

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

**In the Matter of:**

AAKASH, INC. dba PARK CENTRAL CARE  
AND REHABILITATION CENTER,

Employer,

and

SEIU, LOCAL 2015,

Petitioner.

Case No. 32-RC-266500

**EMPLOYER AAKASH, INC'S REQUEST FOR REVIEW OF  
THE REGIONAL DIRECTOR'S DECISION AND DIRECTION  
OF ELECTION AND CERTIFICATION**

January 7, 2021

Louis J. Cannon  
ljcannon@bakerlaw.com  
Michael Parente  
mparente@bakerlaw.com  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave. NW  
Washington, DC 20036-5403  
Telephone: 202.861.1500  
Facsimile: 202.861.1783

*Attorneys for Employer  
Aakash, Inc.*

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	PROCEDURAL BACKGROUND.....	1
III.	STATEMENT OF FACTS .....	2
	A.    Background.....	2
	B.    RN Duties.....	3
IV.	LAW AND ARGUMENT .....	4
	A.    Legal Standard .....	4
	B.    RNs are Statutory Supervisors .....	5
	1.    RN’s Assign other Nurses.....	5
	2.    RN’s Responsibly Direct other Nurses .....	7
	3.    RN’s Have the Authority to Discipline Employees .....	8
	4.    Substitute Supervisors are Still Supervisors .....	9
V.	CONCLUSION.....	9

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Aladdin Hotel</i> , 270 NLRB 838 (1984) .....	9
<i>Bryant Health Ctr., Inc.</i> , 353 NLRB 739 (2009) .....	4
<i>Doctors' Hospital of Modesto</i> , 183 NLRB 950 (1970) .....	9
<i>Eskaton Sunrise Community</i> , 279 NLRB 68 (1986) .....	6
<i>Franklin Hosp. Med. Ctry</i> , 337 NLRB 826 (2002) .....	6
<i>Honda of San Diego</i> , 254 NLRB 1248 (1981) .....	9
<i>Micro Pacific Development, Inc. v. N.L.R.B.</i> , 178 F.3d 1325 (D.C. Cir. 1999) .....	5, 6
<i>Mountaineer Park</i> , 343 NLRB 1473 (2004) .....	4, 7
<i>Oakwood Healthcare</i> , 348 NLRB 686 (2006) .....	<i>passim</i>
<i>Sheraton Universal Hotel</i> , 350 NLRB 1114 (2007) .....	8
<i>Swift &amp; Co.</i> , 129 NLRB 1391 (1961) .....	9
<b>Statutes</b>	
29 U.S.C. § 152(11) .....	<i>passim</i>
<b>Rules</b>	
29 C.F.R § 102.67(c), (d) .....	1

## **I. INTRODUCTION**

Pursuant to the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations 102.67(c) and (d), Aakash, Inc., d/b/a Park Central Care and Rehabilitation Center (the "Employer" or "Park Central"), respectfully requests review of the Regional Director's Certification of Representation issued January 5, 2021, as well as the Regional Director's Decision and Direction of Election issued on November 20, 2020, ("DDE") issued in 32-RC-266500.<sup>1</sup> The Regional Director's DDE and subsequent certification departed from officially reported Board precedent and inappropriately included Statutory Supervisors, 29 U.S.C. § 152(11) ("Section 2(11)") in the petitioned-for bargaining unit. Compelling reasons exist for granting review. In support thereof, the Employer hereby states:

## **II. PROCEDURAL BACKGROUND**

On September 22, 2020, Petitioner, Service Employees International Union, Local 2015 ("Petitioner," "SEIU," or the "Union") filed a petition seeking to represent "[a]ll FT, PT & On-Call RNs and LVNs employed in the facility (Armour-Globe)." (Ex. B, at 6:2-9; Ex. B, Original Petition NLRB Exhibit 1(a)). The Petitioner sought to include two voting groups, through an *Armour-Globe* self-determination election, to an existing bargaining unit of nursing aides and others employed at the Employer's Fremont Facility. (Ex. A at 1). The first voting group sought by the Union consisted of approximately 6 registered nurses ("RN") ("Voting Group A"), and the second voting unit sought by the Union consisted of approximately 15 licensed vocational nurses ("LVN") ("Voting Group B"). (*Id.*). The Employer objected to the inclusion of the RNs in the petitioned-for unit because they are Statutory Supervisors as defined by Section 2(11) of the National Labor Relations Act (the "NLRA" or the "Act"). (*Id.*).

---

<sup>1</sup> The DDE is attached hereto as Exhibit A. The transcript from the Pre-Election Hearing is attached hereto as Exhibit B.

The Region held a pre-election hearing on October 20, 2020. (*Id.*). Based on the testimony and evidence adduced at the hearing, the Regional Director found that the RNs were not statutory supervisors and directed a mail-ballot election in Voting Group A and Voting Group B. (*Id.* at 13-14). The Region mailed ballots to eligible voters on November 24, 2020. (*Id.* at 14). Ballots were counted on December 16, 2020 and the Union prevailed in a commingled vote of 13 votes for representation and zero votes against representation. (Ex. C, Tally of Ballots). The Region certified the election results on January 5, 2020. (Ex. D, Certification).

### **III. STATEMENT OF FACTS**

#### **A. Background**

Park Central is a 24-hour skilled nursing facility. (Ex. B at 13:1-3; 16:1-2). The facility treats both short-term and long-term rehabilitation patients (also called residents) as well as elderly and handicapped patients. (*Id.* at 13:8-12). The facility has 99 “beds.” (*Id.* at 13:13-17). The Park Central nursing staff consists of about 90 employees and is made up of approximately thirteen LVNs, six RNs, and over sixty Certified Nursing Assistants (“CNA”) and Restorative Nursing Assistants (“RNA”),<sup>2</sup> plus a Director of Nursing (“DON”), and an Assistant Director of Nursing (“ADON”). (*Id.* at 14:5-15:5).<sup>3</sup>

The DON and ADON are in charge of the nursing department and generally work normal business hours (Monday-Friday during the day and excluding holidays). (Ex. B at 15:16-25). When the DON or ADON are not in the building, the RNs are in charge of the entire facility, including the nursing department. (*Id.* at 16:3-10).

---

<sup>2</sup> RNAs are also CNAs. (Ex. B at 85:19-86:3). There are approximately eight RNAs. (*Id.*)

<sup>3</sup> The Service Employees International Union, Local 2015 (“Union”) current represents the Employer’s CNAs and RNAs. (Ex. A at 2). The Parties are subject to a collective bargaining agreement (“CBA”) that covers the CNAs and RNAs at this facility as well as three other facilities. The CBA does not cover RNs. (*Id.*)

**B. RN Duties**

All RNs act as charge nurses. (*Id.* at 30:7-11). The CNAs (and RNAs) assignments and directions are provided to them by the RNs. (*Id.* 16:16-23). CNAs and RNAs receive their patient assignment from the licensed nurse (i.e. a RN or LVN) at the start of the shift. (*Id.* at 21:18-22:23). Assignments are made by the licensed nurses using the patient's acuity, the patient's clinical needs, the nurse's knowledge of the patient's plan of care, and patient's preferences so that the workload is distributed in manner that the CNAs can render the care needed and attend to the needs of each patient. (*Id.* at 23:6-20). The patient's "are not numbers, but residents" with their own unique clinical needs. (*Id.*). The licensed nurses judge these clinical needs when assigning CNAs their workload for the day. (*Id.*). The licensed nurses know the residents, know the residents' tolerance for medication, and understand the needs of the residents when judging how care should be given. (*Id.* at 23:21-11). Additionally, the RNs consider the ability of the CNAs (*Id.* at 5421-55:2). This includes the RNs in the petitioned-for unit. (*Id.*).

The RNs assign the CNAs work without any sign-off and the CNAs follow the assignment they are given. (*Id.* at 24:13-17). The RNs are responsible for the CNAs and for ensuring that the CNAs perform the assigned work accordingly and are evaluated in their annual evaluation regarding their ability to lead the CNAs. (*Id.* at 25:10-22).

The RNs can discipline employees. (*Id.* at 25:25-26:1). For example, in January 2018, a RN issued a verbal warning, the first step in Park Central's disciplinary process, to a CNA. (*Id.* at 27:11-29-3). The RN corrected the issue, documented the write-up, and the write-up was placed in the employee's personnel file. (*Id.*).

#### IV. LAW AND ARGUMENT

##### A. Legal Standard

Section 2(11) of the National Labor Relations Act (the “NLRA” or the “Act”) defines “supervisor” as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11). An individual need only possess *one* of these indicia of supervisory authority as long as the exercise of such authority is carried out in the interest of the employer and requires the use of independent judgment. *Mountaineer Park*, 343 NLRB 1473, 1474 (2004); *Bryant Health Ctr., Inc.* 353 NLRB 739, 742 (2009) (The powers specified in Section 2(11) are *disjunctive*, thus, “[a]n individual need possess only one of the enumerated indicia of authority in order to be encompassed by Section 2(11).”) (emphasis added).

A party asserting supervisory status need not show that the individuals in question have actually *exercised* one of Section 2(11)’s enumerated powers. Rather, it is sufficient for the party to demonstrate that the individuals *possess* such authority. *Mountaineer Park*, 343 NLRB at 1474 (assistant housekeeping supervisor were 2(11) supervisors by virtue of the ability to recommend discipline). Regarding the requirement of independent judgment, the putative supervisor “must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB 686, 692 (2006).

**B. RNs are Statutory Supervisors**

**1. RN's Assign other Nurses**

The Regional Director departed from NLRB precedent and committed reversible error by finding that RNs are not Section 2(11) Statutory Supervisors because they do not assign work. When a person assigns employees to a particular post, location, or overall task, such as the RNs do, that person is a supervisor under the Act. *Oakwood Healthcare*, 348 NLRB 686, 689 (2006). “In the healthcare context, the Board has held that assignment encompasses the responsibility to assign employees to care for particular patients.” *The Arc of South Norfolk*, 368 NLRB No. 32 at \*4 (2019). And the putative supervisor does so with independent judgment when matching patient needs with the assignment. *Id.* When in charge, the RNs assign the CNAs which residents the CNAs will care for that shift. In doing so, the RN must analyze the CNAs and their skill level along with the resident’s acuity level, the care plan of each resident and other factors, and determines the assignments for that day. Important in this assessment is that the RNs are not just assigning a number of rooms to CNAs, but are assigning specific CNAs to specific residents; each with their own unique needs so that that the CNA can provide the appropriate level of care to the specific patient. There is no policy dictating how to assign CNAs to residents, and the RNs exercise their own independent discretion in making the assignment.

The Board’s decision in *Oakwood Healthcare* does not require a different result. In *Oakwood Healthcare*, the Board found that “if the assignment is made *solely* on the basis of equalizing workloads,” it lacks independent judgment. *Id.* (emphasis added). That is clearly not the case here. The RN determines which residents the CNAs will care for based on varying and unique factors presented by the needs of each resident. This is not equalization of work, but a direct assignment to care for specific patients. *Id.*; see also *Micro Pacific Development, Inc. v. N.L.R.B.*, 178 F.3d 1325, 1331-32 (D.C. Cir. 1999 (assigning housekeeping work based on hotel needs

confers supervisory status); *Eskaton Sunrise Community*, 279 NLRB 68, 75 (1986) (assigning housekeeping duties and checking room attendant work confers supervisory status).

In denying that the RNs do not assign work, the Regional Director relied that record did not contain evidence that the RNs assign work based on “a clinical factor.” (Ex. A at 6). However, this is precisely what the RNs do. They evaluate the clinical needs of the resident—the resident’s care plan and acuity—when making the assignment. Additionally, the RNs consider the ability of the CNAs. (Ex. B at 54:21-55:2). So, in assigning work, RNs take into account the patient’s clinical needs, skillset of the nurse, and other factors such as knowledge of the patient and gender. (Ex. B at 54:7-55:2).

Finally, the Regional Director displays a fundamental misunderstanding of the facts in pointing out that both LVNs and RNs assign work and that fact cuts against the RNs being supervisors. (Ex. A at 6). While there was testimony that LVNs do serve as charge nurses and assign work, the evidence is that LVNs named Jose Q and Catalina serve as supervisors. (*See Ex. B at 22:19-25; 74:1-3*). Notably, Jose Q and Catalina are not included in the petitioned-for unit with other LVNs and the Regional Director’s reliance on this distinction is misplaced and does not support that RNs are not supervisors.

Contrary to the Regional Directors findings and Board precedent, when a person assigns employees to a particular post, location, or overall task, such as the RNs do, that person is a supervisor under the Act. *Oakwood Healthcare*, 348 NLRB at 689; *Micro Pacific Development, Inc.*, 178 F.3d at 1331. Therefore, RNs assign employees work as defined in Section 2(11) of the Act and are Statutory Supervisors. Based on the Regional Director’s departure from official reported Board precedent, compelling reasons for review exist and the Board should grant the Employer’s request.

## 2. RN's Responsibly Direct other Nurses

Contrary to the Regional Director's findings and consistent with NLRB precedent, RN's responsibly direct other nurses at Park Central. As the Board reiterated in *Oakwood Healthcare*, the terms "'assign' and 'responsibly to direct'" are not synonymous and must be accorded separate meaning. 348 NLRB 688-689. "If a person on the shop floor has 'men under him,' and if that person decides 'what job shall be undertaken next or who shall do it,' that person is a supervisor, provided that the direction is both 'responsible' ... and carried out with independent judgment." *Oakwood Healthcare*, 348 NLRB at 692. This is precisely the role that the RNs perform. RNs are the sole supervisory authority at the facility during certain times and are responsible for the work of the CNAs. There is no formula in directing CNA work and they use their own judgment when taking into account the workload of the CNAs and each CNAs capability to perform each task. Failure to adequately lead the CNAs results in a negative performance evaluation for the RN. *Oakwood Healthcare*, 348 NLRB at 695.

The Regional Direct bases the decision that RNs do not responsibly direct nurses by simply dismissing the testimony as unsupported assertions. (Ex. A at 7). This is not accurate. For example, the Employer provided testimony of management's hours and that when management is not present, the RNs assume the responsibility of the entire facility. Additionally, evidence of directing CNA's was presented through the nurses determining what work each nurse will perform. The RNs have CNA's under them and determine what work the CNAs will perform. It is the RNs who direct the CNAs in the performance of their work utilizing their own judgment based on the CNA's skillset, workload, patient acuity, and patient preference. These points are unrebutted. Based on the forgoing, RNs are Statutory Supervisors within the definition of the Act, and the Employer's Request for Review should be granted.

### 3. RN's Have the Authority to Discipline Employees

An employee only needs the authority to discipline or effectively recommend discipline to be a supervisor. *Mountaineer Park*, 343 NLRB 1473, 1474 (2006). Not only do RNs have the authority to recommend discipline, the record shows they have actually exercised that authority. “To confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel.” *Franklin Hosp. Med. Ctr.*, 337 NLRB 826, 830 (2002). Here, and despite the uncontroverted testimony that there have been no suspensions or terminations at Park Central in approximately the past two years, the Employer presented evidence that RNs have issued discipline to other employees. Specifically, an RN took corrective action against a CNA by issuing a verbal warning, corrected the problem, and provided documentation for the personnel file.<sup>4</sup> *Oak Park Nursing Care Ctr.*, 351 NLRB 27, 28 (2007) (licensed practical nurses were supervisors where they filled out counseling forms as part of the employer’s progressive discipline policy).

However, the Regional Director ignores the fact in the 21 months the Administrator has been at the facility, there have been no suspensions or terminations. The fact that there is little discipline does not mean that the RNs have so-called “paper authority” under Board law as found by the Regional Director. Evidence presented at the hearing showed an RN issued a write-up that was placed into an employee’s personnel file. This is precisely the type disciplinary action that confers Section 2(11) status on employees and the RNs are Statutory Supervisors and cannot be included in any bargaining unit. The Employer’s Request for Review should be granted because the Regional Director departed from officially reported Board precedent.

---

<sup>4</sup> The Board relies on so-called “secondary indicia” of supervisory status where such indicia “corroborate” a Section 2(11) determination. *Sheraton Universal Hotel*, 350 NLRB 1114 (2007). Secondary indicia include: higher rate of pay, signing documents only supervisors are required to sign, and being held out as a supervisor. *Id.*

#### **4. Substitute Supervisors are Still Supervisors**

As the Regional Director found, the RNs, if they possess the requisite authority, are still supervisors even if they are only part-time supervisors. (Ex. A at 8-9). The “test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks or whether such substitution is merely sporadic and insignificant.” *Aladdin Hotel*, 270 NLRB 838, 840 (1984). In *Aladdin*, the Board found that substituting an average of at least two times per month over the previous three months was sufficient to confer supervisory status. *Id.*; see also *Doctors' Hospital of Modesto*, 183 NLRB 950 (1970) (regular substitution twice a week sufficient to exclude as supervisors); *Swift & Co.*, 129 NLRB 1391 (1961) (15% sufficient to exclude as a supervisor); *Honda of San Diego*, 254 NLRB 1248 (1981) (10 out of 40 hours sufficient to exclude as a supervisor). However, and contrary to the Regional Directors findings, the RNs are the chief authority in the building throughout various times of each workday and on the weekends and holidays and possess requisite Section 2(11) authority. As such, the RNs are Statutory Supervisors and the Regional Director committed reversible error by including RNs in the petitioned-for unit.

#### **V. CONCLUSION**

The Regional Director departed from officially reported Board precedent by not finding that the RN were Statutory Supervisors and certifying a bargaining unit that included Statutory Supervisors and the Employer’s Request for Review should granted.

Dated: January 7, 2021

Respectfully submitted,

By: */s/ Michael Parente*

Louis J. Cannon  
ljcannon@bakerlaw.com  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave. NW  
Washington, DC 20036-5403  
Telephone: 202.861.1500  
Facsimile: 202.861.1783

Michael Parente  
mparente@bakerlaw.com  
Baker & Hostetler LLP  
200 Civic Center Dr., Suite 1200  
Columbus, OH 43215  
Telephone: 614.228.1541  
Facsimile: 614.462.2626

*Attorneys for Aakash, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 7<sup>th</sup> day of January 2021, a true copy of the foregoing was filed electronically with the National Labor Relations Board's Executive Secretary and the Regional Director of Region 32. A copy was sent by electronic mail to:

Manuel A. Boígues  
Weinberg, Roger & Rosenfeld  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091  
mboigues@unioncounsel.net

SEIU, Local 2015  
jeffa@seiu2015.org

/s/ Michael Parente  
Michael Parente  
*An Attorney for Aakash, Inc.*

# EXHIBIT A

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**AAKASH, INC. dba PARK CENTRAL CARE AND  
REHABILITATION CENTER**

**Employer**

**and**

**Case 32-RC-266500**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 2015**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

AAKASH, Inc. dba Park Central Care and Rehabilitation Center (Employer) operates a residential care facility in Fremont, California. Petitioner, Service Employees International Union, Local 2015 (Petitioner or Union) seeks to include two voting groups, via an *Armour-Globe* self-determination election, to its existing unit or nursing aides and others employed at the Fremont facility (existing unit). The first voting group consists of approximately 6 registered nurses (voting group A), the second consists of approximately 15 licensed vocational nurses (LVN) (voting group B).

It is not disputed that, absent the issue in this case, Petitioner seeks a proper self-determination election; the parties stipulate the employees in each voting group sought constitute identifiable, distinct segments of the workforce that share a community of interest with the existing unit. However, the Employer asserts that the registered nurses Petitioner seeks to add are statutory supervisors within the meaning of Section 2(11) of the National Labor Relations Act (Act) and therefore voting group A cannot be added to the existing unit. Petitioner maintains the registered nurses are not statutory supervisors and voting group A is therefore an appropriate voting group for a self-determination election. Voting group B is not in dispute. The parties are also in dispute regarding the method of election, with the Employer arguing for a manual election, and Petitioner seeking a mail ballot election considering the ongoing COVID-19 pandemic.

A hearing officer of the National Labor Relations Board (Board) held a videoconference hearing in this matter on October 20, 2020.<sup>1</sup> Both parties filed briefs with me after the conclusion of the hearing. As explained below, based on the record, the briefs, and the relevant Board law, I find the record establishes the Employer has not met its burden of establishing that the registered nurses are statutory supervisors within

---

<sup>1</sup> All dates 2020 unless otherwise indicated.

the meaning of Section 2(11) of the Act. Accordingly, because the petitioned-for voting groups are identifiable, distinct segments of the workforce that share a community of interest with the existing bargaining unit, I have directed the petitioned-for self-determination election in both voting group A and voting group B. Because of the ongoing risks associated with the COVID-19 pandemic, I have directed this election to take place by mail.

## ***RECORD EVIDENCE***

### **A. The Employer's Operation**

The Employer operates a 99 bed, 24-hour skilled nursing facility, providing care for both short-term rehabilitation patients and long-term residents.<sup>2</sup> The nursing department at the facility includes approximately a dozen licensed vocational nurses, six registered nurses, and sixty certified nursing assistants and restorative nursing assistants.<sup>3</sup> In addition to the nursing department the facility also has dietary, housekeeping, fiscal plan, medical records, business office, admissions and activities departments.

Nursing department management consists of a director of nursing, an assistant director of nursing, and an LVN supervisor. Although these individuals are nurses, Petitioner does not seek to include them because of their supervisory and/or managerial roles. The Employer also employs three nurses in specialized roles that may or may not also be supervisory or managerial, a director of staff development, an infection prevention nurse, and a minimum data set coordinator (MDS coordinator). Petitioner also does not seek to include these specialized nurses in the voting groups sought.<sup>4</sup> Management of the nursing department report to the facility's administrator, the most senior manager at the facility.

The existing unit is covered by a collective-bargaining agreement effective October 1, 2018, to September 30, 2021. That contract, in addition to the facility at issue here, also covers employees employed at four other skilled nursing facilities operated by the Employer.

---

<sup>2</sup> I have used the term "patient" in this Decision to refer to both patients and residents.

<sup>3</sup> At hearing the certified nursing assistants and restorative nursing assistants were repeatedly collectively referred to as "CNAs." While this may reflect the everyday usage of the term by the parties, I have used the term "nursing aide" in this Decision to refer to those classifications collectively in order to avoid the confusion associated with using an abbreviation for one classification as a short-form designation for both.

<sup>4</sup> The terms "charge nurse" or "floor nurse" is used at various points in the record to refer to those registered nurses and licensed vocational nurses that work directly with patients and residents, in contrast to the six nurses mentioned.

## **B. Department of Nursing**

Nursing aides are responsible for assisting patients with the activities of daily life, including bathing, grooming, dressing, feeding, visitation and transportation within the facility. On each shift a nursing aide will be paired with a group of patients that they will assist in those activities. That assignment is made by way of a document titled, "Daily Schedule – Assignment Sheet" (assignment sheet) that includes a three by four table. Each box in this table identifies a set of patient room numbers, divided into equivalently sized groups. The name of the nursing aide assigned to each group is added to the table. Each box on the table also includes a pre-determined group designation (A, B, C, or D) for the nursing aide, which determines that employee's break and lunch times. The assignment sheet does not include tasks, responsibilities, or other information, it only matches a nursing aide with a group of patients. The only information added to the tables on the assignment sheet is the name of a nursing aide and the number of patients in their care.

A registered nurse or licensed vocational nurse will place the name of a nursing aide in each box in the table at the start of a shift. The administrator testified that the nurse making the assignment will consider factors such as patient acuity in making assignments, but he also testified that the same nursing aides will generally be placed in the same spot in the assignment sheet over the course of multiple shifts. In describing what factors a nurse considers in making an assignment the administrator provided the example of a patient that preferred a nursing aide of a certain gender assist them with the activities of daily life.

In addition to information such as the date and the registered nurse on shift, the assignment sheet also includes a line titled "Supervisor." The assignment sheets in the record contain the name of the assistant director of nursing and the LVN supervisor added to this "Supervisor" line.

The director of nursing makes the schedule that determines when the registered and licensed vocational nurses will work at the facility, on both the day and night shift. The director of staff development schedules the nursing aides. The director of nursing and assistant director of nursing are at the facility during normal business hours. The Employer maintains that, during overnight hours and on weekends, when management is not present at the facility, the registered nurse on duty is responsible for the entire facility, not only the nursing department, but also the dietary, housekeeping, maintenance and activities departments.

The hospital's administrator additionally testified that registered nurses are responsible for monitoring the work of nursing aides, and that this is a factor in the yearly evaluation of the registered nurses. No evaluation of a registered nurse is contained in the record.

The record contains a note, from 2018, from a registered nurse to the director of staff development, which the Employer maintains constitutes a verbal warning to a

nursing aide under the Employer's progressive discipline system. The note states that the nurse found an employee asleep while working, woke the employee up, and notified the aide that sleeping while on duty was misconduct. The note additionally states the employee had received verbal warnings previously for the same issue.

## **ANALYSIS**

### **A. ARMOUR-GLOBE STANDARD AND FINDING**

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). 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." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

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 stipulate the nurses in the voting groups sought constitute an identifiable, distinct segment of the workforce and I accept that stipulation based on the record evidence.

Regarding the second part of the standard, the Board looks to a variety of factors to determine whether a community of interest exists, including the nature of employee skills and functions; common supervision; the degree of functional integration; interchangeability and contact among employees; work sites; general working conditions and fringe benefits; and bargaining history. *International Bedding Company*, supra, slip op. at 2; *Boeing Co.*, supra at 153; *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163, 167 (3<sup>rd</sup> Cir. 1984); *Rinker Materials Corp.*, 294 NLRB 738, 738-739 (1989).

Here, the parties also stipulate the nurses in the voting groups at issue share a community of interest with the existing unit. Further, this stipulation is supported by record evidence of community of interest factors such as functional integration, a common work site, general working conditions and terms and conditions of employment. Accordingly, based on this stipulation and the evidence in the record supporting the stipulation, I find the petitioned-for election is appropriate consistent with the Board's *Armour-Globe* doctrine.

## **B. SECTION 2(11) STANDARD**

Supervisory status under the Act depends upon whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, as follows:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Possession of any one of these authorities is sufficient to confer supervisory status if the authority is exercised with independent judgment and not in a routine manner. *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001). As stated by the Board in *Oakwood*, “to exercise independent judgment an individual must at a minimum act, or effectively recommend action, free of control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood* at 692.

The burden of establishing supervisory status rests on the party asserting that status. *Croft Metals, Inc.*, 348 NLRB 717, 721. (2006). Supervisory status cannot be established by record evidence which is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Any lack of evidence in the record on an element necessary to establish supervisory status is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

## **C. SECTION 2(11) FACTORS**

### **(1) Assign**

In the Section 2(11) context, “assignment” is defined as the “giving [of] significant overall duties, i.e., tasks, to an employee,” but “significant overall duties” do not include “ad hoc instructions to perform discrete tasks.” *Oakwood Healthcare*, 348 NLRB at 689. Assignment also includes designating an employee to a place, such as a location, department, or wing, and appointing an employee to a time, such as a shift or overtime period. *Id.* Distributing assignments to equalize work among employees’ well known skills is considered a routine function not requiring the exercise of independent judgment, but in a health care setting assigning patients to specific caregivers has been found to require the use of independent judgment where the purported supervisor “balances individualized condition and needs of a patient against the skills or special

training of available nursing personnel,” or where an employees’ “skill set and level of proficiency at performing certain tasks” is tailored to a particular patient. *The Arc of South Norfolk*, 368 NLRB No. 32, slip op. at 4, citing *Oakwood* at 689, 693, 695; *Providence Hospital*, 320 NLRB 717, 727, 731 (1996), overruled in part by *Oakwood Healthcare*, 348 NLRB at 686, fn.29.

Here, the Employer maintains placing the name of a nursing aide in a table on the assignment sheet constitutes “assignment,” in that the nurse considers the patient’s acuity, plan of care, gender preference and the workload of the nursing aides before placing the names of the nursing aides on the document.

I do not find the evidence is sufficient to meet the Employer’s burden in regard to this factor. The Employer states that clinical information, such as a patient’s plan of care and acuity is considered in making assignments, but outside this assertion there is simply no evidence of this in the record. The record does not contain evidence of a nurse choosing to assign a nursing aide to a patient, moving patients or aides, or otherwise making any decision related to the assignment sheet because of a clinical factor. Further, the record does not contain evidence distinguishing the skills and abilities of the nursing aides, and as such there is no discernable basis on which a nurse could make such a decision. The only distinction among nursing aides made in the record is not a skill, but their gender, as some patients have a preference. While the Board has found assigning patients to caregivers can involve independent judgement, this requires a demonstration that the individualized condition and needs of a patient are paired with the skills or special training of available nursing personnel. Here the record does not include evidence of particular skills or abilities among the nursing aides and, assuming for the sake of argument these exist, the record further lacks any evidence of nurses considering these differences in making assignments.

The record also indicates that nursing aides have well-established assignments within the facility, and that these do not change on a daily basis. This strongly suggests that completing the assignment sheet merely involves referring to the nursing aide schedule, a schedule that is not made by the nurses, and identifying which nursing aides are available. In short, there is no evidence of nurses exercising the use of independent judgment in completing the assignment sheet.

Finally, I refer above to “nurses” because the evidence demonstrates both registered nurses and licensed vocational nurses add the names of nursing aides to the assignment sheet. However, the Employer only maintains that completing the assignment sheet constitutes assignment in the Section 2(11) sense as it relates to registered nurses. To the extent this is a shared responsibility, and the Employer acknowledges it is performed by admittedly non-supervisory licensed vocational nurses, I find this further weighs against a finding that completing the assignment sheet is evidence of supervisory status in the manner the Employer asserts.

## (2) Responsibly Direct

The Board has defined “responsibly to direct” as: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’... and carried out with independent judgment.” *Oakwood*, 348 NLRB at 691. The Board explained that direction is “responsible” when the person delegating the task is held accountable for the performance of the task by others and there is the prospect of adverse consequences if the tasks are not performed properly. *Id.* at 692. For example, lead persons in a manufacturing setting were held accountable where they received written warnings because their crews failed to meet production goals. *Croft Metals*, 348 NLRB at 722. On the other hand, when a charge nurse was disciplined for failing to make fair assignments, she was held accountable only for her own performance and not that of other employees. *Oakwood*, 348 NLRB at 695.

The Employer contends the registered nurses responsibly direct nursing aides in that they are the “sole supervisory authority at the facility at certain times and are responsible for the work of the [nursing aides].” The Employer contends that because the administrator and nursing department management are not regularly at the facility overnight and on weekends the registered nurse is the “supervisor” on duty. It is true that management is typically not at the facility at these times, although it does appear management is on-call and available if needed. These overnight and weekend hours certainly provide the opportunity for registered nurses to direct the work of nursing aides, and then be held accountable for the work of the nursing aides, but the record is silent on whether this actually occurs. The record contains no information on any decisions, choices, or actions taken by a registered nurse in these overnight or weekend hours. There is no evidence linking any action of a nursing aide to any registered nurse. The evidence on this point is limited to only the administrator’s assertion registered nurses are held responsible. This statement alone, absent any other evidence, is not sufficient to meet the Employer’s burden.

The administrator also suggests that the yearly written evaluations of the registered nurses contain an assessment of their ability to direct the work of the nursing aides. However, no evaluation or other evidence in support of this contention is contained in the record. Again, I do not find the administrator’s unsupported assertions sufficient to meet the Employer’s burden, particularly when he is referring to documents that are presumably within the Employer’s control, but simply not produced.

## (3) Discipline

The actual authority to discipline, rather than “paper authority” present in job descriptions and other documents is necessary to establish supervisory status. *Golden Crest*, 348 NLRB at 731, quoting *Training School at Vineland*, 332 NLRB 1412, 1416 (2000). The power to point out and correct deficiencies in the job performance of other employees is insufficient to establish that an employee is a supervisor under Section

2(11) of the Act. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). In addition, an employee does not become a supervisor if his or her participation in personnel actions is limited to a reporting function and there is no showing that it amounts to an effective recommendation that will effect employees' job status. *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). Rather, to confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel. *Beverly Health & Rehabilitation Services*, 335 NLRB 635 (2001).

The Employer's contention regarding registered nurses' ability to discipline employees is based on the 2018 document. That note consists of a registered nurse notifying the director of staff development of a rule violation, and that the employee involved was corrected in the moment. It also states the employee had violated the same rule previously. The Employer contends the document demonstrates the registered nurse independently issued a verbal warning to the employee under the Employer's progressive disciplinary system. I do not agree.

The note has no context in the record, neither the nurse that wrote the note, nor the director of staff development to whom it was addressed testified. The administrator who did testify was not employed as the administrator in 2018 when the incident occurred. The only evidence of the purported discipline is the document alone, and I do not find the document alone shows the registered nurse possessed the authority to discipline nursing aides independently. The document can just as easily be read as a recommendation for the director of staff development to issue discipline. It is unknown whether the director of staff development may have acted upon or not, or that may have led to independent investigation, it is impossible to know from only the document. The Employer contends on brief that the document shows the registered nurse issued discipline "without any intervention, input, or review from any other authority." For the reasons stated, I disagree.

#### **(4) Substitution**

The Employer also argues the supervisory functions of the registered nurses should not be disregarding because they are only a portion of the registered nurses' duties. I agree that this is the Board's standard for supervisory status. If the evidence supported finding the registered nurses assigned, responsibly directed, or disciplined nursing aides in the context of Section 2(11) during the overnight hours, for example, this would not be disregarded simply because the registered nurse involved only worked overnight shifts part of the time. However, this does not advance the Employer's argument as, for the reasons stated above, I have found the evidence does not support the Employer's contentions regarding assignment, responsible direction, or discipline.

To the extent the Employer is arguing registered nurses periodically take on the role of management in the nursing department, as described in *Aladdin Hotel*, 270 NLRB 838 (1984), cited by the Employer on brief, there is no evidence of this in the record.

#### **D. SECTION 2(11) CONCLUSION**

The Employer asserts the registered nurses assign, responsibly direct, and discipline nursing aides. However, the factual record is thin, and on each of these points consists of little more than the administrator's contention that this is the case. Where documentary evidence has been introduced, it fails to assist the Employer in meeting its burden. Accordingly, I conclude the registered nurses are not supervisors in the context of Section 2(11), and I have directed the petitioned-for election.

#### ***METHOD OF ELECTION***

The COVID-19 pandemic has had a profound impact on daily life in the United States. Because of the risk of infection associated with gatherings and in-person activities, the pandemic has also had an impact on the way the Board conducts its elections.

The risks presented and precautions associated with COVID-19 are well-known at this point in the pandemic. The Centers for Disease Control and Prevention (CDC), has determined "[t]he best way to prevent illness is to avoid being exposed to the virus," as there is currently no approved vaccine or antiviral treatment, and "[m]inimizing person-to-person transmission of SARS-CoV-2 is critical to reducing the impact of COVID-19."<sup>5</sup> According to the CDC, "[t]he virus that causes COVID-19 is spreading very easily and sustainably between people" and "the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread."<sup>6</sup> Many of the measures recommended by the Federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people.<sup>7</sup>

Although it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its *Considerations for Election Polling Locations and Voters* states officials should "consider offering alternatives to in-person voting if allowed" and that "[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19."<sup>8</sup> The CDC further states the virus can survive for a short period

---

<sup>5</sup> CDC, *Protect Yourself* (updated September 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; Department of Homeland Security, *Predicting the Decay of SARS-CoV-2 in Airborne Particles* (July 16, 2020), <https://www.dhs.gov/publication/st-predicting-decay-sars-cov-2-airborne-particles-factsheet>.

<sup>6</sup> CDC, *How it Spreads* (updated October 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

<sup>7</sup> CDC, *Protect Yourself* (updated September 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>8</sup> CDC, *Considerations for Election Polling Locations*, (updated June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> ("Elections with only in-person voting on a single day are higher risk for COVID-19 spread ..."); see also California Office

on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes," but "it is unlikely to be spread from domestic or international mail, products or packaging."<sup>9</sup> To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: "After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol."<sup>10</sup>

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2.<sup>11</sup> However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, supra at 1145.

After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April, with many Regional Directors, including myself, directing primarily mail ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. To assist Regional Directors in determining when a manual election could be conducted safely, on July 6 the General Counsel issued a

---

of the Governor of the State of California, *Executive Order N-64-20* (May 8, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/05/05.08.2020-EO-N-64-20-signed.pdf> ("WHEREAS to preserve public health in the face of the threat of COVID-19, and to ensure that the November election is accessible, secure, and safe, all Californians must be empowered to vote by mail, from the safety of their own homes ...").

<sup>9</sup> CDC, *Frequently Asked Questions, Am I at risk for COVID-19 from mail, packages, or products?* (updated October 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

<sup>10</sup> CDC, *Running Errands* (updated September 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

<sup>11</sup> I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board (General Counsel) and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

memorandum titled "Suggested Manual Election Protocols," *Memorandum GC 20-10*, setting forth detailed suggested manual election protocols.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. Specifically, when one or more of the following situations is present, a Regional Director should consider directing a mail-ballot election:

1. The Agency office tasked with conducting the election is operating under "mandatory telework" status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The Employer fails or refuses to commit to abide by *GC Memo 20-10*, Suggested Manual Election Protocols;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

The Board ordered that this new guidance would be applied retroactively to all pending cases.

After careful examination of the record, the parties' respective positions, and the current state of the COVID-19 virus in California and Alameda County, where the Fremont facility is located, I have determined that a mail-ballot election is the appropriate option. In reaching this decision, I have applied the six considerations set forth in *Aspirus Keweenaw*, *supra*, to the facts of this case. I have concluded the first and third are not applicable in the instant case. I have addressed the other factors below.

In addressing the second consideration, whether the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher, the Board directs Regional Directors to utilize the data published by Johns Hopkins University, or from official state or local government sources. Where county level data are not available, Regional Directors should look to state level data.

Here, regarding the first part, the 14-day trend in the number of new cases of COVID-19 in Alameda County, the number is increasing. The Johns Hopkins University COVID-19 Status Report for Alameda County, California on November 17 reports a (-1) value of 175 cases and a (-14) value of 67, an almost threefold increase.<sup>12</sup> Regarding the second part, State of California data for Alameda County indicates a 14-day test positivity rate of 2.7 percent on November 17.<sup>13</sup> The 14-day test positivity rate for the whole of California as of November 17, provided by Johns Hopkins University, is 4.99 percent.<sup>14</sup> The Board in *Aspirus* stated if either consideration was met it suggests the propriety of a mail-ballot election. Here, I find the increasing number of new confirmed cases in Alameda County supports Petitioner's argument in favor of a mail ballot election.

Regarding the fourth factor, the Employer has made general assertions regarding its willingness to conduct a safe manual election, and although it did not address GC 20-10 directly, I find its stated willingness is sufficient to satisfy any concerns under this factor. Similarly, regarding the fifth factor, whether there is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status, I find that there is no evidence of a current COVID-19 outbreak at the facility. While the Employer has not addressed this factor in precisely these terms there is no reason to believe an outbreak is ongoing, and the Employer has not refused to disclose the COVID-19 status of its facility.

Finally, *Aspirus Keweenaw, supra*, in its sixth factor allows me to also consider "other similarly compelling circumstances" in determining whether an election should be conducted by mail-ballot due to the COVID-19 pandemic. In this case, I additionally rely upon the nature of the Employer's business: operating a skilled nursing facility that houses many vulnerable patients, as demonstrated by the Employer's continuing policy that excludes the public from its facility. After indicating that a manual election could not be held in the facility as a result, the administrator referenced holding the election outdoors in the visitation area, but the Employer has not made a specific, detailed proposal regarding how an outdoor election would be conducted, beyond the comments of its representative at hearing. The Employer's policy of prohibiting visitors to its facility because of the risk to its vulnerable population is an additional consideration suggesting a mail ballot election is appropriate.

While I am directing the instant election take place by mail because of the rising number of cases in Alameda County, I find the Employer's own current policy prohibiting visitors also suggests that a manual election should not be held at the Employer's facility.

---

<sup>12</sup> <https://bao.arcgis.com/covid-19/jhu/county/06001.html>

<sup>13</sup> <https://covid19.ca.gov/state-dashboard/>

<sup>14</sup> <https://coronavirus.jhu.edu/testing/testing-positivity>

## **CONCLUSIONS**

I have determined that the voting groups sought by Petitioner are appropriate, and I shall direct a self-determination election among the employees in the petitioned-for voting groups. 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 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>15</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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

### **VOTING GROUP - UNIT A (PROFESSIONAL EMPLOYEES):**

All full-time, regular part-time, and on-calls Registered Nurses employed by the Employer at its facility located at 2100 Parkside Drive, Fremont, California; excluding Director of Nurses, Assistant Director of Nurses, MDS Coordinators, Directors Staff Development, Infectious Preventionists, employees represented by a labor organization, managers, non-professional employees, confidential employees, office clerical employees, and supervisors as defined in the Act.

### **VOTING GROUP - UNIT B (NON-PROFESSIONAL EMPLOYEES):**

All full-time, regular part-time, and on-call Licensed Vocational Nurses employed by the Employer at its facility located at 2100 Parkside Drive, Fremont, California; excluding LVN supervisors, employees represented by a labor organization, Director of Nurses, Assistant Directors of Nurses, MDS coordinators, Directors Staff Development, Infectious Preventionists, professional employees, managers,

---

<sup>15</sup> During the hearing the parties stipulated to the following commerce facts:

Aakash, Inc. dba Park Central Care and Rehabilitation Center is a California corporation. The Employer operates a skilled nursing facility located in Fremont, California. During the past twelve months, the Employer has directly provided healthcare services valued in excess of \$250,000. During the same period, the Employer directly purchased and received products valued in excess of \$5,000, from suppliers located outside of the State of California.

confidential employees, office clerical employees, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. There will be two voting groups in the election as set forth above, **VOTING GROUP - UNIT A** and **VOTING GROUP - UNIT B**. Two questions shall appear on the ballot of the professional employees in **VOTING GROUP - UNIT A**:

1. **Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No".**
2. **Do you wish to be represented for purposes of collective bargaining by SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015? The choices on the ballot will be "Yes" or "No".**

The question on the ballot for the non-professional employees in **Unit B** will be "Do you wish to be represented for purposes of collective-bargaining by **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015?**" The choices on the ballot will be "Yes" or "No".

If the professional employees voting in **VOTING GROUP - UNIT A** vote "Yes" to the first question, indicating the employees' desire to be included in a bargaining unit with non-professional employees, they will be so included in the event that they also vote in favor of representation.

If, on the other hand, a majority of the professional employees voting in **VOTING GROUP - UNIT A** do not vote "Yes" to the first question on the ballot, the employees' votes on the second question will not be counted and the employees will remain unrepresented

#### **A. Election Details**

I have determined that a mail ballot election will be held. At the hearing, Petitioner waived eight of the ten days it is entitled to have the voter list described below. Region 32 will mail ballots to employees in the appropriate voting groups at **5:00 p.m. on November 24, 2020**. 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 **December 1, 2020**, as well as those employees who require a

duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 32 office at (510) 637-3300 or Nicholas L. Tsiliacos at (510) 671-3046.

The ballots will be commingled and counted by the Region 32 office at **10:00 a.m. on December 16, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 32 office prior to the counting of the ballots.

The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. 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 unit who were employed during the payroll period ending November 15, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

### **C. Voter List**

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

To be timely filed and served, the list must be *received* by the regional director and the parties by Friday, November 20, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](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 accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business 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 must 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.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, 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. 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. 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 Oakland, California this 18<sup>th</sup> day of November 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224

# EXHIBIT B

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

In the Matter of:

AAKASH, Inc. dba  
Park Central Care and  
Rehabilitation Center,

Case No. 32-RC-266500

Employer,

and

Service Employees International  
Union, Local 2015,

Petitioner.

---

---

Place: Oakland, California (via Zoom videoconference)

Dates: October 20, 2020

Pages: 1 through 120

Volume: 1

OFFICIAL REPORTERS  
eScribers, LLC  
E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
Phoenix, AZ 85020  
(602) 263-0885



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 32

In the Matter of:

AAKASH, INC. DBA  
PARK CENTRAL CARE AND  
REHABILITATION CENTER,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 2015,

Petitioner.

Case No. 32-RC-266500

The above-entitled matter came on for hearing, pursuant to notice, via Zoom videoconference, before **COREEN KOPPER**, Hearing Officer, at the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA 94612-5224, on **Tuesday, October 20, 2020, 9:07 a.m.**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

**On behalf of the Employer:**

**LOUIS CANNON, JR., ESQ.**  
BAKER AND HOSTETLER, LLP  
1050 Connecticut Avenue, NW  
Suite 1100  
Washington, D.C. 20036  
Tel. (202)861-1563  
Fax. (202)861-1783

**MICHAEL PARENTE, ESQ.**  
BAKER AND HOSTETLER, LLP  
200 Civic Center Drive, Suite 1200  
Columbus, OH 43215  
Tel. (614)228-1541  
Fax. (614)462-2616

**On behalf of the Petitioner:**

**MANUEL A. BOIGUES, ESQ.**  
WEINBERG, ROGER & ROSENFELD  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94577  
Fax. (510)337-1023

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
George Lamb	11	32, 88			



E X H I B I T S

1

2

3

EXHIBITIDENTIFIEDIN EVIDENCE

4

**Board:**

5

B-1(a) through 1(f)

6

99

6

B-2

7

99

7

B-3

9

9

8

B-4

117

117

9

10

**Employer:**

11

E-1

17

22

12

E-3

26

30

13

14

**Union:**

15

U-1

36

40

16

U-2

40

42

17

U-3

42

45

18

U-4

45

46

19

U-5

46

46

20

U-6

67

67

21

U-7

72

72

22

23

**Joint:**

24

J-1

82

82

25



P R O C E E D I N G S

1

THE COURT REPORTER: We are on the record.

2

3

HEARING OFFICER KOPPER: The hearing will be in order.

4

This is a formal hearing in the matter of AAKASH, Inc., dba

5

Park Central Care and Rehabilitation Center and Service

6

Employees International Union, Local 2015, case number 32-RC-

7

266500, before the National Labor Relations Board. The hearing

8

officer appearing -- appearing for the National Labor Relations

9

Board is Coreen Kopper.

10

All parties have been informed of the procedures at formal

11

hearings before the Board by service of a description of

12

procedures in certification and decertification cases with the

13

notice of hearing. I have additional copies of this document

14

for distribution, if any party wants more.

15

Will counsel please state their appearances for the

16

record; for the Petitioner?

17

MR. BOIGUES: The Petitioner is the law firm of Weinberg,

18

Roger, and Rosenfeld; present is Manuel Boigues.

19

HEARING OFFICER KOPPER: For the Employer?

20

MR. CANNON: Louis Cannon, from the law firm of Baker

21

Hostetler, Washington, D.C., for the Employer. And I'm joined

22

by cocounsel as well.

23

MR. PARENTE: Michael Parente for the Employer as well,

24

same law firm, Baker Hostetler in Columbus, Ohio.

25

HEARING OFFICER KOPPER: Are there any other appearances?



1 Let the record show no response.

2 Are there any other persons, parties or labor  
3 organizations in the hearing room who claim an interest in this  
4 proceeding? Let the record show no response.

5 I now propose to receive the formal papers. They have  
6 been marked for identification as Board's Exhibit 1(a) through  
7 1(f), inclusive, Exhibit 1(f) being an index and description of  
8 the entire exhibit. The exhibit has already been shown to all  
9 parties.

10 Are there any objections to the receipt of these  
11 exhibit -- exhibits into the record?

12 MR. CANNON: Not from the Employer.

13 MR. BOIGUES: No objection from the Union, but I will note  
14 that we filed a responsive position statement, although the  
15 Employer did not file one -- that our responsive position  
16 statement was not included in the Board exhibits. So I'll note  
17 that for the record, and I'll note that as well. We're  
18 reserving our position regarding the Employer's failure to file  
19 and serve timely a position statement in this matter.

20 HEARING OFFICER KOPPER: Yes, I have prepared your  
21 responsive position as an -- a Board exhibit, so I will be  
22 getting --

23 MR. BOIGUES: Thank you, Madam Hearing Officer.

24 HEARING OFFICER KOPPER: Are there any motions to  
25 intervene in these proceedings to be submitted to the hearing

1 officer for ruling by the regional director at this time? Let  
2 the record show no response.

3 Are there any pre-hearing motions made by any party that  
4 need to be addressed at this time?

5 MR. BOIGUES: Not from the Union.

6 MR. CANNON: Not from the Employer.

7 HEARING OFFICER KOPPER: The parties to this proceeding  
8 have executed a document which is marked as Board Exhibit 2.  
9 That exhibit contains a series of stipulations, including,  
10 among other items, that the Petitioner is each a labor  
11 organization within the meaning of the Act, there is no  
12 contract bar, and the Employer meets the jurisdictional  
13 standards of the Board.

14 Are there any objections to the receipt of Board Exhibit  
15 2?

16 MR. BOIGUES: No objection from Petitioner.

17 MR. CANNON: Not from the Employer either.

18 HEARING OFFICER KOPPER: Are there any petitions pending  
19 in the regional office that's involving other facilities of the  
20 Employer?

21 MR. BOIGUES: None the Petitioner is aware of.

22 MR. CANNON: No.

23 HEARING OFFICER KOPPER: The parties are reminded that  
24 prior to the close of the hearing, the hearing officer will  
25 solicit the parties' positions on election details, including



1 the type -- mail, manual, or partial manual/mail -- best days  
2 of the week, times, and locations for conduction an election.  
3 Any dates in which an election could not occur, including the  
4 reason, where, and how to conduct the count of ballots, and the  
5 eligibility period, most recent payroll ending date and  
6 frequency of pay period, but will not permit litigation of  
7 those issues.

8 The hearing officer will also inquire as to the need for  
9 foreign language ballots and notices of election, and the  
10 proposed number of observers for each party for each polling  
11 period, including the reason. Please have the inf -- relevant  
12 information with respect to these issues available at that  
13 time.

14 The parties have been advised that the hearing will  
15 continue from day to day as necessary until completed, unless  
16 the regional director concludes that extraordinary  
17 circumstances warrant otherwise.

18 The parties are also advised that upon request, any party  
19 is entitled to a reasonable period at the close of the hearing  
20 for oral argument, which shall be included in the transcript of  
21 the hearing. Any party desiring to submit a brief to the  
22 regional director shall be entitled to do so within five  
23 business days after the close of the hearing. Prior to the  
24 close of the hearing, and for good cause, the hearing officer  
25 may grant an extension of time to file a brief, not to exceed

1 an additional ten business days.

2 Okay, let the record reflect that the Employer did not  
3 submit a statement of position in this matter. The Petitioner  
4 has completed, and I have marked for identification as Board  
5 Exhibit 3, a responsive statement of position.

6 Are there any objections to the receipt of this exhibit  
7 into the record?

8 MR. BOIGUES: None from Petitioner.

9 MR. CANNON: None from the Employer either.

10 HEARING OFFICER KOPPER: Hearing no objection, Board  
11 Exhibit 3 is received.

12 **(Board Exhibit Number 3 Received into Evidence)**

13 MR. CANNON: Could you send that -- would you mind  
14 emailing it?

15 HEARING OFFICER KOPPER: Yes, Claudine, can we go off the  
16 record real quick?

17 THE COURT REPORTER: We're off the record.

18 (Off the record at 9:13 a.m.)

19 THE COURT REPORTER: Okay, we're on the record.

20 HEARING OFFICER KOPPER: Does any part --

21 MR. BOIGUES: I have both -- sorry. I have both of your  
22 emails, Exhibit 3 and Exhibit Number 4.

23 MR. CANNON: I -- I just -- I just got 3. Hold on, let me  
24 just take a quick look here.

25 MR. BOIGUES: Sorry, Madam Hearing Officer.



1 MR. CANNON: Okay, I got it. I'm -- I'm good with 3.

2 HEARING OFFICER KOPPER: Does any party contend that  
3 anything other than the Board's standard eligibility formula  
4 for voting is required, given the industry in which the  
5 Employer is engaged?

6 MR. CANNON: No.

7 MR. BOIGUES: Nothing from Petitioner.

8 HEARING OFFICER KOPPER: Hearing --

9 MR. BOIGUES: By standard, I presume that you mean  
10 eligibility for on-call employees; is that -- the Davison-Paxon  
11 standard; is that what the hearing officer is referring to?

12 HEARING OFFICER KOPPER: Yes.

13 MR. BOIGUES: Okay, thank you.

14 HEARING OFFICER KOPPER: Is there anything else that we  
15 need to discuss at this point?

16 MR. BOIGUES: Nothing from Petitioner.

17 MR. CANNON: Nothing from the Employer.

18 HEARING OFFICER KOPPER: The regional director has  
19 directed that the following issues will be litigated in this  
20 proceeding: whether the RNs, the registered nurses, are  
21 statutory supervisors under Section 211 of the Act.

22 Please be aware that because supervisory status involves a  
23 statutory exclusion, the party seeking to exclude employees on  
24 this basis bears the burden of proof. You must present  
25 specific detailed evidence in support of your position.

1 General concluso -- conclusionary statements by witnesses will  
2 not be sufficient. And I may ask follow-up questions, for  
3 example, if conclusory evidence is presented or conclusory  
4 testimony.

5 Okay, Mr. Cannon, please present your first witness.

6 MR. CANNON: All right. The Employer is going to call  
7 George Lamb.

8 HEARING OFFICER KOPPER: Mr. Lamb, can you unmute  
9 yourself?

10 MR. LAMB: Done.

11 HEARING OFFICER KOPPER: Okay, if you could please raise  
12 your right hand.

13 Whereupon,

14 **GEORGE LAMB**

15 having been duly sworn, was called as a witness herein and was  
16 examined and testified, telephonically as follows:

17 HEARING OFFICER KOPPER: Can you please state and spell  
18 your name for the record?

19 THE WITNESS: George Lamb. G-E-O-R-G-E, L-A-M-B.

20 HEARING OFFICER KOPPER: Okay, Mr. Cannon, you may  
21 proceed.

22 **DIRECT EXAMINATION**

23 Q BY MR. CANNON: All right, Mr. Lamb, are you currently  
24 employed?

25 A Park Central Care and Rehab.



1 Q That -- that's your employer, is Park Care -- can you say  
2 that -- I'm sorry.

3 A Park Central.

4 Q Park Central Care and Rehab. What's your -- what is your  
5 position with -- I'll -- I'll just call it Park Central for  
6 brevity's sake; what's your position?

7 A Administrator.

8 Q Okay. And how long have you held that position?

9 A About a year and nine months.

10 Q And did you hold a similar position before that with  
11 another employer?

12 A Yes, yes. I've been in the industry for a while. I've  
13 worked at other facilities as an administrator, correct.

14 Q When you say a while, could you (audio interference) that  
15 for us?

16 A Well, I might date myself, but 30 years.

17 Q Okay. Could you just describe your -- your job duties as  
18 administrator at Park Central?

19 A I see to the day -- day-to-day operations of the facility.  
20 I implement the policies and procedures of ownership. I  
21 represent the facility to regulatory agencies, residents,  
22 family members, staff.

23 Q Okay, so would it be fair to say that you're in overall  
24 charge of the facility?

25 A Yes, I am.



1 Q Okay, and can you just describe to us, what is Park  
2 Central?

3 A We're a skilled nursing facility.

4 Q Okay. And so there are patients, or are -- do you call  
5 them something else?

6 A We call them patients, as far as the state, residents as  
7 far as federal.

8 Q Okay, okay. And -- and what kind of things are people  
9 being treated at Park Central for?

10 A We have primarily our short-term rehabilitation, but we  
11 also have long-term residents as well, senior, frail, elderly,  
12 handicapped.

13 Q Okay. And about how many residents would you have at any  
14 given time in the building? I know that it varies, but just on  
15 average.

16 A We're a 99-bed facility, but during the pandemic, we're  
17 averaging in the 60s.

18 Q Okay, so -- so you know. So are you -- we're here today,  
19 as you -- you're familiar with the petition that was filed?

20 A Yes, I am.

21 Q We're here to talk about the -- the licensed vocational  
22 nurses or LVNs, and the nurses, or we can call them RNs. Other  
23 than the LVNs and the RNs, are there employees at Park Central,  
24 other than those job classifications?

25 A Well, in the nursing department, we have certified nursing

1 assistants. We have restorative aids. We have other  
2 departments as well in the facility, which would be in dietary,  
3 housekeeping, maintenance, activities, all the different  
4 departments you'd have in a nursing center.

5 Q Okay. Let's focus on the nursing department. About how  
6 many employees total do you have there?

7 A About 115.

8 Q In the nursing department?

9 A Yes. No, no, 115 would be total.

10 Q Oh, total in -- in the building, okay.

11 A In -- in the building. Nursing department, well, a good  
12 portion of that.

13 Q Okay.

14 A Maybe 90.

15 Q Okay, okay. How many RNs do you have?

16 A Aside from our DON and ADON, which is the director of  
17 nurses and assistant director of nurses, we have six --  
18 actually, let's see, about six active on the floor operating  
19 the facility at this time.

20 Q Okay. How many LVNs?

21 A 13, around 13.

22 Q What other job classifications in nursing did you say?

23 A Certified nursing assistant.

24 Q How -- how many of those do you have?

25 A Probably around 60.



1 Q Okay. Any other job classification; I think you mentioned  
2 one other one, but I'm not sure.

3 A I mentioned restorative nursing assistants; they're like  
4 cert -- certified nursing assistants, only they did the  
5 restorative care, they'd be included in that count.

6 Q Oh, okay. I --

7 HEARING OFFICER KOPPER: Sorry, in the CNAs count? The 60  
8 CNAs?

9 THE WITNESS: In the CNA count. CNA, RNA -- RNAs are  
10 CNAs.

11 Q BY MR. CANNON: Just focusing on the nurses, to whom do  
12 the nurses report? I think you touched on this, but who --  
13 who's their direct boss?

14 A The director of nurses or her assistant, the assistant  
15 director of nursing.

16 Q Okay. Now, are the -- is the director of nursing or the  
17 assistant director of nursing -- other than you, I know you're  
18 an overall charge of the facility; are those individuals in  
19 charge really of -- of the entire facility?

20 A They're in charge of the nursing department, and the  
21 nurses after hours are in charge of the facility, yeah.

22 Q Now, when you say after hours -- what hours are -- are the  
23 DON or ADON in the -- in the building?

24 A Typical working hours during the day, Monday through  
25 Friday, except for holidays.

1 Q Okay, and the facility operates 24/7?

2 A We do.

3 Q So when the DON or ADON are not in the building, who's --  
4 who's in charge?

5 A The supervisors, RNs.

6 Q Of the nursing department?

7 A Yes, supervisors RNs, but not just nursing department,  
8 because the other department heads aren't in the building  
9 either, which means that they assume responsibility for the  
10 entire facility.

11 Q Okay, and when -- when you say RNs, are you including the  
12 people who are involved in this election petition?

13 A Yes, the registered nurses.

14 Q Okay. So are there -- are there employees who report to  
15 the RNs?

16 A Yes. The LVNs, CNAs, RNAs, all those acronyms.

17 Q Okay. And -- and all the acronyms, right. To what extent  
18 do they report to, can you just kind of give us a broad  
19 overview of -- of how that works?

20 A They -- the CNAs' assignments are made by the licensed  
21 nurses. Their -- their direction is by the licensed nurses.  
22 They -- they give the care from the stations, the assignments  
23 that they've received from licensed nurses. And the other  
24 departments in the building, since the department heads are not  
25 there, would be answering also to the -- the supervisory

1 personnel, which would be the nurses in the building.

2 Q Okay, I'd like to show you an exhibit --

3 MR. CANNON: -- and I would ask the hearing officer,  
4 what -- should I share my screen? I -- I think that is --

5 HEARING OFFICER KOPPER: If you're comfortable doing that,  
6 that'd be great. I can also do that, but.

7 MR. CANNON: Okay, what am I doing here? Okay. I love  
8 technology.

9 Q BY MR. CANNON: I'm going to show you what's been marked  
10 as Employer Exhibit 8.

11 MR. CANNON: Can everyone see that?

12 HEARING OFFICER KOPPER: Yes, and I'd just like to point  
13 out that I -- when I sent it to the court reporter, I renamed  
14 it to Employer Exhibit 1.

15 MR. CANNON: Okay, do -- do you want me to use what you  
16 sent, because we're not -- there's no discrepancy about -- I'm  
17 going to pull up. I guess --

18 HEARING OFFICER KOPPER: I mean, it's -- it's the same  
19 document, it just has a different title.

20 MR. CANNON: Yeah, I -- I just don't want anyone to -- to,  
21 you know, think it might be a different document.

22 Q BY MR. CANNON: Mr. Lamb, can you -- can you tell me what  
23 this document is?

24 A It's a -- an assignment sheet for the CNAs and RNAs.

25 Q Okay. And I'm just looking at the first page here. Right

1 in the mi -- do you see my cursor?

2 A Yes.

3 Q (Audio interference) middle top. It's says "supervisor",  
4 I know there's something handwritten; what is this?

5 A That's Tess, she's the assistant director of nurses.

6 Q All right. And who is Jose?

7 A He's a supervisor.

8 Q Okay. Now, who -- who's actually making this -- what is  
9 this, the -- what -- what does this say to us here?

10 A It's an assignment sheet for the CNAs. It has the CNAs  
11 names on there, the RNAs names on there. These are the CNA  
12 assignments, the -- the residents that they'll be taking care  
13 of on a particular day. This is done early on by the -- by the  
14 RNs. It's done for the nurses -- the CNAs to know which rooms  
15 they're -- they're responsible for, which residents they're  
16 taking care of.

17 Q Now, who -- who actually fills this por -- the -- the --  
18 the series of squares? Who actually completes this document?

19 A The licensed nurse builds this document for the CNAs.

20 Q Can you just give us an idea of what -- what goes into  
21 making the patient assignments; is it just a matter of the  
22 nurse plugging in numbers, or how does that work?

23 MR. BOIGUES: Objection. Leading, suggestive, lack of  
24 foundation.

25 HEARING OFFICER KOPPER: Yeah, can we get a little more

1 foundation?

2 Q BY MR. CANNON: Are you familiar with the way these  
3 assignments are made?

4 A Say it again?

5 Q Are -- are you familiar with the way the -- the CNA  
6 assignments are made?

7 A Yes.

8 Q All right, can you just kind of lay that out for us, how  
9 does that work?

10 MR. BOIGUES: Still lack of foundation. His foundation  
11 hasn't been established that he has personal knowledge. All he  
12 asked him was a question that said, are you familiar with how  
13 it's made, and he said yes. That's not a foundation.

14 HEARING OFFICER KOPPER: Mr. Lamb, if you could just  
15 describe how you're familiar with these forms, you know, how  
16 you have the knowledge of how they work and how they're filled  
17 out.

18 THE WITNESS: I'm knowledgeable about this form and this  
19 type of form in a number of settings because the nursing  
20 assistants need to be assigned residents for care, and the  
21 licensed nurses would make the assignment for the CNAs, I see  
22 this -- these sheet regularly. I've -- I -- I -- I'm here in  
23 the facility, I'm not as a -- nondefined employee, I am -- I'm  
24 here for -- early in the morning, I see the night shift, I see  
25 it through the day, through the p.m. I reference these sheets



1 myself when I'm finding out who's responsible for which  
2 resident so I can talk to the appropriate certified nursing  
3 assistant, so I can answer the residents, as far as their  
4 caregiver, and resolving issues concerning their care.

5 MR. BOIGUES: Same objection stands. He hasn't made a  
6 foundation that anybody has been trained or anything --  
7 personal knowledge of how they're actually filled.

8 HEARING OFFICER KOPPER: I think we could use some --

9 MR. BOIGUES: He's just saying that he's there.

10 HEARING OFFICER KOPPER: -- some information about what  
11 these numbers are and what actually we're seeing on the form,  
12 to explain, to get us to that point.

13 THE WITNESS: Yeah, the numbers -- yeah. The numbers are  
14 the room numbers of the residents, the -- the other numbers  
15 after the room numbers, after the colons, is the beds in the  
16 room, whether it's a two or three-bed room. It indicates which  
17 residents the particular aides whose name is on there for that  
18 assignment, which residents they're taking care of for that  
19 day, and the numbers on there are the number of total residents  
20 that -- that aide will be taking care of, and the handwriting  
21 in is the movement of the residents from certain rooms onto an  
22 assignment that are not on that pre-determined list.

23 HEARING OFFICER KOPPER: And the total circled numbers,  
24 that's the total patients assigned?

25 THE WITNESS: It's the patient load assigned. They're

1 trying to keep that fairly even. On this one, it's fairly  
2 even. There's seven residents per one of those -- per CNA.  
3 I'm looking to see if there's anything else I can clarify on  
4 this form.

5 HEARING OFFICER KOPPER: Okay, go ahead, Mr. Cannon. Just  
6 try to be -- note the foundation issues.

7 Q BY MR. CANNON: Mr. Lamb, can you describe the CNAs' job  
8 duties?

9 A The CNAs take care of all of the activities of daily  
10 living for the residents, from bathing, grooming, dressing,  
11 transporting, feeding, preparing them for visitation outside of  
12 the glass, or outdoor visitation at this time, since we don't  
13 have family members or nonemergency nonstaff personnel in the  
14 building. They -- they take the residents to -- to the  
15 therapy, to the -- and they -- they work their -- their  
16 schedule of -- of the patient's needs around the clinical needs  
17 that the licensed nurses would need to render.

18 Q All right, and who, if you know, who assigns those duties  
19 to the CNAs?

20 A The person making the sheet.

21 Q The sheet, meaning what is -- I guess now it's being  
22 called Exhibit 1, Employer's Exhibit.

23 A This RN that did the sheet assigned these residents to  
24 these aides.

25 Q Okay, did they -- did you obtain -- there are two of them

1 here in -- in Exhibit 1. Did you get these -- where -- where  
2 did you obtain these?

3 A These are at the nurse's station.

4 Q Are they normally kept in the -- the normal course of  
5 business for the Employer?

6 A Could you say again?

7 Q Do -- do you normally keep these documents in the course  
8 of business?

9 A Yes, I see this documents regularly.

10 MR. CANNON: All right. I -- I will move for the  
11 admission of Employer's Exhibit 1.

12 MR. BOIGUES: No objection.

13 HEARING OFFICER KOPPER: On what basis?

14 MR. BOIGUES: I said no objection.

15 HEARING OFFICER KOPPER: Oh, I'm sorry, I misheard you.

16 MR. BOIGUES: Okay.

17 HEARING OFFICER KOPPER: Employer Exhibit 1 is admitted.

18 **(Employer Exhibit Number 1 Received into Evidence)**

19 HEARING OFFICER KOPPER: I just have a question. At the  
20 top of the exhibit, you said it was -- the supervisor was Jose?  
21 What is his job title?

22 THE WITNESS: Jose is an LVN supervisor during the  
23 daytime.

24 HEARING OFFICER KOPPER: Okay, so that's the daytime LVN  
25 supervisor.

1 THE WITNESS: For the day shift, 7 to 3:30.

2 HEARING OFFICER KOPPER: And Tess?

3 THE WITNESS: Tess is the ADON. She's the assistant  
4 director of nurses.

5 HEARING OFFICER KOPPER: Okay, great. Thank you.

6 Q BY MR. CANNON: Mr. Lamb, I have one more question on --  
7 on these. Does Park Central have a -- any set of rules or  
8 guidelines that instruct nurses on how to make assignments?

9 A All residents have a plan of care. As far as the  
10 assignments, the -- the nurse preparing the assignment sheet,  
11 with her knowledge of the residents, prepares the sheet  
12 independently, using her good judgment to determine that the  
13 workload is fair for the CNAs, you know, reasonable that they  
14 can render the full care they need during shift, and also since  
15 these are not numbers but residents, they are aware of who --  
16 102 bed 2 is, and who 129 bed 1 is, and they judge the acuity  
17 and needs of these residents, their clinical needs as well, to  
18 determine what is a fair balance and how these residents need  
19 to be distributed for the CNA care that it'll work during --  
20 during the day.

21 Q Okay. Now, are there -- there are medications that are  
22 given to residents?

23 A Well, that's just it. They're -- they're giving  
24 medications, they're doing IVs, residents are going to therapy,  
25 some residents are able to tolerate less than others. Their

1 routines are all different during the day, and the nurse is --  
2 understands these residents, knows these residents; the nurses  
3 know these residents the best, and they're the ones who would  
4 make the assignment sheet and be able to judge --

5 Q I got it.

6 A -- how the care could be given.

7 Q Got you. And you said that RNs are -- are actually making  
8 these assignments?

9 A Yes.

10 Q Does that include the RNs that the -- the Union has asked  
11 to represent?

12 A Yes, they're -- they're included, yes.

13 Q Now, when they -- when the RN does this assignment sheet,  
14 do you -- do you know whether someone above the -- the RN has  
15 to sign off on it or approve it?

16 A Nobody signs off on it. The -- the CNA follows the  
17 assignment sheet.

18 Q Okay. Do you know what, if anything, would be the  
19 consequence to a nurse if a CNA did not do their job correctly?

20 MR. BOIGUES: Objection. Vague. Consequences --

21 HEARING OFFICER KOPPER: Okay, is there -- is there maybe  
22 a concrete example that could be provided of when a CNA was --  
23 a nurse was -- an RN was held accountable for the conduct of a  
24 CNA?

25 THE WITNESS: Is that question directed to me?

1 HEARING OFFICER KOPPER: Oh, yes. Sorry, Mr. Lamb.

2 MR. BOIGUES: Can we take down the -- the -- the sharing  
3 of the screen?

4 MR. CANNON: Oh, yeah.

5 THE WITNESS: Could you repeat the question, ma'am?

6 HEARING OFFICER KOPPER: Oh, yes, Mr. Lamb. If you could  
7 give an example of when a CNA -- when a -- oh, excuse me -- an  
8 RN has been held accountable for -- for the performance of a  
9 CNA?

10 THE WITNESS: The RN is -- is responsible for the station.  
11 She's responsible for the residents. She answers to the  
12 family, as well as the -- as the -- as supervisors, and she --  
13 she would have -- she has the responsibility for making sure  
14 that the -- that the CNAs do their work accordingly, and treat  
15 the patients fairly, and -- and as I said, is responsible for  
16 the station.

17 HEARING OFFICER KOPPER: Okay. Are you able to provide a  
18 concrete example for when she would -- an RN was held  
19 responsible in some way for the CNA's job performance, or?

20 THE WITNESS: Well, if that -- if that -- it would -- it  
21 would show on her -- in your annual evaluation that she's  
22 unable to lead her staff in providing the care that's required.

23 HEARING OFFICER KOPPER: Okay. Go ahead, Mr. Cannon.

24 Q BY MR. CANNON: Mr. Lamb, what, if any, authority do  
25 nurses have to discipline other employees?

1 A Write people up, warnings, that kind of thing.

2 Q All right, I -- I would -- let me -- let me share my  
3 screen again. I'd like to show you what -- I -- I would  
4 imagine is -- the hearing officer has marked as Employer  
5 Exhibit 3; do I have that right?

6 HEARING OFFICER KOPPER: Yes.

7 Q BY MR. CANNON: Okay, do -- do you recognize this  
8 document, Mr. Lamb?

9 A Yes, yes. That's an -- that's an RN, Jasleen, an RN.

10 Q Is -- down toward the bottom, where it says "from", you're  
11 saying that is the name of the RN?

12 A That's the name of the RN who wrote this.

13 Q Who wrote this.

14 A And the -- the CNA is Paramjit Kaur.

15 Q Okay, and what -- and what is this exactly?

16 MR. BOIGUES: Objection. Lack of foundation -- the -- the  
17 witness wasn't even employed at this facility at the time that  
18 this document is dated.

19 HEARING OFFICER KOPPER: What facility is this document  
20 from?

21 THE WITNESS: Park Central.

22 HEARING OFFICER KOPPER: And --

23 MR. BOIGUES: He wasn't employed there in January of 2018,  
24 assuming that the document -- those dates on the document are  
25 when the document was created.

1 Q BY MR. CANNON: And let me ask you, where did you -- I  
2 haven't moved for -- for the admission yet, but where did you  
3 obtain this document?

4 MR. BOIGUES: You haven't laid a foundation for him to  
5 testify about it, that's my objection, not about its  
6 authenticity.

7 HEARING OFFICER KOPPER: Yeah, let's hear if he's seen  
8 this before and how, you know, when he's seen this before, in  
9 what context.

10 MR. CANNON: Well, that's what I was asking him.

11 Q BY MR. CANNON: So what is this?

12 A It's -- it's -- it's a write-up. It's notifying the --  
13 the director of nurses of a problem with a CNA, that she  
14 corrected, that the RN has corrected, and it was -- this one is  
15 from the employee's personnel file.

16 Q You -- you said which personnel file is this from?

17 A The personnel files which the director of staff  
18 development keeps.

19 Q Okay, and -- and do you -- do you have access to those  
20 files?

21 A Yes, I do.

22 Q Okay, did you -- did you in fact obtain this document  
23 from -- from that file?

24 A Yes, I did.

25 MR. CANNON: All right. I would -- I would move the

1 admission of Employer's Exhibit 3.

2 MR. BOIGUES: No relevance has been established. No  
3 understanding or testimony about what this document is supposed  
4 to show, other than it's a document from one personnel file  
5 that someone -- many -- one from over two years ago. It's done  
6 by this -- sorry, by this witness who has no knowledge. It's  
7 been introduced through this witness who has no knowledge of --  
8 of the incident or of the write up itself, so I would object to  
9 its admission.

10 Q BY MR. CANNON: You called this a write-up, Mr. Lamb; what  
11 does that mean exactly, in your mind?

12 A Well, she's just -- she's saying what the -- the -- the  
13 infraction and that she gave a verbal warning, instructed  
14 verbally, and put that verbal warning in documentation, and  
15 this is the documentation. It's a verbal warning, it needs to  
16 be -- it needs to be documented regardless that a verbal  
17 warning was off -- was -- was offered, and there's -- so this  
18 is substantiation which is in the file, in the event that there  
19 needs to be any further warning.

20 Q Can you -- can you give an overview of how the -- the  
21 write-up process or -- or disciplinary process works at Park  
22 Central? Are there steps?

23 A Yes, there are steps, a verbal warning, written warning,  
24 suspension, termination.

25 Q And again, what would -- what would this document,



1 Employer's Exhibit 3, constitute?

2 A It would satisfy the fact that a verbal warning was given.

3 Q Okay.

4 A And then any repeat would result in further disciplinary  
5 action.

6 Q Now, under -- toward the bottom here, where it says from  
7 Jasleen, who -- who is that; are you familiar with this person?

8 A I don't know her. I've heard of her. Jasleen Kaur  
9 (phonetic) was an RN in this building. She's no longer with  
10 us.

11 Q Okay. Is she a -- was -- did she have a job title of  
12 supervisor or was she just an RN, or do you know?

13 A She was an RN.

14 Q All right.

15 MR. CANNON: I -- I would move again for the admission of  
16 Employer's Exhibit 3.

17 MR. BOIGUES: And the document is irrelevant; no evidence  
18 has been established of what happened, what investigation was  
19 conducted by anyone, because this witness was not even employed  
20 at the facility at the time that this one document from --  
21 allegedly from January 2018, that is alleged, and been  
22 introduced as a supposed verbal warning. And that's what they  
23 offered to, no foundation, no testimony has been laid that  
24 makes that doc -- this document relevant for this hearing.

25 HEARING OFFICER KOPPER: I'm going to admit it into the

1 record, and it will be given the weight that it's entitled to.

2 **(Employer Exhibit Number 3 Received into Evidence)**

3 HEARING OFFICER KOPPER: But I do have a question for Mr.  
4 Lamb. Jasleen is -- it looks like she signs it station 3  
5 charge nurse; are all of the RNs referred to as charge nurses?

6 THE WITNESS: Oh, pretty much. They're in charge.

7 HEARING OFFICER KOPPER: So every single RN is referred to  
8 as a charge nurse?

9 THE WITNESS: Yes, except for -- there's some MDS  
10 assistants, but they don't work the floor, and they're a part  
11 of MDS. So all the other RNs would be charge nurses.

12 HEARING OFFICER KOPPER: And do all -- do all six RNs work  
13 full-time?

14 THE WITNESS: No. In fact, a couple of those we haven't  
15 seen in a while, I think. But we believe that they may be  
16 returning next month. People are off for different reasons at  
17 this time. That's why the numbers are so low as far as the  
18 numbers of -- of registered nurses, but we're really not  
19 attracting much, I think we did hire one recently, but it --  
20 the numbers aren't -- aren't really increasing and a lot of  
21 people are kind of out because we -- we can't share with other  
22 facilities which are exposed, so if -- if people, as you know,  
23 work in multiple facilities, so some -- some of the RNs would  
24 be in the building at this time, and that's why I said probably  
25 about two or so aren't even -- aren't even on the schedule. I

1 mean, their name is there, but there's no assignment, so it's  
2 probably less than that as far as number that are actually  
3 working full-time.

4 HEARING OFFICER KOPPER: Are those two working as on-call  
5 RNs?

6 THE WITNESS: Well, no, no. It's just that they haven't  
7 given us any -- any days to work. One -- one -- one is  
8 actually on a leave, went maternity leave to bonding leave to,  
9 I think, personal injury at this time. So -- and one is --  
10 just hasn't given us any -- any -- any days of availability,  
11 working elsewhere during this COVID season, and maybe  
12 another --

13 HEARING OFFICER KOPPER: So the -- I'm sorry. And those  
14 four RNs that are working; are they working a full-time  
15 schedule?

16 THE WITNESS: Yes.

17 HEARING OFFICER KOPPER: All right. Go ahead, Mr. Cannon.

18 MR. CANNON: Can we actually go off the record? I -- I  
19 might be -- I might be done, but I just want to talk to my  
20 cocounsel.

21 HEARING OFFICER KOPPER: Yes, let's go off the record.

22 (Off the record at 9:44 a.m.)

23 HEARING OFFICER KOPPER: Go ahead, Mr. Cannon.

24 MR. CANNON: All right. The Employer doesn't have any  
25 further questions of Mr. Lamb.



1 HEARING OFFICER KOPPER: Okay, Mr. Boigues, are you  
2 prepared to proceed?

3 MR. BOIGUES: I am.

4 **CROSS-EXAMINATION**

5 Q BY MR. BOIGUES: How are you, Mr. Lamb?

6 A Hello, sir.

7 Q Good to see you in person. We've talked over the phone a  
8 few times, so I'm Manny Boigues, as you know, I'm one of the  
9 attorneys for the Union. I understood from your testimony  
10 earlier that your employer is Park Central; are you employed  
11 directly by Park Central or by the owner of -- of the facility,  
12 Thekkek?

13 A I'm employed by the facility.

14 Q And you said you worked at other facilities before, other  
15 skilled nursing facilities; have you worked for any other  
16 skilled nursing facilities owned by a Thekkek company?

17 A No, this is my first opportunity.

18 Q Great. You testified that you are at the facility and you  
19 said you -- you're not a 9 to 5 employee; can you explain to me  
20 what you meant by that?

21 A I guess I meant I'm salaried. I'm here early, I'm -- I  
22 mean, I can stay, I can define my own hours, I -- I mean, I  
23 like to be able to see the different shifts and -- and get to  
24 know who's here and how things are going. Sometimes I like to  
25 see firsthand, as opposed to just relying on my department

1 heads, who are all hourly and work the 9 to 5. Of course, the  
2 director of nurses is like myself, is salaried, does work after  
3 hours, and comes in on the weekends and does what she needs as  
4 well. That's all I was pointing out is that I have a pretty  
5 good exposure to the facility. Historically, I -- I've enjoyed  
6 that, yes.

7 Q Okay. And does -- so that means both you and the DON, as  
8 you just said, come in after hours on the weekends into the  
9 facility; did I understand you correctly?

10 A To visit.

11 Q To visit, okay. And when you say you arrive early at the  
12 facility; what do you mean, like, you don't arrive at 9 a.m.,  
13 you arrive at what time normally?

14 A Well, when I -- a hearing like today, I arrived at 7:00.

15 Q Okay. What about -- not -- not today, just generally,  
16 what time do you normally arrive at the facility?

17 A I'd say probably about 8.

18 Q 8. And normally what time do you leave at the end of the  
19 day?

20 A Probably around 7.

21 Q 7, okay. And what about the DON, the other salaried  
22 employee in the facility; do you know what time the DON  
23 normally arrives at the facility?

24 A Around 9.

25 Q Around 9. And what time does the DON normally leave the

1 facility, do you know?

2 A Probably 5:30, 6.

3 Q 5:30, 6. And what about the ADON; what hours does the  
4 ADON, the assistant director of nursing, normally have at the  
5 facility?

6 A 7 to 3:30, I believe.

7 Q Excuse me, say it again?

8 A 7 to 3:30.

9 Q 7 in the morning to 3:30 in the afternoon, okay. And you  
10 mentioned somebody with a title of director of staff  
11 development; do you remember your -- your reference to a  
12 director of staff development earlier?

13 A Yes, we have a full-time staff developer, yes.

14 Q What are the duties of the director of staff development  
15 at your facility?

16 A Training, in-servicing, and arranging for in-servicing,  
17 and orienting to the facility all employees of all departments.

18 Q And is -- you referred to that individual that -- that  
19 classification as DSD; is that correct?

20 A That's correct, director of staff development.

21 Q And the DSD is the individual who is the supervisor of the  
22 CNAs in the facility; isn't that correct?

23 A No, that's not really correct.

24 Q Okay, so if -- your testimony, if I understand it  
25 correctly, is that the DSD has no supervisor duties over the

1 certified nursing assistants at the facility; is that correct,  
2 Mr. Lamb?

3 A Not supervisory duties. That would be in some conflict  
4 with his duties as far as a trainer.

5 Q I see. So what do you consider supervisory duties to be,  
6 Mr. Lamb, because you said not supervisory duties?

7 A To supervise someone in their -- their role and their --  
8 their -- their performance during the day, as far as the duties  
9 which they -- that they're assigned.

10 Q You mean the clinical duties that the CNAs are assigned;  
11 do I understand that correctly?

12 A That's correct.

13 Q I see. So the DSD does not supervise the clinical duties  
14 of the CNAs on the floor; is that correct?

15 A He would assess the -- he would assess at times whether or  
16 not they're -- they're performing correctly regarding -- along  
17 with him -- along with the IP, infection control, hand washing,  
18 transporting people appropriately with -- with lifts and making  
19 sure that they're adhering to their training.

20 Q I see. So the DSD does oversee those aspects of the  
21 duties of the CNAs; is that correct?

22 A Educational, yes.

23 Q Educational. And let me -- what's the name of the DSD at  
24 this time right now?

25 A Raj. Raj Dhillon.

1 Q Somebody's --

2 A Sorry about that, I'm sorry.

3 Q No worries. It's okay. Do you -- state the name again  
4 and spell it for the record, please.

5 A R-A-J-A, D-H-I-L-L-O-N.

6 Q Okay. And the DSD, you don't consider the DSD someone in  
7 the nursing department; do I understand your testimony from  
8 earlier correctly?

9 A No, I -- he's in -- he's in nursing.

10 Q Oh, okay. So your earlier mention the DON and the ADON,  
11 they RNs, the LVNs, the CNAs, and the RNA, in addition to those  
12 classifications in the nursing department, you also have the  
13 DSD; is that correct?

14 A Yes. Yes, he's in the nursing department, that's correct.

15 Q Okay. And how long --

16 A But his duties expand beyond the nursing department, as  
17 far as training.

18 Q I see. And how long has the -- the current DSD been in  
19 the facility, sir?

20 A Oh, many years. I -- I wouldn't know for sure without  
21 looking up his hire date.

22 Q Okay, very good. Let me ask you, let's see what -- share  
23 screen -- I'm going to ask you to take a look at a document we  
24 have marked as Union Exhibit Number 1. Do you recognize  
25 that -- the picture that is -- excuse me, Union Exhibit Number

- 1 1, in front of you, Mr. Lamb?
- 2 A Yeah, it's a floor plan.
- 3 Q It's a -- it's a floor plan?
- 4 A Evac -- it's evacuation plan as well.
- 5 Q Okay. And it's -- this is a -- a picture of a document  
6 that is posted at the facility; is that correct?
- 7 A Yes, it is.
- 8 Q Okay, and is it accurate that there are three nurses  
9 stations at the facility?
- 10 A Yes.
- 11 Q Okay. And in this document, where would we see the nurses  
12 stations, Mr. Lamb? If you could tell us, what -- what are the  
13 room numbers? Let's start with that, so scratch that question.  
14 What are the -- the numbers that are here, 130, 129, 128, what  
15 are all these room numbers throughout; what are those?
- 16 A Those are resident rooms.
- 17 Q Okay. And looking at the resident rooms, can you tell us  
18 where the nursing stations are?
- 19 A It says on it station 1.
- 20 Q Okay.
- 21 A And then there's another place for station 2 and 3, and  
22 there -- if you look at -- look at room 136, just below that.  
23 You'll see just off the entranceway is nurse's station 1.
- 24 Q Are you talking about room 138, 137, 136, 135?
- 25 A No, that's -- that's a wing. I'm saying the next one

1 after that, which shows the lobby; do you see the lobby?

2 Q I see a -- a reference to a lobby in the middle of the  
3 document; is that where you're looking at, Mr. -- Mr. Lamb?

4 A That's the lobby. That's kind of the center of the  
5 building. And the nurse's station is right off the lobby; do  
6 you see it?

7 Q Yep, right above it and right in the document under room  
8 number 138; is that correct?

9 A Let me check -- that's -- you're right, that's 138, yeah.

10 Q Do you want me to make that bigger, Mr. Lamb? I'll make  
11 that bigger for you, see if that helps you. Does that help?

12 A I see it now, yes.

13 Q Okay.

14 A Nurse's station 1 is right off the lobby -- excuse me for  
15 interrupting.

16 Q No worries, go ahead.

17 A Nurse's station 2 and 3 is right down there on the other  
18 side of the building, down by bath 3 and 4, across from 118.

19 Q Across from room numbers 118, meaning -- where we're  
20 looking at the document to the right of room 119; is that  
21 correct?

22 A Yes. Yes, that's the nurse's station 2 and 3.

23 Q Is the nurse's stations -- is there any difference between  
24 the three nurse's stations at the facility, Mr. Lamb?

25 A Well, nurse's station 2 and 3 is kind of a combined

1 nurse's station. It's one station, but it -- it -- it has --  
2 it has the two stations as a part of it, the two carts, the two  
3 med carts, the two computers and all are set up at the -- one  
4 thing, it says nurse's station, but it says number 2 and 3.

5 Q I see.

6 A But the actual stations themselves, are you looking for  
7 those?

8 Q I'm asking whether there's any difference in the -- in the  
9 work that is performed out of the three nurse's stations of the  
10 facility, Mr. Lamb.

11 A I don't believe so, because they -- each -- each of these  
12 nurse's stations are for -- are representing a section of the  
13 building.

14 Q I see. And is the --

15 A That hallway --

16 Q -- go ahead.

17 A Okay, yeah. That -- that hall proceeds south, north.

18 Q Okay.

19 A For nurse's station 1, north is station 1. Then --

20 Q Where do you see the north? What are you referring to?

21 A The compass.

22 Q Okay. There's a compass, okay, so is it --

23 A This thing.

24 Q Okay.

25 A See all those?

1 Q Yep.

2 A That's station 1. And then, the -- the -- the aisle  
3 that's down by (indiscernible), which is at the south end of  
4 the building, that's station 3. No, that's -- that's station  
5 2. That's station 2. And then the middle one you saw opposite  
6 122 is station 3. So anyway, they're divided up, that's what  
7 I'm trying to say.

8 Q Understand. So the -- the difference in the nurse's  
9 station is that each nurse's station is responsible for a group  
10 of patients in the facility; do I understand that correctly?

11 A And the rooms afforded that station kind of change  
12 depending upon the census.

13 Q Right, okay.

14 MR. BOIGUES: Before I continue, I'd like to offer Union  
15 Exhibit Number 1 into evidence.

16 HEARING OFFICER KOPPER: Any objections?

17 MR. CANNON: No.

18 HEARING OFFICER KOPPER: Union Exhibit 1 is admitted.

19 **(Union Exhibit Number 1 Received into Evidence)**

20 Q BY MR. BOIGUES: Mr. Lamb, I have a document now in front  
21 of you that I have marked as Union Exhibit Number 2; do you  
22 recognize this document, Mr. Lamb?

23 A Yes, it's a schedule.

24 Q And it's a schedule for who in the facility, Mr. Lamb?

25 A The director of staff development, the infection control

1 nurse, and the -- and the MDS coordinator, but the MDS  
2 coordinator at this time is on a leave; she'll be returning  
3 next week.

4 Q I see. Earlier in your testimony for your counsel, you  
5 said there are six RNs in the facility; were you including the  
6 infection control nurse that is listed in this schedule?

7 A No, I -- I -- I said, when I named the -- the RNs, I said  
8 excluding -- I believe I said excluding the -- the DON, the  
9 ADON, I should -- I should -- the IP, the MDS coordinator.  
10 I -- I -- those are all -- those have all been decided as being  
11 supervisory and separate from the petition, and this was done,  
12 what was it, last week?

13 Q Just so that -- that I'm clear, earlier when you testified  
14 that there are RNs in the facility, there's a DON, there's the  
15 ADON, and then there were six other RNs in the facility; when  
16 you said six, were you talking about nurses who are on the  
17 floor dealing with med carts, for example, those six?

18 A I'm referring to charge nurses on the floor, not -- not  
19 MDS coordinators or infection preventionists --

20 Q Thank you.

21 A -- or ADON or DON, that's correct.

22 Q Okay, thank you. And in the facility, is this referred to  
23 as the supervisor's schedule, Mr. Lamb, the document that's in  
24 front of you as Union Exhibit Number 2?

25 A No, no. This is the DSD, and just -- it's not the

1 supervisor's schedule because I mean, there are -- there are  
2 other supervisors.

3 Q I see. Is it -- is it referred to as the supervisor's  
4 schedule for the nursing department, Mr. Lamb?

5 A No, because there are other supervisors in nursing.

6 Q Right. The other supervisors in nursing that you have  
7 identified, other than the DSD, the DON, and the ADON, was a  
8 gentleman named Jose; is that correct, Mr. Lamb?

9 A Jose's on the nurse schedule, yes.

10 Q Yes, okay.

11 MR. BOIGUES: Before we continue, I'd like to offer Union  
12 Exhibit Number 2 into evidence.

13 HEARING OFFICER KOPPER: Any objection?

14 MR. CANNON: No.

15 HEARING OFFICER KOPPER: Okay, Union Exhibit 2 is  
16 admitted.

17 **(Union Exhibit Number 2 Received into Evidence)**

18 MR. BOIGUES: Thank you.

19 Q BY MR. CANNON: Mr. Lamb, I am -- I have in front of you  
20 now Union Exhibit Number 3, a schedule; is this the nursing  
21 department schedule that you just referred to just a minute  
22 ago?

23 A It's not the correct one, and it's not one that I would be  
24 counting off of, no.

25 Q What do you mean it's not the -- the current one? Are you

1 saying this is a -- a false copy of the schedule for August?

2 A No, I'm saying that we're in October.

3 Q I see. But is this a -- a copy of the nursing schedule  
4 for the month of August of 2020 for your facility, Mr. Lamb?

5 A It was.

6 Q It was, okay. I see on this schedule at the top, for a.m.  
7 there's a Tess A., RN, ADON, is that the ADON that you  
8 testified about earlier that is a supervisor in the facility?

9 A Yes.

10 Q Okay. And there's a Jose Q., LVNs SUP, sup, listed on  
11 this schedule on the top on the left-hand corner; is that the  
12 supervisor that you testified about earlier when the hearing  
13 officer asked you what was his license?

14 A Yes. He's the day shift supervisor.

15 Q He's the day shift supervisor. Okay, thank you.

16 HEARING OFFICER KOPPER: And I'm sorry, what's Tess's last  
17 name, the ADON?

18 THE WITNESS: Tess. One moment. I should know that off  
19 the top of my head, but it's Alvarez with a Z.

20 HEARING OFFICER KOPPER: Alvarez. And what is Jose's last  
21 name?

22 THE WITNESS: Oh, that's a little more difficult. It's  
23 Quevedo, I'll spell it, Q-U-E-V-E-D-O.

24 HEARING OFFICER KOPPER: Okay. Thank you.

25 Q BY MR. BOIGUES: Mr. Lamb, did you create this schedule?



1 A No, I don't make the schedule, no.

2 Q Did the DON create the schedule?

3 A No, the DON has the DSD make the CNA schedule.

4 Q I see.

5 A The DON does this schedule.

6 Q Okay, and my question was about this schedule, but let me  
7 see if I under -- understood your answer correctly. The DON  
8 makes the schedule that we have in front of you right now as  
9 Union Exhibit Number 3; did I understand that correctly, Mr.  
10 Lamb?

11 A Yes, the DON makes this schedule, yes.

12 Q Okay. And if I understood you correctly, the DON has the  
13 director of staff development create the schedule for the CNAs;  
14 is that correct?

15 A That's correct.

16 Q And the DSD creates the schedule for the CNAs, and does  
17 that include the RNAs who are also CNAs but have this title  
18 RNA, restorative nursing assistant?

19 A Yeah, I would presume, because he's the one that orients  
20 them and puts them on the schedule, yes.

21 Q Yes. Okay. How long has your current DON been at the  
22 facility, Mr. Lamb?

23 A Oh, she's been here for years now.

24 Q Okay. And has the DON been creating this schedule, the  
25 monthly schedule, for the licensed nurses as we have the



1 exemplar on Union Exhibit Number 3 the whole time, as far as  
2 you know?

3 A Yes.

4 MR. BOIGUES: I'd like to offer Union Exhibit Number 3  
5 into evidence.

6 HEARING OFFICER KOPPER: Any objections?

7 MR. CANNON: No objection.

8 HEARING OFFICER KOPPER: Okay. Union Exhibit 3 is  
9 admitted.

10 **(Union Exhibit Number 3 Received into Evidence)**

11 MR. BOIGUES: Thank you, Madam Hearing Officer.

12 Q BY MR. BOIGUES: Mr. Lamb, I now have in front of you what  
13 I have marked as Union Exhibit Number 4. This is the schedule  
14 for the CNAs on the a -- a.m. shift at your facility for the  
15 month of October; is that correct?

16 A Yes.

17 Q Okay. And this is the schedule that you just testified  
18 that is created by the director of staff development; is that  
19 correct?

20 A He fills it in.

21 Q He fills it in, at the direction of the DON, if I  
22 understood you correctly?

23 A Yes.

24 MR. BOIGUES: I'd like to offer Union Exhibit Number 4  
25 into evidence.

1 MR. CANNON: No objection.

2 HEARING OFFICER KOPPER: Union Exhibit 4 is admitted.

3 **(Union Exhibit Number 4 Received into Evidence)**

4 Q BY MR. BOIGUES: Mr. Lamb, I have Union Exhibit Number 5  
5 in front of you at this time. This is the schedule for the  
6 CNAs in the p.m. and the NOC shift; is that correct for the  
7 month of October -- is that correct?

8 A Yes.

9 Q And the same answer as you gave me for the a.m. schedule,  
10 which is that the DSD is the one that creates the schedule; is  
11 that correct?

12 A He fills this in, that's correct.

13 Q Mr. Lamb, in your facility, do you, and your DON, and your  
14 director of staff development, create schedules in order to  
15 meet regulatory obligations for nursing hours per patient per  
16 day?

17 A We don't make them for that purpose, but we do comply with  
18 that regulatory requirement when we -- when we do our  
19 schedules.

20 Q I see.

21 MR. BOIGUES: Before I continue, I'd like to offer Union  
22 Exhibit Number 5 into evidence.

23 MR. CANNON: No objection.

24 HEARING OFFICER KOPPER: Union Exhibit 5 is admitted.

25 **(Union Exhibit Number 5 Received into Evidence)**



1 Q BY MR. BOIGUES: Mr. Lamb, what is the regulatory minimum  
2 obligation that you're referring to that the facility complies  
3 with, with respect to nursing hours per patient? Can you  
4 explain that?

5 A Yeah, it's 3.5.

6 Q 3.5.

7 A For all -- for all direct care nursing staff. It's  
8 currently 2.4 for CNAs. It used to be 3.2.

9 Q Can you explain that a little further? I know it's a  
10 lingo that you -- that you know because you work in the  
11 industry. I'm familiar with it, but I don't know that the  
12 individual who's reading the record would understand that. So  
13 let's break that down. 3.5 and 2.4. Let's start with 3.5.  
14 What do you mean by 3.5, Mr. Lamb?

15 A A direct caregiver, which would not include director of  
16 nurses, by direct caregiving -- or it would not include the  
17 DSD. It -- it has to do with people who are actually providing  
18 care and -- and meeting the clinical needs of residents, and  
19 not just doing an assessment, or you know -- or -- or -- it's  
20 director of staff per -- nursing hours per patient day.

21 Q 3.5 is -- and you referred to is as PPD; is that correct?  
22 Per patient day?

23 A That's right. And that's licensed nurses and CNAs.

24 Q Okay. So you have for each patient, you have a regulatory  
25 requirement of a minimum of 3.5 nursing hours per patient per

1 day; and that's a regulatory obligation, did I understand that  
2 correctly, Mr. Lamb?

3 A Yes. Yes, it is.

4 Q Okay. And if I understood you correctly, the DON hours in  
5 the facility do not count towards that minimum; is that  
6 correct?

7 A Unless she's performing a -- a direct care role at that  
8 time, because she is a registered nurse. If she were to work  
9 as a -- as -- on the floor, with everyone else, providing the  
10 care, then in that case -- but it would have to be -- it would  
11 have to be clearly shown on the -- on the assignment sheet her  
12 role, but ordinarily as the director of nurses, no, it would  
13 not count.

14 Q Okay. And what about the DSD, did I understand you  
15 correctly that also the DSD --

16 A Same thing --

17 Q -- does not --

18 A Same thing goes for DSD.

19 Q Is your DSD an LVN or an RN?

20 A LVN.

21 Q LVN. Okay. And the same thing for the DSD, the hours do  
22 not count unless the DSD's on the floor providing direct care;  
23 is that correct?

24 A That's correct.

25 Q What about the ADON's time on the floor, does that count



1 towards the -- the minimum 3.5 patient per day hours that you  
2 referred to earlier -- the nursing hours?

3 A I should know that off the top of my head, but I'm  
4 thinking. Do we add her in? I believe she's added in.

5 Q She's added in, okay. What about the MDS coordinator's  
6 time and --

7 A Oh, yes, MDS definitely can be used, because of the  
8 assessment process.

9 Q Because they do assessments of the individuals, okay.  
10 What about the infection control nurse that we saw on that  
11 schedule, not the -- the nurse's schedule, but the separate  
12 schedule that it's in -- in evidence as Union Exhibit Number 3,  
13 I believe.

14 A We're not adding her in.

15 Q Excuse me?

16 A We're not adding her in.

17 Q You're not adding --

18 A Also, the role is -- the role is fairly new, and before  
19 we -- we -- we were required to have a full-time infection  
20 preventionist, that's a -- a recent requirement by the state.

21 Q I see. And that's in response to COVID -- COVID-19; is  
22 that correct?

23 A That's just because of COVID, because before that even  
24 when the feds passed the regulation a few years back requiring  
25 an IP -- it's a couple years back, I think. Something like

1 2019, I guess. They said part time, but it was the state that  
2 said full time, and that's because of COVID.

3 Q Thank you. Because of COVID. Okay. You also mention a  
4 2.4 nursing hours for CNAs, can you expand on your answer, what  
5 you meant by that? The 2.4 PPD for CNAs, sir.

6 A That's the CNA and the RNAs, it's not separate from  
7 licensed personnel, that's not a part of the 3.5. Just -- just  
8 the -- the direct caregiving of the CNAs and -- and RNAs is a  
9 new requirement mandating that we meet the 2.4. But just  
10 there's some flexibility on that because this was -- a waiver's  
11 granted, you know, during this pandemic.

12 MR. BOIGUES: Hold on one second, Mr. Lamb. Sorry, we  
13 lost the hearing officer.

14 I am not the host and I can broadcast this live on  
15 Facebook. I'm trying to find the room. Breakout rooms. Geez.  
16 Oh, boy, I don't know what happened. Let's see. I don't see  
17 her coming back. Madam Court Reporter, I think we go off the  
18 record while we wait for the hearing officer, I suppose,  
19 because --

20 THE COURT REPORTER: Yes, thank you.

21 (Off the record at 10:17 a.m.)

22 THE COURT REPORTER: We're on the record.

23 MR. BOIGUES: Thank you, Madam Court Reporter.

24 **RESUMED CROSS-EXAMINATION**

25 Q BY MR. BOIGUES: Mr. Lamb, I -- sorry I cut you off while



1 you were giving your answer with respect to the minimum  
2 regulatory obligation for nursing hours related to CNAs, 2.4 I  
3 think is what it was, so I'll ask my question again, we could  
4 start over. Can you tell -- tell us a little more about what  
5 the minimum requirement is with respect to CNAs or RNAs under  
6 the 2.4 number that you mentioned?

7 A This gives me an opportunity to clarify. I didn't mean  
8 to -- to say that we have any type of a COVID waiver because we  
9 did not apply for a COVID waiver. And the idea of waiver  
10 preceded the COVID situation, because in our industry we had  
11 had a significant CNA shortage, okay, which occurs at times,  
12 and that's when -- that was staffing waivers, the patient needs  
13 and the workforce waivers that were offered through CDPH, that  
14 gave us a little bit of variance as far as the 2.4. So we have  
15 some flexibility on the 2.4, but that's -- we still aim for  
16 that, and we try to maintain that. As far as providing the  
17 nursing hours necessary to meet the basic needs of our  
18 residents.

19 Q I see. What -- you said the 2.4 was a regulatory  
20 requirement, you said recent. When did that obligation start?  
21 Having the minimum 2.4 nursing hours of CNAs as a regulatory  
22 requirement.

23 A Well, it seems like it's only been in place for maybe a  
24 couple of years, because the workforce in-patient waiver, I  
25 know we applied this year. I know I applied last year at Park

1 Central. I think it may have been the year before that that --  
2 oh, yeah, it was the year before that even that I applied with  
3 another facility, so it probably does go back a few years.

4 Q Okay. And if I understand --

5 A As far as the 2.4.

6 Q As far as the 2.4. And what that means is that for each  
7 day you're meeting the regulatory requirement, you have to have  
8 2.4 hours of CNA time for each patient per day; is that  
9 correct?

10 A That's correct.

11 Q Okay. And if I understand you correctly, at your  
12 facility -- at this facility, you have a waiver that you  
13 don't -- you could avoid meeting that, but you attempt to meet  
14 it anyway; is that correct?

15 A We -- we regularly review our staffing from preceding days  
16 at stand-up meetings to find out where we are and project where  
17 we're going to be, so we can try to maintain that 2.4. And  
18 we've been largely -- we've been largely successful and -- but  
19 we are under the obligation regardless of meeting the 3.5; that  
20 cannot -- that is not waived.

21 Q The 3.5 is not waivable. And you -- you said you have  
22 these daily meetings in which you -- you look at what you  
23 census is going to be and you do then scheduling to staff to  
24 make sure you try to meet those minimums; is that correct?

25 A Yes, we did.



1 Q And you also take into consideration the patients'  
2 acuities when you're determining your staffing for each day; is  
3 that correct?

4 A Well, that's in the assignment because the -- the 2.4 and  
5 the regulatory requirement is irregardless of a patient's  
6 acuity. It's when the licensed nurse does the assignment sheet  
7 for the residents that she needs to weigh acuity because we  
8 don't want too large a -- a -- a hardship upon any particular  
9 person and staff member, and we don't want any resident being  
10 deprived because they were put in with too many high-acuity  
11 people to be cared for in a particular day. Because there  
12 people -- so our levels are different, every one's an  
13 individual.

14 Q I see. So does that mean, then, that the monthly schedule  
15 that you've told us is created by the DON for the licensed  
16 nurses and by the DSD for the CNAs, those monthly schedules  
17 don't take into consideration the acuity of the patients; is  
18 that correct?

19 A The -- the monthly schedule is just who's working that  
20 day, and we -- we try to meet not only the -- the requirements,  
21 but we try to staff at what we feel is a fair number of -- of  
22 staff to -- to patient ratio. We do that on the -- on the  
23 monthly schedule, but that doesn't take into consideration how  
24 the patient is going to be assigned, what the assignments will  
25 look like, based -- based upon patient acuity, like prep.

1 Q Okay. And just -- the answer to my question is the  
2 monthly schedule does not take into consideration -- that's my  
3 question, does the monthly schedule take into consideration the  
4 acuity of the patient when it's being created? The monthly  
5 schedule not the daily one.

6 A No, the monthly does not.

7 Q And your testimony is that the daily assignments -- once  
8 the monthly schedule's created, then the daily assignments take  
9 into consideration the acuity of the patients, how the CNAs are  
10 assigned to those patients; is that your testimony?

11 A Yes.

12 Q Okay. Aside from acuity of the patients, and the fair  
13 division of -- of the work as you describe earlier in your  
14 testimony, what else is considered with respect to the daily  
15 assignment sheet that you testified about, do you know?

16 A Resident preference -- some people have -- have -- have  
17 voiced preferences as far as their care. One thing in  
18 particular would be sexual. Some -- some ladies do not want  
19 gentlemen taking care of them, so we have to take that into  
20 consideration. Those are the types of things we look at.

21 Q Okay. So patient preference, acuity, and meeting the  
22 minimum staffing requirements under the regulations. What else  
23 goes into the assignment -- the daily assignments, Mr. Lamb, if  
24 anything?

25 A The ability of the -- of probably the personnel too, the

1 personnel, to be able to take care of that person.

2 Q And you testified that there is a -- a stand-up meeting is  
3 the term that you used. How often are the stand-up meetings,  
4 Mr. Lamb?

5 A Monday -- Monday to Friday.

6 Q Monday to Friday.

7 A In the morning. Yeah, Friday before the following  
8 weekend.

9 Q Okay. And these are daily, what -- what are called stand-  
10 up meetings that you have? And where do they happen; in your  
11 office or in a conference room?

12 A No, we -- we use the largest room we have because we  
13 reduced the number of attendees, we'd make sure that we're --  
14 we're socially distanced, and that it's a safe meeting  
15 environment for a group of people, because we discourage people  
16 being in close proximity at this time of the pandemic. And we  
17 use our largest room which we have available, which is our  
18 dining room, and if we sit around, and if there's tables we  
19 make sure there's one person per, and we have representatives  
20 of the different departments. It's department heads  
21 primarily --

22 Q Department heads.

23 A -- at the stand-up meeting, and we -- it occurs at 9:15 in  
24 the morning.

25 Q Okay. And who attends the meetings on a regular basis,



1 the daily stand-up meetings the department runs?

2 A I'm there, the director of nurses is there, and some  
3 department heads, representing their departments.

4 Q So you're there --

5 A The director of social service, medical records, that kind  
6 of thing.

7 Q Do any RNs go to the stand-up meetings other than the DON  
8 or the ADON in her place?

9 A The ADON would be there if the DON is not there.

10 Q Do any other RNs go to this daily stand-up meetings the  
11 department has?

12 A If the ADON is not there and the DON is not there then  
13 we'll have an RN attend.

14 Q Tell me an RN that you have had at the stand-up meetings  
15 in the last six months?

16 A What's her name? I'm not good with some names, but --

17 Q I see.

18 A -- I'm -- I'm just looking at the schedule, that's why I'm  
19 looking down right now.

20 Q You need to look at a document to find out who your --

21 A I'm just looking to see her name. I want to get her name  
22 right because the -- (indiscernible, simultaneous speech) --

23 Q So what schedule are you looking at, Mr. Lamb? What are  
24 you looking at? What document are you looking at?

25 A Oh, I'm looking at the October schedule.

1 Q For who? For the --

2 A Of nurses.

3 Q The licensed nurses.

4 A Licensed nurses. And I'm looking for a name. There's --  
5 there's -- Harpreet -- Harpreet is one.

6 HEARING OFFICER KOPPER: Mr. Lamb, I don't believe you  
7 should be reviewing the documents that the parties haven't  
8 seen.

9 MR. BOIGUES: That is very correct.

10 HEARING OFFICER KOPPER: Did you need to review that to  
11 refresh your recollection?

12 THE WITNESS: It was to refresh my recollection regarding  
13 the nurse's name because we have a Harmpreet (phonetic) and we  
14 have a Harpreet and I wanted to make sure that I -- I use the  
15 correct name. And I think the document is in evidence because  
16 it's the schedule that (indiscernible, simultaneous speech) --

17 HEARING OFFICER KOPPER: Why don't we turn that over --  
18 why don't you turn over any documents you have --

19 THE WITNESS: Okay.

20 HEARING OFFICER KOPPER: -- make sure you're not reviewing  
21 anything, and then if we need to go that route, we can do that.

22 THE WITNESS: Okay.

23 Q BY MR. BOIGUES: So Mr. Lamb, does the DSD attend the  
24 dai -- the daily stand-up meeting that you referred to earlier?

25 A The DSD?

1 Q Yes, the DSD.

2 A Yes.

3 Q And what department is the DSD the head of?

4 A As I said, he works between departments. He is in  
5 nursing. A big component of the stand-up meeting he has  
6 information too.

7 Q He's there because he -- he -- he's in charge of the CNAs;  
8 isn't that correct?

9 A No, he's there because of the information he can provide.

10 Q I see. I thought your testimony was that the daily stand-  
11 up meeting is for department heads, so that's why I'm asking  
12 what department is the DSD the head of? That's what I'm trying  
13 to understand, Mr. Lamb.

14 A I'm trying to think. Most of -- most of the -- most of  
15 the attendees at the stand-up meeting are department heads.  
16 But that's correct, the -- the director of staff development is  
17 there because he handles some things for nursing which I -- I  
18 don't think any -- any of the rest of us would be aware of,  
19 work-related injuries, he -- he keeps track of that. The PPD,  
20 he's the person who gives us that information to work with,  
21 it's that kind of information that he brings to the meetings.

22 Q I see.

23 A And today, since -- he has to be there because I don't  
24 think any of the rest of us were able to attend the meeting.

25 Q Mr. Lamb, what typical hours do the DSD work at the

1 facility again?

2 A He works regular hours, 7 to 3:30.

3 Q 7 to 3:30. And for whenever you're not there, after  
4 hours, you're not -- you know, as you put it visiting on the  
5 after-hours or on the weekends, or the DON is not visiting  
6 after hours or on the weekends, there is a directory the  
7 facility -- at the facility, is there not, which has your phone  
8 numbers so you could be contacted after hours and on the  
9 weekends?

10 A Yes, we have a directory for all of our -- all of our  
11 phone numbers are there.

12 Q For all of your what, sorry?

13 A Our phone numbers.

14 Q Your phone numbers. And that's -- are the nurses  
15 prohibited from calling you if you are not physically in the  
16 facility, if they need something from you?

17 A No, they can call me. They might (indiscernible,  
18 simultaneous speech) --

19 Q Could also text you, right?

20 A No, they would -- they would call my cell.

21 Q They would call your cell phone, okay. What about the  
22 DON, are -- are the staff at the facility, the nurses or the  
23 CNAs, if they need something when you're not there physically,  
24 are they able to -- not you specifically, sorry, the DON, are  
25 they able to contact the DON in those after-hours using that

1 directory that you have at the facility?

2 A Yes. Yes.

3 Q And is it the same for the DSD as well? The DSD's phone  
4 number is also listed there, and the staff are also able to  
5 contact the DSD after hours or on the weekends for any matters,  
6 correct?

7 A Yes. Yes.

8 Q Mr. Lamb, I am going to share with you in the screen what  
9 has been marked and admitted into evidence as Employer Exhibit  
10 Number 1. I have that up on the screen. I'm going to make it  
11 a little bigger, see, make sure you are able to look at it. Do  
12 you see that document there, Mr. -- Mr. Lamb?

13 A Yes, I do.

14 Q Okay. And this assignment sheet is specifically -- if I  
15 understand correctly by looking at the two pages that we have,  
16 for the a.m. shift; is that correct?

17 A I'm just checking. Yeah, it looks like day-shift people,  
18 yes.

19 Q Okay. And how many -- how many shifts do the CNAs work in  
20 the facility, Mr. Lamb?

21 A Three shifts. There are three shifts.

22 Q There's three shifts. What are the shifts, Mr. Lamb?

23 A AM, PM, and night.

24 Q AM, PM, and night. Is the p.m. shift the NOC shift?

25 A Yes.

1 Q Okay. So there would be -- there would be a -- an  
2 assignment sheet like the one we have -- that the Employer has  
3 introduced as Employer Exhibit Number 1 for each shift, right?  
4 The p.m. shift, the NOC shift, and also the a.m. shift like the  
5 one we have in the record; is that correct?

6 A Yes. Yes.

7 Q And there's a box on the right-hand corner that has a  
8 group, it says group, break, and lunch. If we look at the  
9 second page of Employer Exhibit Number 1, the groups are marked  
10 as A, B, and C, and D. Do you see that?

11 A Yes, I do.

12 Q Okay. I'm showing you page 2 of Employer Exhibit Number  
13 1. What is the A, B, C, D markings on this reflect?

14 A It's a breakdown of -- so people aren't taking lunch and  
15 breaks at the same time, but at different times.

16 Q I see. So is it correct that the CNAs are assigned to a  
17 specific group for purposes of when they are going to take  
18 their break on their lunches, because they're pre-scheduled; is  
19 that correct?

20 A Yes. Yes. Because under each name of the CNA it does  
21 show which group they are.

22 Q I see. You are referring to -- when we look further down  
23 in the document there will be an assignment number 1 and then  
24 there's a group A or a group B that the nurses are assigned to;  
25 is that correct?

1 A That's correct.

2 Q There's also times here for resident breakfast, CNA pass  
3 out nourishment, resident lunch. Do you see those times under  
4 the box that has the groups for the nurses when they're taking  
5 their lunch and their breaks? Do you see that?

6 A Additional assignments, yes. Yes, I see that.

7 Q Okay. And those are assignments that are -- that are pre-  
8 determined by -- on this assignment sheet; is that correct?

9 A Well, because nurses come out at certain times, and meals  
10 are provided at certain times, yes.

11 Q Okay. And these times tell the CNAs when breakfast is  
12 going to be passed out or when dinner or lunch are going to be  
13 passed out; is that correct?

14 A Yeah, that way they know the time schedule. They can  
15 anticipate when the nurses will be past, and when the meal will  
16 come out, yes.

17 Q To the left of that on the document, we're still looking  
18 at page number 2, under the date there's a number of items  
19 there. The first line says, first lunch cart will be out at  
20 11:30, then the second line says, social dining starts at  
21 11:45, assisted dining starts at 12:00 is the third line. Do  
22 you see those, Mr. Lamb?

23 A Yes, but those aren't really implemented at this time.

24 Q Why do you say that? Because of COVID?

25 A Yes, we don't have social dining or assisted dining at

1 this time, everyone eats in their rooms.

2 Q Everybody can eat in their room, okay. So Mr. Lamb, going  
3 back to page 1, these assignments, assignment number 1,  
4 assignment number 2, assignment number 3 or the group  
5 assignments, this is what your testimony was earlier that the  
6 nurses -- the licensed nurses, as you put it, are the ones who  
7 makes these assignments; is that correct?

8 A That's correct.

9 Q When you say licensed nurses, are you referring to only  
10 the RNs or are you also including the LVNs in your answer, Mr.  
11 Lamb?

12 A We only have so many RNs.

13 Q That wasn't my question --

14 A And we don't --

15 Q -- how many you have, my question is -- well, you said the  
16 licensed nurses are the ones who make these assignments. I'm  
17 asking you if you are referring to licensed nurses as -- as  
18 meaning RNs only, or are you also including the LVNs, the  
19 licensed vocational nurses in your answer, sir?

20 A No, whenever I say licensed nurse I mean LVN and RN.

21 Q You include both of them; is that correct?

22 A I do. I do.

23 Q Okay. So this daily assignment sheet could be created by  
24 an RN or by an LVN, filled out; is that correct?

25 A Yes.

1 Q Okay. And the CNAs, they are regularly assigned to the  
2 same assignment number, are they not, Mr. Lamb?

3 A Pretty much. There's some rotation, yeah.

4 Q What do you mean there's a rotation, sir? What's the  
5 rotation that you are referring to with respect to assignment  
6 numbers? Let's start with that.

7 A Well, because I don't think we have fixed assignments  
8 permanently. And some people will -- will shift -- because  
9 some people are off on certain days, and other people have to  
10 assume those assignments.

11 Q I see. So for example, assignment number 1, Gloria, she's  
12 a regular employee, works four, five days a week. Gloria as a  
13 full-time employee would normally be assigned assignment number  
14 1 in group A, every day, unless someone else takes her position  
15 because she's off; is that correct?

16 A Ordinarily, yes. Yes.

17 Q Ordinarily, yes. Same thing with, for example, CNA  
18 Floriza in page 1 of Employer Exhibit Number 1 -- Floriza has  
19 been assigned to assignment number 4 in group B the entire time  
20 that you have been working there except when she's off,  
21 correct?

22 A Yeah, and a lot of this has to do with the fact that we do  
23 not want to be moving people around the building too much at  
24 this time. This is a COVID-related matter where we've been  
25 instructed not to -- except for moving people out of the

1 observation unit, we try as much as possible not to move beds,  
2 not to move people, not to move staff too much, that way we  
3 could, in the event of an exposure, we can better isolate -- we  
4 could tra -- we could trace.

5 Q Even pre-COVID, Floriza, for example, during your time  
6 there that you started before COVID, Floriza has been regularly  
7 assigned assignment number 4 in group B, has she not, Mr. Lamb,  
8 except when she's off?

9 A Yes. But not necessarily everyone, and that's why I'm  
10 saying that at this time we're even -- we're strict regarding  
11 not moving people about the building, you know.

12 Q Yep. So the assignments are changing even less now,  
13 currently under COVID, is that what I'm understanding your --

14 A Yeah.

15 Q -- testimony to be?

16 A We kind -- we need to kind of watch who (indiscernible)  
17 and where they are.

18 Q Yeah. And the -- the purpose of this assignment sheet,  
19 Mr. Lamb, is to make sure that the CNAs have an equal and fair  
20 distribution of the number of patients in the facility --

21 A Correct.

22 Q -- and that's what we see on page 1, everybody's getting  
23 seven patients, on page 2, everybody's getting eight patients;  
24 isn't that correct?

25 A That's why the circled numbers, yes.

1 Q Yes. Thank you.

2 MR. BOIGUES: If we could go off the record for a minute,  
3 Ms. -- Madam Hearing Officer? I'm going to do one more  
4 exhibit. Thank you.

5 HEARING OFFICER KOPPER: Are we off the record?

6 THE COURT REPORTER: I was waiting on you. Off the  
7 record.

8 (Off the record at 10:41 a.m.)

9 HEARING OFFICER KOPPER: Okay. We're on the record.

10 MR. BOIGUES: I didn't hear the hearing officer. Think it  
11 was mute.

12 HEARING OFFICER KOPPER: Oh, yes. I said we'll go back on  
13 the record.

14 MR. BOIGUES: Thank you. I just sent the hearing officer  
15 and counsel for the Employer a document that I am marking as  
16 Union Exhibit Number 6.

17 **(Union Exhibit Number 6 Marked for Identification)**

18 MR. BOIGUES: Have you received it?

19 HEARING OFFICER KOPPER: Yes, I received it.

20 MR. CANNON: I got it as well.

21 MR. BOIGUES: All right. Give me one second if I can  
22 find -- there it is. Share button.

23 **RESUMED CROSS-EXAMINATION**

24 Q BY MR. BOIGUES: Mr. Lamb, I am showing you and sharing  
25 with you on this screen Union Exhibit Number 6. Do you see the



1 document? Do you -- and do you recognize it?

2 A Yes.

3 Q What is the document, Mr. Lamb?

4 A It has the name of the CNAs on it, and night shift  
5 assignment sheet.

6 Q This is a -- an assignment sheet for what you said was a  
7 NOC shift, is referred to as a NOC shift which is the night  
8 shift; is that correct?

9 A Yes.

10 Q Okay. And do you recognize the names of the individuals  
11 listed on the -- on the document?

12 A Yeah, I recognize the names.

13 MR. BOIGUES: I'd like to offer Union Exhibit Number 6  
14 into evidence.

15 MR. CANNON: No objection.

16 HEARING OFFICER KOPPER: Union Exhibit 6 is admitted.

17 **(Union Exhibit Number 6 Received into Evidence)**

18 MR. BOIGUES: Thank you, Madam Hearing Officer.

19 Q BY MR. BOIGUES: Mr. Lamb, earlier in your testimony you  
20 said that medications and IVs are part of the duties in the  
21 nursing department. Who is in charge of dispensing medications  
22 to the residents in the facility?

23 A The licensed nurses.

24 Q And that includes, as you said earlier, both RNs and LVNs;  
25 is that correct?



- 1 A That's correct.
- 2 Q Are the nurses on the floor assigned a cart, a medication  
3 cart as part of their duties when they are assigned to do work  
4 on the floor?
- 5 A Yes. There is one medication cart per station. Yes.
- 6 Q Okay. Each station has one medication cart so there are  
7 three cart in the facility; is that correct?
- 8 A There are six carts.
- 9 Q Six carts. Why is that, Mr. Lamb? Why are there six  
10 carts if there are three nurses station; can you explain that?
- 11 A Three treatment carts.
- 12 Q So there's three medication carts and there are three  
13 separate carts for treatment --
- 14 A Yeah.
- 15 Q -- correct? Okay. And who are the individuals in the  
16 facility -- what -- what classification are assigned the  
17 medication carts? Start with those.
- 18 A Charge nurses.
- 19 Q Would that be licensed nurses?
- 20 A Yes, it would be.
- 21 Q It would be either a RN or a LVN; is that correct?
- 22 A Yes.
- 23 Q What about the treatment carts that are in the facility?  
24 Which classification is assigned those carts?
- 25 A Same thing.

1 Q Same thing. Thank you, Mr. -- Mr. Lamb.

2 IVs -- only RNs are able to do IVs on the residents; is  
3 that correct?

4 A To start an IV.

5 Q To start an IV. I see. Once it's started, the LVNs can  
6 also then continue with the procedure of the IV; is that  
7 correct?

8 A They can monitor it, but they can't -- there are  
9 limitations to their role as far as an IV.

10 Q Under their license, they're --

11 A Even if they're --

12 Q -- they're not allowed --

13 A Even if they're IV certified. Even if they're IV  
14 certified.

15 Q Thank you, Mr. Lamb. You projected -- predicted my -- my  
16 question. So under their license, the LVNs do not have the  
17 authority under just a regular license to start an IV; is that  
18 correct?

19 A That's correct.

20 Q But an LVN can get a certification to be able to start an  
21 IV; is that correct?

22 A Not to start it.

23 Q Not to start it? To monitor it.

24 A I don't think so. Monitor it, yes.

25 Q So only the RNs are able to -- in the facility are able to

1 start an IV; is that correct?

2 A That's correct.

3 Q Any other licenses difference that you can think of that  
4 only the RNs could do but the LVNs cannot do other than the IV?  
5 Anything else that you can think of?

6 A There -- there are assessment limitations on -- on LVNs.

7 Q So they both perform assessments of the patient, but the  
8 RNs --

9 A There's the scope --

10 Q -- have a higher --

11 A Their scope of practice kind of defines that.

12 Q Other than the IVs, starting the IVs, and the level of  
13 assessment that an RN can perform based on their license, is  
14 there anything else that you can think of?

15 A Not that I can think of right now, but I'm sure there is.

16 Q Thank you, Mr. Lamb. I'm showing you again Union Exhibit  
17 Number 3, Mr. Lamb. I want to make sure. Jose Q., the LVN  
18 supervisor, that is listed on the schedule under a.m. as a  
19 supervisor. Does Mr. Jose Q. have an assignment -- a  
20 medication cart, or is a medication cart assigned to Mr. Jose  
21 Q., the supervisor -- LVN sup listed on the schedule?

22 A No.

23 Q What about the treatment cart? Is a treatment cart  
24 assigned to Jose Q., the LVN supervisor on this schedule?

25 A Not unless he's working the floor.



1 Q I see. And under what circumstances would Jose Q., the  
2 supervisor, be working the floor, Mr. Lamb?

3 A If there weren't another nurse on the station working the  
4 floor.

5 Q If there was a shortage and you needed an additional body  
6 to be assigned one of the carts -- either medication cart or  
7 treatment cart -- it could be assigned to the supervisor that's  
8 listed on this schedule; did I understand that correctly, Mr.  
9 Lamb?

10 A Which has kind of been the case, I think, with the -- the  
11 p.m. supervisor, so that -- that -- that is an eventuality,  
12 yes.

13 MR. BOIGUES: Madam Hearing Officer, if we could have  
14 about -- it's going to be ten minutes until 11:00, off the  
15 record, if I may?

16 HEARING OFFICER KOPPER: Yeah. Let's take a -- let's go  
17 off the record and take a ten-minute break.

18 MR. BOIGUES: Thank you.

19 (Off the record at 10:50 a.m.)

20 COURT REPORTER: We're on the record.

21 MR. BOIGUES: Thank you.

22 **RESUMED CROSS-EXAMINATION**

23 Q BY MR. BOIGUES: Mr. Lamb, I am sharing with you what I  
24 have marked as Union Exhibit Number 7. Do you recognize this  
25 as being an assignment sheet for the p.m. shift at your

1 facility?

2 A I recognize the p.m. shift names.

3 Q You recognize the p.m. shift names. Great. And there are  
4 three stations as they are during the day shift and the night  
5 shift, as well; is that correct? Or the p.m. shift --

6 A Yes.

7 Q -- excuse me.

8 A Yes.

9 Q And on the p.m. shift, on the NOC shift, instead of having  
10 groups A, B, C, and D, you only have two groups; is that  
11 correct, Mr. Lamb?

12 A That's correct.

13 Q Okay.

14 MR. BOIGUES: I'd like to offer Union Exhibit Number 7  
15 into evidence.

16 HEARING OFFICER KOPPER: Any objection?

17 MR. CANNON: No.

18 HEARING OFFICER KOPPER: Union Exhibit 7 is received.

19 **(Union Exhibit Number 7 Received into Evidence)**

20 MR. BOIGUES: I don't have any further questions for Mr.  
21 Lamb at this time.

22 HEARING OFFICER KOPPER: Okay.

23 MR. CANNON: The Employer doesn't have any redirect. I  
24 don't know if, Madam Hearing Officer, if you have anything.

25 HEARING OFFICER KOPPER: Yes. I have some questions. I



1 have some follow-up questions.

2 Okay. Okay, Mr. Lamb. I just have some follow-up  
3 questions. So I'm sorry, we have to go through some -- some of  
4 our factors for -- that we use to establish whether or not  
5 employees are supervisors under Section 211 of the Act. But  
6 just beginning, I want some overview. So what are -- what are  
7 the other departments at the facility besides nursing?

8 THE WITNESS: Activities, dietary, maintenance which is  
9 housekeeping, fiscal plan, dietary, medical records,  
10 admissions, business office. I think I got them all.

11 HEARING OFFICER KOPPER: Thank you.

12 THE WITNESS: I didn't mention social service, I don't  
13 believe.

14 HEARING OFFICER KOPPER: Thank you. Do the RNs, CNAs and  
15 RNAs all work the same shift, the same three shifts you  
16 mentioned earlier?

17 THE WITNESS: They -- they primarily -- the -- the -- they  
18 primarily -- they would primarily work one shift, but sometimes  
19 they will work a different shift.

20 HEARING OFFICER KOPPER: Sorry. My question was  
21 confusing. You mentioned there's three shifts. There's the  
22 day, night, and can you repeat the third shift?

23 THE WITNESS: PM.

24 HEARING OFFICER KOPPER: PM. And what are the hours --  
25 what are the hours for each of the three shifts?

1 THE WITNESS: 7 to 3:30, 3 to 11:30, and 11 to 7:30.

2 HEARING OFFICER KOPPER: And who is the LVN PM supervisor?

3 THE WITNESS: That's Catalina.

4 HEARING OFFICER KOPPER: Do you know her last name?

5 THE WITNESS: Catalina -- not off the top of my head.

6 HEARING OFFICER KOPPER: And does the p.m. LVN supervisor  
7 work from 11 p.m. to 7 a.m. or a different shift?

8 THE WITNESS: No, it would be the p.m. shift, which is 3  
9 to 11:30.

10 HEARING OFFICER KOPPER: Okay. 3 p.m. to 11:30 p.m.

11 THE WITNESS: That shift, yes.

12 HEARING OFFICER KOPPER: You also mentioned the plan of  
13 care. Who prepares the plan of care for the patients or  
14 residents?

15 THE WITNESS: It's multidisciplinary.

16 HEARING OFFICER KOPPER: So is --

17 THE WITNESS: It's a -- it's --

18 HEARING OFFICER KOPPER: -- there a team?

19 THE WITNESS: -- it's primarily nursing, but it has  
20 components for the other departments because, you know, a  
21 resident's needs need to be met in all departments, you know,  
22 whether it's their activity needs, their nursing needs, their  
23 dietary needs. They're all on the plan of care.

24 HEARING OFFICER KOPPER: And for nursing, does the DON  
25 contribute to creating the plan of care?

1           THE WITNESS:  It's a complicated process, because you have  
2 short-term and long-term care plans and it -- the MDS is tied  
3 into their -- the care planning.  Nursing has care planning  
4 meetings on a regular basis, weekly, in which family members  
5 are, these days, by phone because we can't have visitors in the  
6 building but it used to be that the family members would be  
7 invited to attend as well as responsible parties for the  
8 residents that -- the residents that couldn't represent  
9 themselves.  And they would all be present and they'd go  
10 through the medication, the treatments, the goals, the  
11 discharge planning, all of those things.  And that would --  
12 that would be the plan of care.  And there's a base -- baseline  
13 plan of care that's done within about 48 hours, and then after  
14 that there's a -- there's a -- the care plan developed, and  
15 then there's a quarterly care plan meeting.  So it's an  
16 ongoing -- it's an ongoing project for the resident during the  
17 entire period of their stay.

18           HEARING OFFICER KOPPER:  And which employees in the  
19 nursing department contribute to creating the plan of care?

20           THE WITNESS:  All of them, because the plan of care needs  
21 to be not only addressed quarterly by the relations and -- and  
22 the DON and the MDS, but it needs to be revised and developed  
23 and changed on a regular basis as -- as -- as the patient  
24 evolves.  You need to do -- that you've gone to provide care,  
25 what we've done about it, and how -- what our goal is, how

1 we're going to keep the patient safe. And those -- the  
2 licensed nurses would be contributing -- all licensed nurses  
3 would be contributing to the plan of care and would be  
4 documenting on the plan of care.

5 HEARING OFFICER KOPPER: So you -- you testified that the  
6 RN or the LVN prepares the daily schedule; is that correct?

7 THE WITNESS: Yes. Yes.

8 HEARING OFFICER KOPPER: And do they review -- what  
9 documents do they -- do they review to create the schedule?

10 MR. BOIGUES: Lack of foundation to your question, Madam  
11 Hearing Officer.

12 HEARING OFFICER KOPPER: Do they need to look at the  
13 census levels? I mean, you mentioned that they take into  
14 account the census levels, correct? Like --

15 THE WITNESS: The --

16 HEARING OFFICER KOPPER: What do you know that the RNs or  
17 the LVNs -- do you know what they look at to --

18 THE WITNESS: Well, the census -- the census is for the  
19 schedule, for the monthly schedule.

20 HEARING OFFICER KOPPER: Okay. So that's different than  
21 the daily schedule.

22 THE WITNESS: The daily schedule is -- that's a creation  
23 of the assignments and who's responsible for which patients and  
24 the workload and the acuity of the patient and what the  
25 patients will require and who will be taking care of them. And

1 if someone's not there, who's going to -- who's going to do  
2 those residents, who's going to take care of them. That's the  
3 assignment. So I think we may be confusing the -- the monthly  
4 schedule with the assignment sheets.

5 HEARING OFFICER KOPPER: My apologies. So with the  
6 assignment sheets, the RN or the LVN prepares the assignment  
7 sheet, correct?

8 THE WITNESS: That's correct.

9 HEARING OFFICER KOPPER: And they use -- do they review  
10 the plan of care?

11 THE WITNESS: Yes. It -- it -- it's always a  
12 consideration.

13 HEARING OFFICER KOPPER: And do they have to review some  
14 physical documents --

15 THE WITNESS: The plan of care has --

16 HEARING OFFICER KOPPER: -- or go --

17 THE WITNESS: The plan of care has the problems, the  
18 needs, the goals.

19 HEARING OFFICER KOPPER: I guess my question is what do  
20 they physically look at when they're preparing the assignments?  
21 Do they have to review some documents that -- that have -- that  
22 contain the plan of care for the patients? Do they have to  
23 look at the acuity? Is this reflected in documents somewhere?

24 THE WITNESS: A licensed nurses would know that because  
25 they're the ones creating those documents. They're the ones

1 doing the progress notes -- the daily, the weekly progress  
2 notes. They're -- they're -- they're directly involved with  
3 the patient care. And that's why you have licensed nurses  
4 doing the assignment sheets. So we have LVNs and RNs doing the  
5 assignment sheets. We have RNs doing the assignment sheets.  
6 We have the LVNs, because we only have so many RNs and we  
7 have -- we're relying heavily upon LVNs these days.

8 HEARING OFFICER KOPPER: Okay. And both the -- the RNs  
9 and the LVNs take into account the abilities of the -- the LVNs  
10 and RNs on the floor in terms of making those assignments, and  
11 the CNAs on the floor after making those assignments?

12 THE WITNESS: Take what -- what (indiscernible).

13 HEARING OFFICER KOPPER: Can you repeat that? Sorry.

14 THE WITNESS: (Indiscernible, simultaneous speech).

15 HEARING OFFICER KOPPER: I didn't understand you, Mr.  
16 Lamb.

17 THE WITNESS: The day -- the day shift was done the night  
18 before. It's done by the prior shift. It's prepared in  
19 advance by the licensed nurse. And they do take into account  
20 all the factors involved and the needs of the resident and how  
21 we're going to meet those for today. And they -- they use  
22 their judgment and their knowledge, their clinical knowledge of  
23 the residents.

24 HEARING OFFICER KOPPER: What factors do they take into  
25 account?

1 THE WITNESS: Everything from the weight of the resident  
2 to the treatments the resident's receiving to whether or not  
3 they require feeding as opposed to independently eating,  
4 whether they're a bedfast patient needing turning every two  
5 hours as opposed to someone who'll be gotten up during the day  
6 and will be up during the day, in the therapy room and all,  
7 maybe coming back in for a nap or at the end of the day. All  
8 of those considerations need to be -- need to be addressed  
9 because each resident is different and each resident has  
10 different needs.

11 HEARING OFFICER KOPPER: And what --

12 THE WITNESS: When the --

13 HEARING OFFICER KOPPER: -- abilities --

14 THE WITNESS: I'm sorry. Go ahead.

15 HEARING OFFICER KOPPER: What abilities of the personnel  
16 do -- do they take into account?

17 THE WITNESS: The personnel? They do have to consider --  
18 as I said, the gender of the personnel, if there's a problem  
19 with a resident; the -- the -- the ability of the staff to  
20 perform the functions that are going to be required for that  
21 patient; whether or not that staff member is going to have to  
22 get other pe -- other staff to help them and take care of the  
23 patient, should the patient be an extremely heavy individual or  
24 morbidly obese; and whether or not that staff member can take  
25 care of eight residents when their colleagues are doing seven

1 because of -- because of an odd number count.

2 HEARING OFFICER KOPPER: Okay. And you mentioned that  
3 both LVNs and RNs can -- can act as charge nurses?

4 THE WITNESS: Yes, in our -- in our building they can,  
5 although there are requirements for having RNs in the building.  
6 Okay. We're required to have that. And you have to meet that  
7 requirement. And as I said, there are certain things that the  
8 RNs can do. You have to consider who you're giving IVs to, who  
9 you're doing a substitute with, you -- you have to decide  
10 and -- and you work around that to try to see that you have the  
11 RN present when you need the RN. But as I said, the majority,  
12 as you noticed, of our scheduling are LVNs so we do rely  
13 heavily upon LVNs, and the same way that a few hospitals rely  
14 on RNs and -- and LVNs do basic care needs that our CNAs  
15 usually do. What you have to work with.

16 HEARING OFFICER KOPPER: So I know you've already seen  
17 Employer Exhibit 3 that's already been admitted into the  
18 record, which was from 2018. I just wanted to know if there  
19 are any more recent documents that were similar to that from  
20 when you were actually at the facility.

21 THE WITNESS: Yeah. Because I was looking because I  
22 just -- I just could not -- I could not recall too much -- we  
23 just haven't had a lot of warnings or corrections occurring  
24 lately. I think we've just been too busy. I mean, you know,  
25 eight to nine months out of my tenure here has been COVID.

1 There's a lot that -- that's our -- that's our concentration.  
2 That's our -- our concern. That's where all of our efforts are  
3 directed -- CDC, CDPH, (indiscernible). It -- it -- it's  
4 mitigation plans. It's all -- these are the requirements  
5 because of their -- the pandemic that we're trying to  
6 satisfy -- even testing of our staff. Those are kind of our  
7 priorities at this time.

8 And -- and our staff are exceedingly devoted and we're  
9 working with the numbers we have and the work isn't easy, but  
10 we're getting by. We're surrounded by facilities in the area  
11 which had exposures and we're trying to limit our exposure to  
12 those exposures without bringing the staff who are quarantined  
13 from those facilities. So we're working with what we have.  
14 And the only reason why I'm volunteering this is because that  
15 kind of explains why we're in our current bind concerning RNs,  
16 LVNs, and our CNAs.

17 HEARING OFFICER KOPPER: And remind me. How long you've  
18 been at this facility?

19 THE WITNESS: A year and nine months, I guess -- eight  
20 months, nine months. It feels like years.

21 HEARING OFFICER KOPPER: And how many other facilities  
22 does the Employer have?

23 THE WITNESS: We're affiliated with a good -- I guess, six  
24 facilities or so, a half dozen. If I try to name them maybe I  
25 could remember exactly how many.

1 HEARING OFFICER KOPPER: I'm just going to show you -- I'm  
2 going to share my screen and show you what has been marked as  
3 Joint Exhibit 1.

4 THE WITNESS: Help me read the time on there, yeah.

5 HEARING OFFICER KOPPER: So this is the collective  
6 bargaining unit agreement for the existing unit. The first  
7 page here, does this show all of the other employer facilities?

8 THE WITNESS: No, it doesn't. It -- it shows the ones  
9 that are in this bargaining unit. There's also a facility --  
10 let's see, Manteca, Creekside, so there's -- there's a few  
11 others. So my count's pretty close, because these are four and  
12 I think beyond this there is one, two three other -- no, no  
13 that's -- three's on there. La Mariposa's on there. Two  
14 others. I still say it's about six.

15 HEARING OFFICER KOPPER: And you work out of the Fremont  
16 facility?

17 THE WITNESS: Yes.

18 HEARING OFFICER KOPPER: That being?

19 THE WITNESS: Park Central, the one in Fremont.

20 HEARING OFFICER KOPPER: Okay. I'd like to receive Joint  
21 Exhibit 1 into the record, as long as there's no objections  
22 from either party.

23 MR. BOIGUES: No objection from Petitioner.

24 MR. CANNON: No -- no objection from the Employer.

25 **(Joint Exhibit Number 1 Received into Evidence)**

1 HEARING OFFICER KOPPER: Do the RNs have -- are they  
2 involved in hiring at the facility?

3 THE WITNESS: No. No. By and large, no. They can  
4 recommend staff, but the actual hiring process, it doesn't  
5 involve any -- any of the charge nurses or -- no.

6 HEARING OFFICER KOPPER: Are the RNs involved in the  
7 transfer of employees?

8 THE WITNESS: On assignments and that kind of thing.

9 HEARING OFFICER KOPPER: Just the sort of assignments  
10 we've already discussed with the --

11 THE WITNESS: Yes.

12 HEARING OFFICER KOPPER: -- daily schedule?

13 THE WITNESS: What we just discussed.

14 HEARING OFFICER KOPPER: They don't transfer employees to  
15 other facilities?

16 THE WITNESS: No. In fact, right -- we don't -- we don't  
17 share between facilities at this time. That would be -- that  
18 would be dangerous and we're not going to make ourselves  
19 liable.

20 HEARING OFFICER KOPPER: Good point. Do the RNs suspend  
21 employees?

22 THE WITNESS: They can, yeah. They can suspend.

23 HEARING OFFICER KOPPER: Can you provide a example when an  
24 RN suspended an employee?

25 THE WITNESS: As I said, when I -- when I got the exhibit,



1 that one exhibit -- I don't know if I said, but when I got that  
2 one exhibit that I -- that we presented as one of the exhibits  
3 for the facility, I didn't see -- I didn't see any and I don't  
4 recall us suspending or firing anyone since I've been here.  
5 We've had some resignations, but --

6 HEARING OFFICER KOPPER: There haven't been any  
7 suspensions or terminations since you've been at the facility?

8 THE WITNESS: Not of licensed nurses that I know of, no.

9 HEARING OFFICER KOPPER: Of -- of any employees, has there  
10 been?

11 THE WITNESS: No, no.

12 HEARING OFFICER KOPPER: And just so it's clear for the  
13 record, when you meant -- were mentioning the exhibit, you were  
14 talking about Employer Exhibit 3, the write-up?

15 THE WITNESS: The write-up, yes.

16 HEARING OFFICER KOPPER: Do -- do the RNs lay off  
17 employees?

18 THE WITNESS: No, this is more of the reverse. People  
19 decline to come in.

20 HEARING OFFICER KOPPER: (Audio interference) --

21 THE WITNESS: I'd be --

22 HEARING OFFICER KOPPER: -- recall --

23 THE WITNESS: -- astounded. It's a fearful time for  
24 everyone.

25 HEARING OFFICER KOPPER: Have -- have there been any --

1 any recalls since you've been at the facility where laid off  
2 employees are brat -- brought back to work?

3 THE WITNESS: No, but we're -- we're in contact with -- as  
4 I said, the ones that have not worked here in a while, and  
5 finding out whether or not they're going to be giving us any  
6 available days so we can get them back on the schedule.

7 HEARING OFFICER KOPPER: And you're referring to RNs  
8 that -- that are currently on the --

9 THE WITNESS: Yes.

10 HEARING OFFICER KOPPER: -- sched --

11 THE WITNESS: Yes, I am.

12 HEARING OFFICER KOPPER: Do the RNs promote employees?

13 THE WITNESS: By and large, people aren't promoted here  
14 unless they obtain a different degree of -- of certification or  
15 licensure. That -- that's why I refer to licensed nurses and I  
16 refer to certified. Nurse's aides are certified. Licensed  
17 nurses are either LVNs or RNs. You cannot work at a different  
18 capacity without the appropriate licensure.

19 HEARING OFFICER KOPPER: I apologize. I should've  
20 followed up on this earlier, but out of the 60 CNAs you  
21 mentioned, how many are RNAs, roughly, if you know.

22 THE WITNESS: Pro -- probably around eight or so, but --  
23 but they have to do the training to be an RNA and they actually  
24 have to work in the role of an RNA. But you see, they're CNAs  
25 as well, which means that they would be used as CNAs if CNAs

1 were needed, if they even had an RNA certification but -- but  
2 there was not an RNA need. So that's why it's interchangeable  
3 as far as RNA to CNA, because they are a CNA.

4 HEARING OFFICER KOPPER: Do RNs grant time off to  
5 employees? They approve time off requests?

6 THE WITNESS: Hold on a second while I think about that.  
7 Do they -- no, I think, generally, that goes to the director of  
8 staff development because he's got to do the schedule, and it's  
9 the person that would do the schedule that would need to know  
10 whether or not they're coming in or not.

11 HEARING OFFICER KOPPER: And do RNs grant or approve  
12 overtime?

13 THE WITNESS: Overtime is automatic with our time clock  
14 system. Anything over eight hours -- we don't round anymore.  
15 It's by the minute. Anything over -- we're compliant with the  
16 Union contract.

17 HEARING OFFICER KOPPER: Do -- this might also be governed  
18 by the contract, but do RNs grant wage increases or raises?

19 THE WITNESS: They can't do -- it -- it's in the contract  
20 as far as especially the CNAs. As far as licensed nurses, I  
21 don't think they would be handing out salary increases.

22 HEARING OFFICER KOPPER: Do the RNs participate in  
23 handling or adjusting grievances?

24 THE WITNESS: They can, though there -- they would be a  
25 party to it.

1 HEARING OFFICER KOPPER: How -- how would the -- how do  
2 they participate in handling grievances, RNs, specifically?

3 THE WITNESS: Well, they may receive the grievance, the --  
4 the -- they'll be in dialogue with the director of nursing and  
5 the involved parties, and we've had meetings here where  
6 people -- they had group meetings even for sharing whatever  
7 grievances because we try to resolve all grievances, yes.

8 HEARING OFFICER KOPPER: Are the RNs authorized to resolve  
9 grievances on their own?

10 THE WITNESS: Of course they can, if they can -- if -- if  
11 they can handle the grievance, of course. Yeah.

12 HEARING OFFICER KOPPER: Can you provide an example of  
13 when an RN resolved a grievance without a higher authority  
14 being involved, someone with more authority being involved?

15 THE WITNESS: Well, I don't think higher authority  
16 would -- would even need to know if they resolved it.

17 HEARING OFFICER KOPPER: Just want to be clear, I'm  
18 talking about grievances under the collective bargaining  
19 agreement.

20 THE WITNESS: I'm really not trying to be difficult. I'm  
21 just trying --

22 HEARING OFFICER KOPPER: Oh, I --

23 THE WITNESS: -- to recollect.

24 HEARING OFFICER KOPPER: -- you're not being difficult at  
25 all, Mr. Lamb, not at all. It's okay if you don't know the

1 answer. That's fine, as well.

2 THE WITNESS: Because there have been. I would have to  
3 look into that because I -- I -- I know that there was one  
4 particular problem with the -- with night shift licensed  
5 personnel, but all of -- the night shift personnel were pulled  
6 in along with the -- and the director of nurses was involved,  
7 as well. So I -- I know that was resolved, but I wouldn't know  
8 the involvement of the individuals.

9 HEARING OFFICER KOPPER: Okay, I think that's all I have.  
10 So Mr. Cannon, do you have any redirect?

11 MR. CANNON: No, I don't.

12 HEARING OFFICER KOPPER: Mr. Boigues, any --

13 MR. BOIGUES: If I may -- if I may, Madam Hearing Officer.  
14 Thank you.

15 **FURTHER CROSS-EXAMINATION**

16 Q BY MR. BOIGUES: Mr. Lamb, you identified eight different  
17 departments in response to the hearing officer's questions  
18 earlier; do you remember that?

19 A Yes.

20 Q Could we go through them? Activities. Does activities  
21 have a head of a department?

22 A Yes. We have an activity director and --

23 Q How many --

24 A -- shares a --

25 Q -- employees under -- in that -- under that director in



1 the activities department?

2 A Oh, about maybe four or five. They don't all work on the  
3 same day, though, but there's about four or five. They  
4 recently joined the Union.

5 Q Okay.

6 A -- so --

7 Q Dietary --

8 A -- they're part of the Union --

9 Q Excuse me?

10 A They're part of the Union staff, yes.

11 Q Dietary department, does that have a director?

12 A Yes, food service supervisor, dietary manager. I call her  
13 dietary manager.

14 Q Okay. So supervisor, dietary manager?

15 A Yes.

16 Q How many employees in the dietary department, sir?

17 A Total? Well, oh, probably ten, but -- well, maybe less.

18 Q The maintenance department that you mentioned earlier is  
19 part of house -- housekeeping is part of --

20 A Housekeeping --

21 Q -- it as well?

22 A -- is physical plant. Yeah, that would be laundry  
23 workers, housekeepers, maintenance assistant.

24 Q And is that a department in the facility?

25 A Yes, yes.

1 Q And you have a department head for the -- the plant  
2 facilities?

3 A (Indiscernible, simultaneous speech) -- he's an acting --  
4 he's the acting maintenance supervisor at this time.

5 Q And the maintenance supervisor that you just mentioned is  
6 in charge of the employees in laundry, housekeeping, and -- and  
7 maintenance?

8 A Yes, that's correct.

9 Q And how many -- how many employees are under -- in that  
10 department?

11 A Maybe about seven.

12 Q Medical records department, do you have a department head  
13 for that department?

14 A That only consists of the medical records clerk and one  
15 assistant, who's the special supply coordinator, as well.

16 Q I see.

17 A Very, very small.

18 Q So it's two people in the medical records department?

19 A That's correct.

20 Q Okay. Admissions you mentioned as a department. Is there  
21 a department head for that department?

22 A Yeah, that would be the admissions coordinator, and she  
23 has a -- a -- a couple of -- a few receptionists under her,  
24 about three.

25 Q You mentioned business office as a department. Is there a

1 head of the business office?

2 A Well, business office is just business office manager.

3 Q Just a business office manager?

4 A And she's the department head, yeah.

5 Q She's the department head of the business office manager,  
6 but there's only one individual --

7 A Exactly --

8 Q -- in the department, right?

9 A -- she's the working supervisor, yes.

10 Q Working supervisor, got you. Social services department,  
11 is there a department head?

12 A Same thing. It's a working supervisor.

13 Q I see. One individual in that department; that correct?

14 A That's correct.

15 Q Okay. And these department heads that you have mentioned,  
16 or coordinator or working supervisor, these are the individuals  
17 that attend those stand-up meetings that you testified about  
18 earlier; is that correct?

19 A Yes, yes.

20 Q With respect to grievances, you recently had some  
21 grievances that you're trying to deal with employees about  
22 staffing issues and problems that they're having at the  
23 facility, and you've had meetings with employees about that;  
24 isn't that correct, Mr. Lamb?

25 MR. CANNON: Objection. Relevance.

1 MR. BOIGUES: How is it his resolution of the problems are  
2 not relevant, Madam Hearing Officer. I don't understand.

3 HEARING OFFICER KOPPER: You're saying it's relevant  
4 because it involves with -- just the Union resolving --

5 MR. BOIGUES: Yes --

6 HEARING OFFICER KOPPER: -- grievances?

7 MR. BOIGUES: -- of course. Yeah.

8 HEARING OFFICER KOPPER: We'll allow it.

9 MR. BOIGUES: With employee issues.

10 Q BY MR. BOIGUES: Do you know what I'm talking about, Mr.  
11 Lamb, the issues that you're having with the employees right  
12 now about staffing and issues at the facility that they have  
13 tried to meet with you about?

14 A I talk to the staff often about that issue. We don't  
15 always have meetings.

16 Q Yeah?

17 A Sometimes I might be just speaking with them on the floor  
18 about it, too, and about what we're doing, and I think I may  
19 have had a couple meetings in my office, yeah, yeah, about  
20 staff --

21 Q You had a --

22 A -- staff grievances --

23 Q You had a meeting recently --

24 A -- and what we do in these -- about what we're doing.

25 Q About what you're doing. And you had a meeting recently

1 with the unionized staff in which the licensed nurses also  
2 joined that meeting and demanded Union recognition because they  
3 want those issues addressed for the nursing staff; do they not?

4 A That -- that wasn't a -- a staffing meeting, and that  
5 wasn't a meeting in my office. I was told that some people  
6 wanted to meet with me, and of course I said fine, this  
7 afternoon, and then many of the -- the personnel in the  
8 building showed up in the lobby and they wanted to present me  
9 with -- with a petition having to do, not with -- not with  
10 staffing, but with hazard pay --

11 Q Hazard.

12 A -- and I told them that I would get that off to ownership  
13 and see where the standing was on it before because we'd  
14 addressed it before, and we wanted to know when would hazard  
15 pay be implemented during the pandemic.

16 Q And the hazard pay issue that -- that is being -- that has  
17 been requested by the employees includes not only the unionized  
18 staff, but it also includes the licensed staff; is that  
19 correct?

20 A Well, yeah, there were some -- there were some licensed  
21 nurses in the lobby as well.

22 Q Can licensed nurses just give hazard pay to the employees  
23 that are in the Union?

24 A No, they -- they wouldn't be giving the pay.

25 Q They want the pay, actually, right? The licensed nurses

1 want the hazard pay?

2 MR. CANNON: I object.

3 A I think everyone does --

4 Q Everyone does.

5 A -- in America.

6 MR. CANNON: Object to relevance. What does this have to  
7 do with anything? Mr. Lamb's in charge of the entire facility.  
8 I'm sure managers come to him.

9 MR. BOIGUES: Mr. Cannon, if you don't know what pay has  
10 to do with this hearing, you're in the wrong hearing, sir.

11 MR. CANNON: I'm -- I'm in a hearing where you're --

12 MR. BOIGUES: And then you --

13 MR. CANNON: -- making a very long record, which I --

14 MR. BOIGUES: Yeah.

15 MR. CANNON: -- thanks for doing it. Go ahead.

16 MR. BOIGUES: I know you want more money, and you know,  
17 we'll see if you get paid, but we'll make a long record as we  
18 need to.

19 MR. CANNON: Right, that -- that's the reason, Miguel.

20 HEARING OFFICER KOPPER: Let's just --

21 MR. BOIGUES: So you have your two --

22 HEARING OFFICER KOPPER: -- bring it --

23 MR. BOIGUES: -- your two attorneys --

24 HEARING OFFICER KOPPER: -- down a --

25 MR. BOIGUES: -- here.

1 HEARING OFFICER KOPPER: -- notch everyone.

2 MR. BOIGUES: Thank you.

3 Q BY MR. BOIGUES: Mr. Lamb --

4 MR. CANNON: You know what to ask -- ask another couple of  
5 hours' worth of --

6 MR. BOIGUES: Thank you.

7 MR. CANNON: -- questions.

8 MR. BOIGUES: Thank you. Of course. More billable work  
9 for both of you. I understand. That's fine.

10 MR. CANNON: Not the reason why --

11 HEARING OFFICER KOPPER: Let's get --

12 MR. BOIGUES: Oh, sure.

13 HEARING OFFICER KOPPER: -- back to what's relevant.

14 MR. BOIGUES: Thank you.

15 Q BY MR. BOIGUES: Mr. Lamb, can the RNs -- let's start with  
16 them -- can they grant the hazard pay that the employees have  
17 been demanding and asking that you give them? Do they have  
18 authority to do that?

19 A I can't even grant it.

20 Q You can't even grant it.

21 A So does that answer your question?

22 Q Well, you answer my question. I'm asking you to answer my  
23 question. Is the answer yes or no? Are they able to or not?  
24 I didn't ask about you. I'm asking can the RNs grant the  
25 hazard pay to the unionized staff, yes or no?

1 A Nobody can. The answer's no.

2 MR. BOIGUES: The answer's no. Thank you, sir.

3 That's all the questions I have.

4 HEARING OFFICER KOPPER: Okay, great.

5 MR. BOIGUES: And no -- no -- no more billables for you,

6 Mr. Cannon.

7 HEARING OFFICER KOPPER: I --

8 MR. CANNON: Strike that --

9 HEARING OFFICER KOPPER: -- right, you're --

10 MR. CANNON: -- from the record.

11 HEARING OFFICER KOPPER: -- excused as a witness, Mr.

12 Lamb. You can still participate in the hearing, but I don't

13 get --

14 THE WITNESS: Thank you. I have a question. May I put --

15 may I just ask it quickly? What would --

16 HEARING OFFICER KOPPER: Do you want to --

17 THE WITNESS: -- you want me to do with Union's Exhibit 3,

18 the one that I referenced and looked at during the -- during

19 the hearing?

20 HEARING OFFICER KOPPER: Yes, do you want to -- do you

21 want to -- do you have a question?

22 THE WITNESS: Yes, you said to provide you with what I was

23 looking at. It's Union --

24 MR. BOIGUES: He has a schedule from October that wasn't

25 turned over, but he has things in front of him that he's

1 referring to.

2 THE WITNESS: That's what I looked at --

3 MR. BOIGUES: (Indiscernible, simultaneous speech).

4 THE WITNESS: -- to get the name of the employee.

5 HEARING OFFICER KOPPER: Right, yes, so I was just asking  
6 you to turn it over because witnesses aren't supposed to be  
7 reviewing documents without the --

8 THE WITNESS: Right.

9 HEARING OFFICER KOPPER: -- parties knowing --

10 THE WITNESS: I apologize for that. I -- I wasn't aware  
11 that I wasn't allowed to look at -- an exhibit.

12 HEARING OFFICER KOPPER: No worries. I should've given  
13 better instructions.

14 So you're excused, Mr. Lamb, as a witness, so I'm just  
15 going to mute you, but you're welcome to continue to observe  
16 the hearing.

17 THE WITNESS: Thank you.

18 HEARING OFFICER KOPPER: Mr. Cannon, do you have any  
19 additional witnesses?

20 MR. CANNON: No, the Employer rests.

21 HEARING OFFICER KOPPER: Okay. Mr. Boigues, do you --

22 MR. BOIGUES: Yeah.

23 HEARING OFFICER KOPPER: -- want to call a witness?

24 MR. BOIGUES: No witnesses. Thank you.

25 HEARING OFFICER KOPPER: Okay.



1 MR. BOIGUES: Oh, and the billing hours are evaporating.  
2 Sorry.

3 HEARING OFFICER KOPPER: Okay, we can all stop with the --  
4 with the jokes.

5 MR. CANNON: Look at yourself. You're so proud of  
6 yourself.

7 HEARING OFFICER KOPPER: All right, I think it's fairly  
8 clear, but Mr. Cannon, do you want to summarize your final  
9 position regarding the supervisory status of the RNs?

10 MR. CANNON: No, we'd like to file a brief if the regional  
11 director would want to set a briefing schedule.

12 HEARING OFFICER KOPPER: Okay, we'll get to that.

13 Mr. Boigues, did you want to summarize your final position  
14 at this point, not --

15 MR. BOIGUES: Yes, of course.

16 HEARING OFFICER KOPPER: -- in lieu of a brief, just --

17 MR. BOIGUES: Of course. Yeah, of course, as you -- as  
18 a -- as I -- as is always done in these hearings.

19 The Union's position remains that the unit requested by  
20 the petition for an Armour-Globe/Sonotone election is  
21 appropriate, and the Employer has failed miserably to meet  
22 their burden in this case to prove that any single RN is a  
23 supervisor, which is their burden. They have to prove it with  
24 respect to each individual that they claim exercise authority,  
25 and they have failed to do so based on the limited evidence

1 that they presented in this case. This is nothing but delay  
2 and billable hours' time.

3 HEARING OFFICER KOPPER: Couple housekeeping issues. I  
4 failed to receive into the record Board Exhibits 1 and 2,  
5 although I did ask if anyone has any objections. There were no  
6 objections to Board Exhibit 1, so I'd like to admit -- get that  
7 admitted into the record, so that's admitted. And Board  
8 Exhibit 2, there were also no objections, so Board Exhibit 2 is  
9 admitted into the record.

10 **(Board Exhibit Numbers 1 and 2 Received into Evidence)**

11 HEARING OFFICER KOPPER: Now I would like to explore  
12 election details in the event an election is directed. If an  
13 election is directed, it will be scheduled for the earliest  
14 date practicable.

15 If an election is directed, does any party who is entitled  
16 to receive the voter list wish to waive the ten day, or any  
17 portion of the ten day requirement?

18 MR. BOIGUES: Yes, the Union will waive up to eight days  
19 of the requirement in order to get quick election, as soon as  
20 practicable, as required by the rules.

21 HEARING OFFICER KOPPER: Mr. Cannon?

22 MR. CANNON: Yeah, I don't have the right to a voter list.

23 HEARING OFFICER KOPPER: Oh, my apologies. All right --

24 MR. CANNON: I will --

25 HEARING OFFICER KOPPER: -- okay.

1 MR. CANNON: I will -- I will waive the right to have the  
2 voter list.

3 HEARING OFFICER KOPPER: Has either party's position  
4 changed concerning the election details provided in its  
5 petition -- well, this is just for the Union -- or responsive  
6 statement of position?

7 MR. BOIGUES: No, Union's petition remains the same that  
8 it should be a mail ballot election.

9 HEARING OFFICER KOPPER: Does any party perceive an  
10 impediment to conducting an election if an election is directed  
11 between November 3rd and November 24th, 2020?

12 MR. CANNON: Let -- let me just say for the Employer, the  
13 Employer would ask that a manual election be held.

14 HEARING OFFICER KOPPER: Yeah, we're going to go through a  
15 lot about that, unfortunately.

16 MR. CANNON: Yeah.

17 HEARING OFFICER KOPPER: So I heard no one say they had  
18 any impediment for an election if it was to be directed between  
19 November 3rd and November 24th.

20 MR. CANNON: What the Employer would -- would ask that the  
21 election be directed on November 23rd.

22 HEARING OFFICER KOPPER: And is -- what is the impediment  
23 for any of the other dates?

24 MR. CANNON: Well, it -- it's unclear at this point who --  
25 you know, who's going to be in, who's going to be out. The

1 Employer would like time to sit and discuss factual information  
2 with those people that knows they're going to be voting.  
3 Obviously, the -- the 3rd is -- is right around the corner.  
4 It's much too soon for the Employer, in the Employer's view,  
5 anyway.

6 MR. BOIGUES: Well, we obviously disagree that more time  
7 should be provided for union-busting by the Employer. The --  
8 the rules require that the election be scheduled as soon as  
9 practicable, and just because the Employer wants more time,  
10 that doesn't mean that the election should be delayed in order  
11 for union-busting purposes, as counsel just admitted.

12 HEARING OFFICER KOPPER: Mr. Cannon, what is the  
13 Employer's position concerning the type of election? You  
14 stated the preference is for manual; is that correct?

15 MR. CANNON: Yes, yes.

16 HEARING OFFICER KOPPER: And you stated the preference is  
17 for November 23rd. What about the times and locations of the  
18 election?

19 MR. CANNON: As far as location, there is a -- there --  
20 there's an outside tent area that -- that we think might work,  
21 but there's also -- there's a conference room. I don't --

22 George, are you still on?

23 I believe there's a -- there's a conference or a break  
24 room inside the building. Either one of those, I think, would  
25 be fine.

1           And between 2 and 5 p.m., I think, would cover -- you  
2 would -- you would catch all the people in the facility as  
3 they're coming in or, you know, are leaving.

4           HEARING OFFICER KOPPER: And if there were to be a mail or  
5 mixed manual/mail election, what is the Employer's position  
6 concerning the manner, date, time, and places of ballot count?

7           MR. CANNON: Well, a manual election, and so the ballot  
8 count when -- when the polls close. That would be our  
9 position.

10          HEARING OFFICER KOPPER: But if a mail or mixed  
11 manual/mail election were to be directed, what is the  
12 Employer's position on the date, time, and place of the ballot  
13 count?

14          MR. CANNON: I -- I think we're open on that. I mean, if  
15 there's going to be a mail ballot election, I would imagine  
16 that the ballot count's going to be via Zoom, so I don't think  
17 we take a position on that.

18          HEARING OFFICER KOPPER: Okay, and what is the Employer's  
19 position on the eligibility period, including the most recent  
20 payroll ending date and frequency.

21          MR. CANNON: Normal. Meaning the payroll period ending  
22 before the -- the direction is issued.

23          HEARING OFFICER KOPPER: Okay, so the mode of the election  
24 is nonlitigable, but we are requesting the parties input in  
25 this area, and I have a number of questions I have to go

1 through if -- given these circumstances.

2 So Mr. Lamb, you can respond to these questions, but this  
3 is not testimony. You are -- you were placed under oath  
4 previously, but you are no longer testifying. This is just to  
5 provide input, given the Employer's position on having a -- a  
6 manual election.

7 So what areas of the facility are members of the public  
8 allowed to enter, currently?

9 MR. LAMB: Only the front entranceway. The front lobby,  
10 main entrance to the building, is permissible as far as entry  
11 and exit.

12 HEARING OFFICER KOPPER: And please describe the layout of  
13 the -- the parking available, both for the public and private  
14 areas of parking.

15 MR. LAMB: Parking is limited, very limited. It's a small  
16 parking lot, and it won't -- it would not accommodate too much  
17 traffic in it.

18 HEARING OFFICER KOPPER: You mentioned one public entrance  
19 to the facility, but can you describe all the other entrances  
20 and exits to the facility?

21 MR. LAMB: We have emergency exits from the building, one  
22 that's primarily used by housekeeping for -- for taking out  
23 trash and that kind of thing, but as far as entry to the  
24 building, for the purposes of a screening and -- and -- and of  
25 a -- of -- of people, it would have to be through the front

1 entranceway. It would have to be in the lobby.

2 We'd have to do a temp check and a screening, but that  
3 would work for employees, and I think that's why Mr. Cannon was  
4 talking about outdoor because I don't think it would be  
5 possible to -- and we would need to have, of course, Union  
6 representatives in the building for this purpose, but  
7 unfortunately, as I mentioned to Jeff from the Union, we can  
8 only have emergency and staff at this time entering the  
9 building. We're not even doing visitors in the building at  
10 this time. We're doing only visits -- visitation outside.

11 So I don't think utilizing a room in the building would --  
12 would -- would be feasible. I think it would have to be --  
13 such as Mr. Cannon mentioned, out front we have a visitation  
14 area, which is a canopy, a tented area. We have a large front  
15 that could accommodate this. We could put tables out. We  
16 could -- we could set it up accordingly, but it -- probably  
17 that's what would have to be done if we were to do physical  
18 balloting.

19 HEARING OFFICER KOPPER: And how large is the -- the tent,  
20 the tented area, the proposed voting area?

21 MR. LAMB: The tent is 10 by 20 feet, but the -- but the  
22 landscaping around it, there's benches and -- plenty of benches  
23 and what with social distancing, probably, we -- we would have  
24 to scatter a bit, and that's why I think it would have to be  
25 outdoors because indoors, we would have social distancing.

1 We -- we wouldn't be allowed to bring some people in. It --  
2 it -- it would have to be an outdoor event, and only the front  
3 of our building would accommodate.

4 HEARING OFFICER KOPPER: And what does the Employer intend  
5 to do to make the election safe?

6 MR. LAMB: Safe?

7 HEARING OFFICER KOPPER: Yeah.

8 MR. LAMB: I guess privacy would be the only problem.

9 HEARING OFFICER KOPPER: Have any employees at the  
10 facility contracted COVID-19?

11 MR. LAMB: Oh, you're referring to COVID? That's why I  
12 couldn't understand.

13 HEARING OFFICER KOPPER: Oh.

14 MR. LAMB: Outdoor is much safer than indoor anyway  
15 because of the ventilation. Outdoor we have to -- we just --  
16 we would enforce masking and social distancing, and many --

17 Did you find this humorous?

18 MR. BOIGUES: I do find this humorous. To say that to the  
19 people that were at the Rose Garden thinking that they were  
20 safe because they were outdoors. I find it very humorous what  
21 you're trying to do. Especially a facility your neigh -- your  
22 neighbor facility, Gateway, who is under investigation by the  
23 district attorney because people have died because of COVID in  
24 there and -- and issue, so --

25 HEARING OFFICER KOPPER: Okay --

1 MR. BOIGUES: -- I do --

2 HEARING OFFICER KOPPER: -- so --

3 MR. BOIGUES: -- find it humorous that you think that  
4 it -- a manual election should go forward.

5 MR. LAMB: So he --

6 HEARING OFFICER KOPPER: So again, remember this is non --

7 MR. LAMB: The fact that we're assembled --

8 HEARING OFFICER KOPPER: -- litigable. I'm just  
9 getting --

10 MR. BOIGUES: I'm not litigating it.

11 HEARING OFFICER KOPPER: I'm just getting input.

12 And so you mentioned masks. Are you able to provide face  
13 shields?

14 MR. LAMB: Yes, we do. For our visitations outside we  
15 already do that, yes.

16 MR. BOIGUES: Apparently enough for the staff, for sure.

17 HEARING OFFICER KOPPER: And PPE, personal protective  
18 equipment?

19 MR. LAMB: I think that would be face shields and masks  
20 and social distancing that we have enforced for personal --

21 HEARING OFFICER KOPPER: Are you able to provide gloves?

22 MR. LAMB: Yes.

23 HEARING OFFICER KOPPER: Are you able to vide -- provide  
24 disinfecting wipes?

25 MR. LAMB: Yes.

1 HEARING OFFICER KOPPER: Are you able to provide  
2 plexiglass barriers?

3 MR. LAMB: We would not have that, no. No, I don't think  
4 that we would -- any -- that -- that's a good observation.

5 HEARING OFFICER KOPPER: Are you able to provide  
6 disposable pencils without erasers?

7 MR. LAMB: Yes, I'm sure we could.

8 HEARING OFFICER KOPPER: How many employees at this  
9 facility have contracted COVID-19?

10 MR. LAMB: We've had one.

11 HEARING OFFICER KOPPER: Have any residents or patients at  
12 this facility contracted COVID-19?

13 MR. LAMB: No.

14 HEARING OFFICER KOPPER: Have any managers contracted the  
15 COVID-19?

16 MR. LAMB: No.

17 HEARING OFFICER KOPPER: Has the workforce been tested for  
18 COVID-19?

19 MR. LAMB: We test weekly.

20 HEARING OFFICER KOPPER: And what percentage of the  
21 workforce is -- is tested on a weekly basis?

22 MR. LAMB: 100 percent.

23 HEARING OFFICER KOPPER: And there's only been one  
24 positive test, or one individual, at the facility?

25 MR. LAMB: We believe she was exposed outside the

1 building, and she was immediately put out. We were contacted  
2 by county public health and --

3 HEARING OFFICER KOPPER: Okay, what --

4 MR. LAMB: -- that was our one exposure.

5 HEARING OFFICER KOPPER: What percentage of the workforce  
6 is under the age of 25? It's okay if you don't know.

7 MR. LAMB: Would we say ten percent, I mean --

8 HEARING OFFICER KOPPER: What per --

9 MR. LAMB: -- 20 percent. I --

10 HEARING OFFICER KOPPER: What percent --

11 MR. LAMB: -- I just don't know everyone's age.

12 HEARING OFFICER KOPPER: What percentage of the workfo --  
13 force are over the age of 50?

14 MR. LAMB: Over 50? Probably 80 percent.

15 HEARING OFFICER KOPPER: And what percentage of the  
16 patients or residents are over the age of 50?

17 MR. LAMB: The residents?

18 HEARING OFFICER KOPPER: Yeah.

19 MR. LAMB: Over 50? Probably 90 percent.

20 HEARING OFFICER KOPPER: So --

21 MR. LAMB: Or higher than that. Maybe 95 percent.

22 We're -- we -- we have senior clientele.

23 HEARING OFFICER KOPPER: Okay. And is the facility -- the  
24 facility isn't open to the public -- is not open to the public?

25 MR. LAMB: No, we're not. We're still not open to the

1 public.

2 HEARING OFFICER KOPPER: If -- and they're not allowing  
3 visitors to the facility?

4 MR. LAMB: No. No, we're not allowing visitors, except  
5 for emergency -- for providers of care. We are bringing in  
6 providers of care now and -- and regular staff. But no  
7 visiting in the facility. We do have visitation outside and  
8 through glass visits too.

9 HEARING OFFICER KOPPER: And how many visitors are allowed  
10 outside the facility per day?

11 MR. LAMB: How many visitors are allowed -- allowed  
12 outside?

13 HEARING OFFICER KOPPER: Um-hum.

14 MR. LAMB: We could accommodate per day one, two, three,  
15 four at a time.

16 HEARING OFFICER KOPPER: Four at a time. And what are the  
17 visiting hours?

18 MR. LAMB: 10 to 7:30. No, no, it's earlier than that.  
19 8.

20 HEARING OFFICER KOPPER: 8 a.m. to 7:30 p.m.?

21 MR. LAMB: Well, because we -- we did the visitation  
22 outside. We did that visitation outside for 9 to 11. So I'd  
23 say it's 9 now. 9 to -- 9 to 6.

24 HEARING OFFICER KOPPER: 9 a.m. to 6 p.m.?

25 MR. LAMB: Yeah. Because we're not doing earlier than 9.

1 HEARING OFFICER KOPPER: And do you -- what do you require  
2 visitors to wear?

3 MR. LAMB: Okay, when it's through glass, they have to  
4 wear a face mask. What's allowed in the community at this  
5 time, because it's through glass; they're not in the building.  
6 You're outside, the resident's inside. If it's a visitation in  
7 our canopy area where we can only do two visitors at a time  
8 with a resident --

9 HEARING OFFICER KOPPER: So the visitors are outside, but  
10 the residents are inside?

11 MR. LAMB: Yes, except for outdoor visitation. In outdoor  
12 visitations, the resident would wear a face mask and shield,  
13 and the -- the visitor would wear a face mask and -- and have  
14 proof of recent, within five day, COVID testing and stay  
15 socially distant.

16 HEARING OFFICER KOPPER: Okay. And do you take  
17 temperature checks of visitors?

18 MR. LAMB: We do. Even for these visitations, we take the  
19 temperature check. Yes.

20 HEARING OFFICER KOPPER: Are residents or patients allowed  
21 to go off-campus or off-site?

22 MR. LAMB: No. They only go out for doctors' visits.

23 HEARING OFFICER KOPPER: Do you know what the CDC  
24 infection rates of employees in this industry are?

25 MR. LAMB: You mean our county positivity rate?



1 HEARING OFFICER KOPPER: The infection rates for employees  
2 in the industry.

3 MR. LAMB: Not in the industry. We -- we're keeping track  
4 of positivity rates now county-wide for purposes of -- of  
5 seeing a -- and our -- our positivity rate has drastically  
6 fallen. It was up by -- like, week four, it went down to 2. --  
7 I think it's -- it's below 2 now in -- in Alameda County.

8 HEARING OFFICER KOPPER: And you -- you said before  
9 there's roughly 150 employees total at the facility?

10 MR. LAMB: No, total employees in the facility, I think I  
11 said 115.

12 HEARING OFFICER KOPPER: 15. Okay. And what are  
13 employees required to wear at the facility?

14 MR. LAMB: They're required to wear face -- surgical face  
15 masks. In our observation area, they're required to wear N-95  
16 face masks. And whenever they're in proximity of residents,  
17 they need to wear a face shield as well.

18 HEARING OFFICER KOPPER: And are employees' temperatures  
19 taken on a daily basis?

20 MR. LAMB: When they arrive. When they arrive, their  
21 temperatures are taken upon arrival and recorded in our  
22 screening log.

23 HEARING OFFICER KOPPER: And what is the protocol when an  
24 employee has an elevated temperature?

25 MR. LAMB: They don't work that day. That's why the

1 screening log. There's a second group of questions that  
2 they're asked, and plus, we take their temperature check. And  
3 if they answer any of the questions or if it's an elevated  
4 temperature, they're sent home.

5 HEARING OFFICER KOPPER: And are there rules about how  
6 many employees can be in the break room at the same time?

7 MR. LAMB: Yeah, we've already -- yeah. We -- we're --  
8 we're distancing in the break room. We're trying to  
9 accommodate our staff with more areas where they can have  
10 their -- have their meals. And we're -- we're -- on all  
11 tables, we're indicating the number of people that can be at  
12 any given table at one time, so that they're not -- because  
13 mealtime, masks can be removed, and we want no close proximity,  
14 but we want them to be able to eat at that time, so we've --  
15 we've expanded our dining facilities for our staff, because our  
16 residents are not using them for dining at this time. We have  
17 that opportunity.

18 HEARING OFFICER KOPPER: Okay, thank you, Mr. Lamb. Mr.  
19 Boigues, what is the Petitioner's position concerning the type  
20 of election?

21 MR. BOIGUES: Petitioner's position remains that -- that a  
22 mail ballot election will be the safest option, not only for  
23 the Board agent but also for the observers. And as Mr. Lamb  
24 has already noted, the facility has had a no-visitors rule in  
25 place at the facility because of the unsafe conditions that

1 there would be if individuals entered a facility, and as Mr.  
2 Lamb has already said as well, even in the outside area where  
3 residents are -- family members are there to -- to go visit  
4 them and where they're proposing that an election occur, even  
5 there, there is limited number of people could be out there,  
6 because of the exposure and the risk.

7 And therefore, especially -- and we'll have this in our --  
8 in our post-hearing brief as well, nursing homes in California  
9 have been known to be the epicenter of the virus, the pandemic  
10 that we are going through right now. One of the sister  
11 facilities of this Employer is under investigation by the  
12 county because of the problems that there were in that facility  
13 regarding this pandemic and the rates in the county, in Alameda  
14 County where the facility's located, are still much higher for  
15 healthcare workers and for residents than it is for the entire  
16 county. And those numbers are all available in the California  
17 Department of Public Health website, and we will share them in  
18 our post-hearing brief.

19 So we don't see how an in-person election is possible,  
20 unless the Employer just wants an in-person election for  
21 purposes of watching who goes in and who votes in this tent  
22 that they are proposing to set up outside of the facility. But  
23 for any other purpose, the unsafe conditions require there be a  
24 mail ballot election. So our position has not changed.

25 HEARING OFFICER KOPPER: And what is the Petitioner's

1 position -- if a manual or mixed manual/mail election were to  
2 be ordered, what's the Petitioner's position as to the dates,  
3 times, and locations of the election?

4 MR. BOIGUES: For the what, excuse me?

5 HEARING OFFICER KOPPER: If -- if the regional director  
6 were to order a manual or mixed manual/mail vote --

7 MR. BOIGUES: What would be the -- the location? We would  
8 have to find -- probably find some hall away from the facility  
9 that would be large enough to allow the observers and the Board  
10 agent who will be there to be socially distant and for people  
11 to come in and out of that building without being under the  
12 watchful eye of the Employer or its union-busting attorneys  
13 during the election. And then, you would have to schedule an  
14 election for multiple days, to make sure that individuals who  
15 are not working or who have other jobs because of the -- of the  
16 situation are able to actually show up and vote if they're off  
17 or they are unable to travel from further distances than the  
18 county that they live in.

19 HEARING OFFICER KOPPER: Okay, and do you have a -- an  
20 additional position on the -- the exact dates and times?

21 MR. BOIGUES: Exact date and time remains as it is  
22 required by Board rule, as soon as practicable. It should be  
23 as soon as possible after direction of election in ordered in  
24 this case -- is issued in this case.

25 HEARING OFFICER KOPPER: And if a mail ballot election



1 were to be ordered, what is the Petitioner's position on the  
2 manner, date, time, and place of the ballot count?

3 MR. BOIGUES: The ballot count should be done as it is has  
4 been in every other situation, over video, so --

5 HEARING OFFICER KOPPER: Okay, and what is the  
6 Petitioner's position regarding the eligibility period within  
7 the most recent payroll ending date and frequency?

8 MR. BOIGUES: It will the same as the Employer's counsel  
9 stated, it should be the most recent payroll ending period  
10 after the decision is issued in this case ordering an election,  
11 so we know what will happen.

12 HEARING OFFICER KOPPER: Thank you. Does any party  
13 anticipate the need for the notice of election and ballots to  
14 be translated?

15 MR. BOIGUES: Not the Petitioner.

16 HEARING OFFICER KOPPER: Okay, Mr. Cannon, what is the  
17 name, address, email address, fax number, and telephone number  
18 of the Employer's on-site representative to whom the regional  
19 director should transmit the notice of election, if an election  
20 is directed?

21 MR. CANNON: I'd -- I'd ask Mr. Lamb to give his  
22 information.

23 MR. LAMB: Of course. G -- G as in George, L as in Larry,  
24 A as in apple, M as in Mary, B as in boy, at T as in Thomas, H  
25 as in Harry, E as in Edward -- so it says "the" -- K-K, Kelly

1 kite, E-K, kite, dot com. So it's glamb@thekkek.com. That's  
2 the email address. Is that what you -- what --

3 HEARING OFFICER KOPPER: Yes, and can you also provide the  
4 address?

5 MR. LAMB: 2100 Parkside Drive, P-A-R-K-S-I-D-E, one word,  
6 Drive, Fremont, 94536.

7 HEARING OFFICER KOPPER: And your phone number, please?

8 MR. LAMB: 510-797-5300, extension 202.

9 HEARING OFFICER KOPPER: And fax number?

10 MR. LAMB: 510 -- may I look that up? Fax number --

11 HEARING OFFICER KOPPER: We may have it. Claudine, do you  
12 have the fax --

13 MR. LAMB: I've got it. I've got it. 797-3767.

14 HEARING OFFICER KOPPER: Thank you. Mr. Cannon, if an  
15 election is directed, may the region communicate with your  
16 election observer regarding election procedures and any issues  
17 that arise during an election, the pre-election conference, and  
18 the ballot count?

19 MR. CANNON: Yes.

20 HEARING OFFICER KOPPER: Mr. Boigues, if an election is  
21 directed, may the region communicate with your election  
22 observer regarding election procedures and any issues that  
23 arise during an election, the pre-election conference, and the  
24 ballot count?

25 MR. BOIGUES: Of course.

1 HEARING OFFICER KOPPER: The regional director will issue  
2 a decision in this matter as soon as practical and will  
3 immediately transit the document to the parties' designated  
4 representatives by email, fax, or by overnight mail. Prior to  
5 this hearing, the parties were provided with form NLRB-5580,  
6 Description of Voter List Requirement After Hearing in  
7 Certification and Decertification Cases, which explains the  
8 Employer's obligation to furnish a voter list should an  
9 election be directed in this matter. A document is marked for  
10 identified as Board Exhibit 4, I believe. Yes. Are there any  
11 objections to the receipt of Board Exhibit 4?

12 MR. BOIGUES: None from Petitioner.

13 MR. CANNON: No.

14 HEARING OFFICER KOPPER: Hearing no objection, Board  
15 Exhibit is received into the record.

16 **(Board Exhibit Number 4 Received into Evidence)**

17 HEARING OFFICER KOPPER: Any party -- party is entitled  
18 upon request to a reasonable period at the close of hearing for  
19 oral argument. Does any party wish to make such a request at  
20 this time? Okay. No requests at this time.

21 Any party desiring to submit a brief to the regional  
22 director shall be entitled to do so within five business days  
23 after the close of the hearing. Copies of the briefs shall be  
24 served upon all other parties to the proceeding, and a  
25 statement of such service shall be filed with the regional

1 director, together with the brief. No reply briefs may be  
2 filed, except upon special permission of the regional director.  
3 Does any party wish to waive the filing of post-hearing briefs?

4 MR. CANNON: No, the Employer would like to file a brief.

5 HEARING OFFICER KOPPER: Briefs shall be due on October  
6 27th, 2020. Parties are reminded that pursuant to Section  
7 102.5 of Board's rules and regulations, briefs and other  
8 documents must be filed by electronically submitting, e-filing  
9 through the Agency's website at [www.NLRB.gov](http://www.NLRB.gov), unless the party  
10 filing the document does not have access to the means of  
11 filing -- for filing electronically or filing electronically  
12 would impose an undue burden. Briefs or other documents filed  
13 by means other than e-filing must be accompanied by a statement  
14 explaining why the filing party does not have access to the  
15 means for filing electronically or filing electronically would  
16 impose an undue burden.

17 Filing a brief or other document electronically may be  
18 accomplished by using the e-filing system on the Agency's  
19 website at [www.NLRB.gov](http://www.NLRB.gov). Once the website is accessed, click  
20 on e-file documents, enter the NLRB case number, and follow the  
21 detailed instructions.

22 The responsibility for the receipt of the document rests  
23 exclusively with the sender. A failure -- a failure to timely  
24 file the brief will not be excused on the basis that the  
25 transmission could not be accomplished because the Agency's



1 website was offline or unavailable for some other reason,  
2 absent a determination of technical failure of the site with  
3 notice of such posted on the website.

4 Okay, Claudine, do you have all the exhibits?

5 THE COURT REPORTER: Yes, ma'am.

6 HEARING OFFICER KOPPER: Do you have an estimate of the  
7 number of pages for the transcript?

8 THE COURT REPORTER: Maybe 80 to 100.

9 HEARING OFFICER KOPPER: Thank you. The parties are  
10 reminded that they should request an expedited copy of the  
11 transcript from the court reporter. If there is nothing  
12 further, the hearing will be closed.

13 MR. BOIGUES: Thank you, Madam Hearing Officer, Madam --

14 MR. CANNON: Thank you.

15 MR. BOIGUES: -- Court Reporter.

16 HEARING OFFICER KOPPER: The hearing is now closed. We  
17 can go off the record.

18 **(Whereupon, the hearing in the above-entitled matter was closed**  
19 **at 12:09 p.m.)**

20

21

22

23

24

25

C E R T I F I C A T I O N

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 32, Case Number 32-RC-266500, AAKASH, Inc. dba Park Central Care and Rehabilitation Center and Service Employees International Union, Local 2015, conducted via Zoom videoconference at the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA 94612-5224, on October 20, 2020, at 9:07 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

*Claudine Metoyer*  
\_\_\_\_\_  
CLAUDINE METOYER

Official Reporter



**INDEX AND DESCRIPTION OF FORMAL DOCUMENTS**

**Re: Park Central Care and Rehabilitation Center  
Case 32-RC-266500**

- Board's Exhibit      1(a) Original Petition, 32-RC-266500, dated 9/22/2020
- 1(b) Original Notice of Representation Hearing, dated 9-23, 2020
- 1(c) Affidavit of Service of 1(b)
- 1(d) Index and Description of Formal Documents

DO NOT WRITE IN THIS SPACE	
Case No. <b>32-RC-266500</b>	Date Filed <b>09/22/2020</b>

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

<b>2a. Name of Employer:</b> Park Central Care and Rehabilitation Center	<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> 2100 Parkside Drive, Fremont, CA 94536
---	---

<b>3a. Employer Representative - Name and Title:</b> George Lamb	<b>3b. Address (if same as 2b - state same):</b> SAME
---	--

<b>3c. Tel. No.</b> (510) 797-5300 ext. 202	<b>3d. Cell No.</b> N/A	<b>3e. Fax No.</b> (510) 797-3767	<b>3f. E-Mail Address</b> glamb@thekkek.com
--	----------------------------	--------------------------------------	--

<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Skilled Nursing Facility	<b>4b. Principal Product or Service</b> Health care	<b>5a. City and State where unit is located:</b> Fremont, CA
--	--	---

<b>5b. Description of Unit Involved:</b> <b>Included:</b> All FT, PT & On-Call RNs and LVNs employed in the facility (Armour-Globe) <b>Excluded:</b> All other employees, managers guards & supervisors as defined in the Act	<b>6a. Number of Employees in Unit:</b> 25	<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---	---

Check One:  7a. Request for recognition as Bargaining Representative was made on (Date) By this petition and Employer declined recognition on or about (Date) N/A (If no reply received, so state).  
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent (If none, so state)</b> NONE	<b>8b. Address:</b>
---	---------------------

<b>8c. Tel. No.</b>	<b>8d. Cell No.</b>	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b>
---------------------	---------------------	--------------------	---------------------------

<b>8g. Affiliation, if any:</b>	<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b>
---------------------------------	---	--

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** NO If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of Labor Organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**  
NONE

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts and election in this matter, state your position with respect to any such election:  Manual  Mail  Mixed Manual/Mail

<b>11b. Election Date(s):</b> 10/09/2020	<b>11c. Election Time(s):</b> N/A	<b>11d. Election Location(s):</b> N/A
---	--------------------------------------	--

<b>12a. Full Name of Petitioner (including local name and number):</b> Service Employees International Union, Local 2015	<b>12b. Address (street and number, city, State and ZIP code):</b> 2910 Beverly Blvd. Los Angeles, CA 90057
---	--

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):**  
Service Employees International Union

<b>12d. Tel. No.</b> (213) 985-0400	<b>12e. Cell No.</b>	<b>12f. Fax No.</b>	<b>12g. E-Mail Address</b> JeffA@seiu2015.org
--	----------------------	---------------------	--

<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b> <b>13a. Name and Title:</b> Manuel A. Boigues, Attorney for Union	<b>13b. Address (street and number, city, State and ZIP code):</b> 1001 Marina Village Parkway, Suite 200, Alameda, CA 94501
--	---

<b>13c. Tel. No.</b> (510) 337-1001	<b>13d. Cell No.</b>	<b>13e. Fax No.</b> (510) 337-1023	<b>13f. E-Mail Address</b> mboigues@unioncounsel.net
--	----------------------	---------------------------------------	---

I declare that I have read the above petition and that I am the representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

Name (Print) Manuel A. Boigues		Date 09/22/20
-----------------------------------	--	------------------

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**



<p><b>PARK CENTRAL CARE AND REHABILITATION CENTER</b></p> <p style="text-align: center;"><b>Employer</b></p> <p style="text-align: center;"><b>and</b></p> <p><b>SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015</b></p> <p style="text-align: center;"><b>Petitioner</b></p>	<p><b>Case 32-RC-266500</b></p>
---	---------------------------------

**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

**YOU ARE HEREBY NOTIFIED** that the hearing in the above matter will be a videoconference hearing and is hereby scheduled for **Wednesday, October 14, 2020**, at 9:00 a.m. A pre-election conference call for the purpose of narrowing the issues, reaching stipulations, and discussing potential exhibits is scheduled for October 1, 2020, at 10:00 a.m. It may be conducted by videoconference or telephonically. All parties will be contacted and provided a call-in number and conference ID prior to the pre-election conference.

**YOU ARE FURTHER NOTIFIED** that, pursuant to Section 102.63(b) of the Board’s Rules and Regulations, **PARK CENTRAL CARE AND REHABILITATION CENTER** must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on October 05, 2020. Following timely filing and service of a Statement of Position by **PARK CENTRAL CARE AND REHABILITATION CENTER, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015** must complete its Responsive Statement of Position responding to the issues raised in the Employer’s Statement of Position and file it and all attachments with the Regional Director and serve it on the parties named in the petition such that it is received by them no later than **noon** Pacific on October 08, 2020.

**Pursuant to Section 102.5 of the Board’s Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency’s website ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden.** Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing

electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: September 23, 2020

/s/ Valerie Hardy-Mahoney

---

Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street Suite 300N  
Oakland, CA 94612-5224

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

<b>PARK CENTRAL CARE AND REHABILITATION CENTER</b>  <b>Employer</b>  <b>and</b> <b>SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015</b>  <b>Petitioner</b>	<b>Case 32-RC-266500</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated September 22, 2020, Notice of Representation Hearing dated September 23, 2020, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on September 23, 2020, I served the above documents by electronic mail upon the following persons, addressed to them at the following addresses:

GEORGE LAMB, ADMINISTRATOR  
PARK CENTRAL CARE AND  
REHABILITATION CENTER  
2100 PARKSIDE DRIVE  
FREMONT, CA 94536  
glamb@thekkek.com  
Fax: (510)797-3767

MANUEL A. BOIGUES, ESQ.  
WEINBERG, ROGER & ROSENFELD  
1001 MARINA VILLAGE PKWY, STE 200  
ALAMEDA, CA 94577  
mboigues@unioncounsel.net  
Fax: (510)337-1023

JEFF ARMSTRONG  
SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 2015  
2910 BEVERLY BLVD  
LOS ANGELES, CA 90057-1012  
jeffa@seiu2015.org

September 23, 2020

Date

Alice Lafontaine, Designated Agent of NLRB

Name

/s/ Alice Lafontaine

Signature

# EXHIBIT C

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

AAKASH, INC. DBA PARK CENTRAL CARE AND  
REHABILITATION CENTER

Employer

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 2015

Petitioner

Date Filed

Case No. 32-RC-266500

09/22/2020

Date Issued 12/16/2020

Type of Election  
(Check one:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction
- Incumbent Union (Code)

(If applicable check  
either or both:)

- 8(b) (7)
- Mail Ballot

VOTING UNIT A FIRST QUESTION

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters ..... 5
- 2. Number of Void ballots ..... 0
- 3. Number of Votes cast for Inclusion with nonprofessional employees ..... 3
- 4. Number of Votes cast for \_\_\_\_\_ ..... 1
- 5. Number of Votes cast for \_\_\_\_\_ ..... 1
- 6. Number of Votes cast against Inclusion with nonprofessional employees ..... 0
- 7. Number of Valid votes counted (sum of 3, 4, 5, and 6) ..... 3
- 8. Number of Challenged ballots ..... 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) ..... 3
- 10. Challenges are not sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for \_\_\_\_\_

Inclusion with nonprofessional employees

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For AAKASH, Inc. dba Park Central Care and  
Rehabilitation Center

For Service Employees International Union,  
Local 2015

Via Zoom

Via Zoom

For \_\_\_\_\_

For \_\_\_\_\_

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

AAKASH, INC. DBA PARK CENTRAL CARE AND  
REHABILITATION CENTER

Employer

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 2015

Petitioner

Date Filed

Case No. 32-RC-266500

09/22/2020

Date Issued 12/16/2020

Type of Election  
(Check one:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction
- Incumbent Union (Code)

(If applicable check either or both:)

- 8(b) (7)
- Mail Ballot

VOTING UNITS A AND B TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters ..... 18
- 2. Number of Void ballots ..... 0
- 3. Number of Votes cast for Petitioner ..... 13
- 4. Number of Votes cast for \_\_\_\_\_ ..... 1
- 5. Number of Votes cast for \_\_\_\_\_ ..... 1
- 6. Number of Votes cast against participating labor organization(s) ..... 0
- 7. Number of Valid votes counted (sum of 3, 4, 5, and 6) ..... 13
- 8. Number of Challenged ballots ..... 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) ..... 13
- 10. Challenges are ~~not~~ sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for Petitioner

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For AAKASH, Inc. dba Park Central Care and Rehabilitation Center

Via Zoom

For \_\_\_\_\_

For Service Employees International Union, Local 2015

Via Zoom

For \_\_\_\_\_

# EXHIBIT D

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**AAKASH, INC. DBA PARK CENTRAL CARE  
AND REHABILITATION CENTER**

**Employer**

**and**

**Case 32-RC-266500**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 2015**

**Petitioner**

**TYPE OF ELECTION: RD DIRECTED**

**CERTIFICATION OF RESULTS OF ELECTION**

An election has been conducted under the Board's Rules and Regulations among the following group of employees of the Employer to determine if they desired to be represented by SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015, and included in the collective-bargaining agreement between the parties that extends from October 1, 2018 through September 30, 2021.

All full-time, regular part-time, and on-call Registered Nurses and Licensed Vocational Nurses employed by the Employer at its facility located at 2100 Parkside Drive, Fremont, California; excluding Director of Nurses, Assistant Director of Nurses, MDS Coordinators, Directors Staff Development, Infectious Preventionists, LVN supervisors, employees represented by a labor organization, managers, confidential employees, office clerical employees, and supervisors as defined in the Act.

The Tally of Ballots shows that SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015 has been designated by the employees in that group as their collective-bargaining representative. No timely objections have been filed.

As authorized by the National Labor Relations Board,

It is certified that SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015 may bargain for the employees in the above group as part of the unit of employees which it currently represents. The professional employees did wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining.



January 5, 2021

/s/ Valerie Hardy-Mahoney

---

Valerie Hardy-Mahoney  
Regional Director, Region 32  
National Labor Relations Board

Attachment: Notice of Bargaining Obligation

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of the regional director's decision to direct an election, if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by January 20, 2021. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

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](http://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.

## NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

---

<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.