated a new collective-bargaining agreement (Agreement) effective from December 6, 2017 through November 30, 2020 and from year to year thereafter unless modified or terminated by agreement of the parties. The Agreement extends representation to certain employees at both the Hospital and the DHEC in the existing technical unit, and includes technicians who provide sonographic services, including Nuclear Medicine Technologists, Perinatal Ultrasound Specialist, Radiologic Technologist I and II, Clinical Mammographer, and Ultrasonographer, referred to collectively in this Decision as Ultrasound Technicians (UTs).<sup>7</sup> Most employees working at the at the DHEC, however, have been historically excluded from the Unit.<sup>8</sup>

The MFMC was operated by an outside entity called Mednax until November 2019 when the Employer acquired it and took over its operation. As noted above, the MFMC is physically located on the third floor of the DHEC in a separate structure adjacent to the Hospital's main building and the two are connected by a skywalk. The MFMC does not provide services to Hospital inpatients but caters only to outpatient referrals from primary providers. If a patient who receives services at the MFMC is subsequently hospitalized at the Employer's hospital, which happens frequently, the records (charting, lab notes, and test results) generated at the MFMC are available to the Hospital staff through the Epic electronic charting system commonly used by the Employer. Likewise, if a hospital patient is subsequently referred as an outpatient to the MFMC, the Hospital's records would be available through the same system. A hospital patient cannot be seen at the MFMC until discharged from the hospital, however.

The MFMC currently consists of nine employees: the three PUTs sought by the Petitioner, four Registered Nurses (RNs), a diabetes educator, and two receptionists. There is one physician (not employed directly by the Employer) who works in the MFMC and also does rounds and performs procedures at the Hospital. The MFMC employees, with the exception of the physician, do not float to any other departments in the Hospital.

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<sup>7</sup> The other classifications in the existing unit covered by the Agreement are set forth in Appendix A of the Agreement and are too lengthy to reiterate here.

<sup>8</sup> See my Decision in Case 19-UC-244614 (Sept. 25, 2019). There are some technical employees who work in the DHEC (where the MFMC is located) that are included in the existing unit currently represented by the Petitioner, including advanced UTs in the Pulse Heart Institute. The Petitioner does not represent any employees on the third floor of the DHEC where the MFMC, OB/GYN department, and Midwifery Center are located.

## ANALYSIS UNDER THE *ARMOUR-GLOBE* STANDARD

Whether it is appropriate to add additional employees to a preexisting bargaining unit is a question addressed by the Board's *Armour-Globe* doctrine. *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). Under the *Armour-Globe* doctrine, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). Thus, an incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011).

An "identifiable, distinct segment" of the workforce is one that does not unduly fragment the workforce. *Capitol Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). Here, the parties stipulated that the PUTs in the voting group sought constitute such an identifiable, distinct segment of the workforce and I accept that stipulation based on the record evidence.

Regarding the other factor of the *Armour-Globe* doctrine, the Board reviewed the elements of the traditional community of interest test in *PCC Structural, Inc.*, 365 NLRB No. 160, slip op at 6 (2017). As identified in *PCC*, determining the community of interest between groups of employees involves: whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including an inquiry into the amount and type of job overlap between classifications; are functionally integrated with other employees; have frequent contact and interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.* at 13, citing *United Operations, Inc.* 338 NLRB 123 (2002).<sup>9</sup>

I find that there is sufficient record evidence to support a finding of community of interest between the employees in the existing unit and the employees in the group that the Petitioner seeks to add. The parties stipulated, and I find based on the evidence in the record, that these employees work in the same physical location and share common supervision.<sup>10</sup> In addition to sharing a common facility and common supervision, the

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<sup>9</sup> *PCC Structural, supra*, involves an election for a stand-alone unit where the question is whether the employees in the proposed unit share interests sufficiently separate and distinct from those in the remainder of the workforce to constitute an appropriate unit for bargaining. The instant case seeks a self-determination election to add employees to an existing unit consistent with *St. Vincent, supra*. Thus, *PCC Structural* is relied upon herein for the Board's current community of interest factors.

<sup>10</sup> In its Statement of Position, the Employer argues to the contrary that the PUTs have separate supervision: although the day-to-day functions of the PUTs are overseen by the Clinic Manager, they still fall under the auspices of the Director of Imaging, who performs their appraisals. The Employer further implies that the DHEC and the

record further confirms that most of the elements set forth in *PCC Structurals* discussed in further detail below are present in sufficient degree to further support my decision.

### ***Departmental Organization***

Although not expressly stated in the record, it appears from the description of the existing unit that the classifications contained therein are spread across various departments in the Hospital. Thus, there is nothing inconsistent with the Employer's departmental organization by having the PUTs in a separate department than others already represented.<sup>11</sup> Therefore, departmental organization appears to be a neutral factor.

### ***Skills and Training***

The record evidence shows that the skills and functions of the MFMC PUTs and the UTs represented by the Petitioner are similar in nature. Although the MFMC PUTs only perform certain types of scans limited primarily to prenatal issues as opposed to the broader range of scans done by the unit UTs, both groups use the same equipment and technology. Moreover, both groups receive similar training that focuses on their respective protocols.

Specifically, MFMC PUTs are required to have satisfactorily completed formal ultrasound technology training and to have the proper certification in nuchal translucency. Previous experience as a high-risk OB ultrasonographer is preferred but not required. UTs at the hospital are not required to have nuchal translucency certification, although some do.

Moreover, the MFMC PUTs use the same ultrasound equipment and technology for ultrasounds as used by the hospital-based UTs in the existing unit. Both groups use transducers (specialized probes) to obtain certain images.

Based upon the similarities in skills and the fact that the PUTs use the same equipment and technology as the UTs in the existing unit, albeit on a smaller universe of patients, I find this is a strong indicator of a community of interest between the petitioned-for voting group and the existing unit.

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Hospital are two separate health services in separate buildings, despite having stipulated that the PUTs work in the same physical location as other ultrasound techs. I find that the record does, in fact, support the stipulation that the employees in the petitioned-for group work in the same location and share common supervision with the employees in the existing unit.

<sup>11</sup> Although the Employer argues in its brief that the physical separation of the PUTs from the Hospital UTs suggests they are two different health services, I find that the evidence of functional integration discussed *infra* outweighs this.

## ***Job Functions***

Generally, the MFMC PUTs perform ultrasound scans on high-risk OB patients to monitor fetal growth and abnormalities, and also perform nonstress test evaluations of fetal heartrates and movements. According to the job description in effect October 2019, the PUTs are responsible for performing obstetrical ultrasound procedures at a technical level not requiring constant supervision. They are also responsible for writing reports, filing, charging, and stocking rooms in their department. Internal contacts, according to this description, included other PUTs, nurses, genetic counselors, grief counselors, and perinatologists. Once the PUTs perform the requested tests, they report the results to the MFMC physician, who then consults with the patients.

The job description for Hospital UTs in the existing unit states that these techs are responsible for performing diagnostic and therapeutic ultrasound procedures at a technical level not requiring constant supervision, but under the limited direction of a radiologist. Internal contacts are primarily with patients and their family members, and physicians. Requirements for this job include completion of a formal ultrasound technology training program and registration with certain credentialing registries. Previous experience as an ultrasonographer is preferred but not required.<sup>12</sup>

Since the Hospital has a broader patient population, the UTs there perform not only OB scans, but also vascular and general ultrasounds. Thus, the competencies required of the UTs differ from those of the MCMC PUTs only inasmuch as they are multimodality and thus the UTs must be competent in more categories.

Moreover, the existing unit contains a number of UTs who perform only specific types of scans on a particular demographic, so the fact that the PUTs may serve a different and more selective demographic than the Hospital UTs is not dispositive as the Employer argues.

Taken as a whole, I find that the fundamental similarities of the work performed by the PUTs and the UTs in the existing unit is greater than the differences, particularly given the fact that they have similar levels of training, require little direct supervision, and use the same equipment and technology, and therefore conclude that this factor weighs in favor of finding a community of interest between the petitioned-for voting group and the existing unit.

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<sup>12</sup> The record does not reveal whether the unit UTs perform the other miscellaneous duties performed by the PUTs.

### ***Functional Integration***

Although the MFMC is a relatively independent operation from the Hospital, many of those who receive services at the MFMC are transferred to the Hospital. Hospital inpatients can be referred to the MFMC for follow-up as outpatients. Most importantly, the records and charts generated by both the MFMC and the Hospital regarding a particular patient are commonly shared through the electronic charting system and can be accessed by either. Thus, the PUTs in the MFMC provide needed patient information to the Hospital as part of an integrated delivery of services for high-risk pregnancy patients.

When the MFMC became part of the Employer's operation, the Hospital Ultrasound Lead, along with the Hospital's Director of Imaging, helped set up the clinic with regard to its ultrasound operation and train the PUTs, and continues to act as a resource for them. This suggests some integration of operations between the PUTs and the UTs.

Based on the foregoing, it appears that the MFMC is a relatively independent department that operates within a highly integrated facility. Because the facts weigh both for and against functional integration, I conclude that this is essentially a neutral factor in finding a community of interest.

### ***Contact and Interchange with Unit Employees***

The record shows that the PUTs have little contact with the employees in the existing unit. In this regard, the Employer considers them to be outpatient-care providers, in contrast to the UTs in the existing unit who treat only hospital inpatients. With the exception of the referrals described above, there is little if any actual contact between the two groups of employees.

The MFMC PUTs do not "float" to the hospital to perform services there, nor do UTs from the hospital work in the MFMC. The MFMC PUTs are not promoted to other positions in the Hospital, since there is no equivalent role for their specific modality there. Moreover, an MFMC PUT could not perform the multimodalities required of the general UTs in the Hospital who have a broader range of competencies. This is because the MFMC PUTs' duties have a narrower focus on particular tests for only high-risk OB patients.

However, a UT in the Hospital could transfer to the MFMC after receiving the appropriate experience, training, and certification to be a PUT, and the record shows that one UT who previously worked at the Hospital was hired in 2018 as a PUT in the

MFMC after a hiatus of several years.<sup>13</sup> There is currently no formal progression ladder for MFMC sonographers to become UTs in the hospital, or vice versa.

With regard to contact, the MFMC PUTs do not regularly visit the Hospital on a regular basis: however, Hospital employees, including unit UTs, attend orientations and certain trainings common to all employees held at the MFMC. Although the PUTs and the UTs appear to share a common parking lot, there is no evidence whether they share other common areas like lunch or breakrooms.

As noted above, when the Employer took over the operation of the MFMC, the UT lead person from the hospital met daily with the PUTs to assist them with the transition, and currently acts as a resource for them.

In spite of the lack of regular contact between the MFMC PUTs and the Hospital UTs, I find that the fact that there can be and has been interchange between the two groups militates in favor of finding a community of interest between them.

### ***Terms and Conditions of Employment***

It is undisputed that the Employer has centralized human resources at its facility. In this regard, hiring, firing, and other human resources-related policies and decisions are ultimately made by the Employer's Human Potential (human resources) department for all employees, including the MFMC PUTs.

Other support services are centralized as well: the same payroll system is used by all employees to monitor time and attendance. MFMC employees use the same Human Potential office and processes as Hospital employees and share the same IT support and record-keeping system. Most regional Hospital policies apply to the employees in the MFMC, as well as benefit plans. In this regard, the Employer has standardized benefits for Hospital and MFMC employees, with the exception of training funds: the represented hospital workers' have a union training fund, while the non-represented employees have tuition reimbursement.<sup>14</sup>

Wage rates are set at the organizational level, and rates for Hospital employees differ from those of MFMC employees. Specifically, wage schedules for the Hospital employees in the existing unit are established by the collective-bargaining agreement (Agreement) between the parties, with annual adjustments over the life of the Agreement. The specific wage for any given classification is determined by years in service pursuant to the Agreement. The wages for the Hospital employees are generally higher than those of the MFMC employees, partially because the former are

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<sup>13</sup> I conclude that the fact that there is only a single recent incident of transfer is likely due to the small number of PUTs in the MFMC.

<sup>14</sup> The part-time MFMC PUT is not eligible for benefits.

scheduled to work 24 hours a day, 365 days a year as opposed to the more limited work schedules of the MFMC employees.

With regard to the MFMC employees, including the PUTs, the Employer has wage ranges with a minimum, midpoint, and maximum wage. These ranges are determined, in part, by the Employer's compensation team that analyzes comparable hospital market data.<sup>15</sup> However, the record shows that the wage rates between the two groups do not differ that greatly, with the PUTs earning between \$36.15/hour to \$52.01/hour, as compared to the Hospital UTs in the existing unit who earn between \$37.76/hour and \$59.25/hour.

The MFMC employees' paychecks are issued by the Employer and not by the MFMC separately. The PUTs' pay is managed and generated by the Kronos employee management timekeeping system utilized by all other employees at the Employer's facility.

The work hours of the PUTs differ from the UTs in the existing unit because MFMC is open only four days a week, 8:00 a.m. to 4:30 p.m. while the Hospital operates 24/7, 365 days a year. Because the MFMC's operates limited hours, the three PUTs at issue do not work what would be considered full-time, in that they work less than 40-hours week. One of the PUTs works as needed, generally two days a week. The four days worked by the PUTs are not always the same, and the schedule is proposed by the MFMC physician and scheduled three to four months in advance. If the schedule is changed, the MFMC Clinical Manager makes the changes and necessary adjustments.

While the PUTs generally work fewer hours than the Hospital employees, the record evidence shows that some Hospital UTs in the existing unit can work regular 8-hour shifts. Also, other unit employees who work in the DHEC maintain clinic hours (10-hour shifts Monday through Friday), particularly the cardiac and nuclear imaging technicians in the Advanced Imaging department (ACI) in the Employer's outpatient Pulse Heart Center. Also, there are unit endoscopy techs in the Gastrointestinal Lab located in the DHEC who work 12-hour shifts Monday through Friday.

The Employer provides uniforms for the hospital employees, as opposed to the MFMC employees who must provide their own scrubs. All employees at the Employer's facility, including those in the DEHC wear a company-provided badge that describes in which department they work.

Based upon the foregoing, I find that the wages of the PUT's do not significantly differ from that of certain UTs in the existing unit, particularly in the bottom ranges. In

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<sup>15</sup> This data also informs the Employer's wage negotiations for the employees represented by the Petitioner.

this regard, the pay ranges for the PUTs and the UT's in the existing unit do not demonstrate that the former earn considerably less than the latter.

With regard to work hours, the record shows that there are UTs in the existing unit who work in clinics in the DEHC who have similar hours to the PUTs. The record also shows that the UTs work a variety of schedules based on their specific job duties and requirements of their respective departments. Moreover, the UTs who work in the Employer's other clinics, including those in the DHEC, work hours similar to those of the PUTs. Also, both groups receive essentially the same benefits, with the sole exception of training funds that are provided by the Petitioner for the employees in the existing unit.

I conclude that the similarities in terms and conditions of employment, particularly wages, hours, and benefits, combined with centralized human resources and record-keeping, outweigh the differences and strongly favor the finding of a community interest at issue.

### ***Supervision***

As noted above, the parties stipulated, and I so find, that the PUTs and the unit UTs share common supervision and are both overseen by the Hospital's Director of Imaging. The Director of Imaging performs the periodic evaluations of the PUTs along with the Lead UT, with input from the Clinical Manager.

The daily operation of the MFMC is performed by the Clinical Manager who supervises, schedules, and troubleshoots the employees, including the PUTs, on a day-to-day basis. This Clinical Manager makes hiring decisions; recommends terminations; approves time off; initiates discipline; participates in performance appraisals; and responds to grievances for all the employees in the MFMC, including the PUTs. She also regularly reviews the time sheets for the MFMC employees for missed punches.

The MFMC PUTs are subject to regular reviews of their "competencies," which focus on the particular tasks they perform. Likewise, the Hospital UTs are evaluated according to their required competencies, which are more generalized and not as specific as those of the MFMC PUTs. The Lead UT in the Hospital developed the competency checklist for both the PUTs and the UTs and is involved in the annual evaluation of said competencies. Based thereon, the methods of evaluation for the PUTs and the UTs in the existing unit are similar.

I find, based on the foregoing and the stipulation of the parties, that the employees sought by the Petitioner and the employees in the existing unit share joint supervision by the Hospital's Director of Imaging.

Accordingly, based upon the stipulation of the parties and evidence in the record, particularly the shared supervision, similar skills, job functions, and terms and conditions of employment, I have concluded the voting group sought is appropriate for the self-determination election sought by the Petitioner. There are currently three employees in that group.

The parties agreed that while an in-person election is the Board's preferred method for conducting elections, in this case, the election should be held by mail ballot in light of the current circumstances due to COVID-19 and consistent with the Board's decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020). Accordingly, I shall direct that a self-determination election be held by mail-ballot.

### **CONCLUSION**

I have determined that the voting group sought by Petitioner is appropriate, and I shall direct a mail-ballot self-determination election among the employees in the petitioned-for voting group. Based on 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 affirmed.
2. The parties stipulated, and I so find, that 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.<sup>16</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>16</sup> The parties stipulated to the following commerce facts:

The Employer, a Washington corporation, with an office and place of business in Spokane, Washington, is engaged in the business of operating an acute care hospital and clinic. During the last twelve months, a representative period of time, the Employer had gross revenues in excess of \$250,000, and purchased and received at its facilities within the State of Washington goods valued in excess of \$50,000 directly from suppliers outside the State of Washington

All full-time, part-time, and Per Diem Perinatal Ultrasound Techs employed by the Employer in its Maternal Fetal Medicine Clinic located at 800 West 5<sup>th</sup> Avenue, Spokane, WA, excluding all other employees, guards, managers, confidential employees and supervisors as defined in the Act.

There are approximately 3 employees in the voting group above.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a mail-ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **SEIU Healthcare 1199W**. If a majority of valid ballots are cast for SEIU Healthcare 1199W, they will be taken to have indicated the employees desire to be included in the existing unit currently represented by the Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

### **A. Election Details**

Based on the stipulation of the parties, the election will be held by mail. At the hearing, Petitioner waived the ten days it is entitled to have the voter list described below. Region 19 will mail ballots to employees in the appropriate voting group on Thursday, January 7, 2021 at 4:30 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, January 14, 2021 as well as those employees who require a duplicate ballot, should immediately contact the Region 19 office at **206-220-6300**, or our national toll-free line at **1-866-667-NLRB (1-866-667-6572)**.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by 1:00 p.m. PST on Thursday, February 4, 2021. The parties agreed that only those ballots that arrive in the Region 19 office by the ballot due date and time will be counted and that no objections will be filed based on the foregoing. All ballots will be commingled and counted by an agent of Region 19 of the National Labor Relations Board on Monday, February 8, 2021 at 1:00 p.m. with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count.

## **B. Voting Eligibility**

Eligible to vote are those in the voting group who were employed during the **payroll period ending immediately prior to the date of this Decision**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Also eligible to vote are all employees in the voting group who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

The Petitioner waived the ten days that it is entitled to have the voter list. To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Thursday, December 31, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be

alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

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

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

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

#### **D. Posting of Notices of Election**

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

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

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 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.

A request for review may be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>17</sup> 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. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Seattle, Washington on Tuesday, December 29, 2020.

*Ronald K. Hooks*

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<sup>17</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden.