UNITED STASTES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDMICHIGAN MEDICAL CENTER – WEST BRANCH,

Employer **Case No: 07-RD-270474**

and

SEIU HEALTHCARE MICHIGAN

Union

and

RUTH FOURNIER, an Individual

Petitioner

SEIU HEALTHCARE MICHIGAN'S REQUEST FOR EXTRAORDINARY RELIEF

SEIU Healthcare Michigan hereby requests, pursuant to Rule 102.67(j), that this Honorable Board stay the election proceedings in this matter. Ultimately, the Union will file a request for review, pursuant to Rule 102.67(c), and seek review of the Regional Director's Decision and Direction of Election in this manner, issued February 10, 2021. With this pleading, however, the Union seeks a stay of the election ordered by the Regional Director, pending a decision of this Honorable National Labor Relations Board on the Union's request for review.

Argument

On or about December 18, 2020, Petitioner Ruth Fournier, an individual, filed a decertification petition to hold an election within the unit of employees employed by the Employer Mid-Michigan Medical Center – West Branch. The unit description portion of the Petition referenced and attached the Recognition clause of the current collective bargaining agreement between the Employer and the Union, SEIU Healthcare Michigan. It is a "wall-to-

wall" unit of non-management hospital positions, which has operated effectively for over 20 years. It should be noted that the Petition on its face did not seek to disrupt this bargaining unit. **(See Exhibit A, the petition)**. As such, the Petition did not call for a *Sonotone* election.

On February 10, 2021, the Regional Director issued her Decision and Direction of Election. (Exhibit 1, Decision and Direction of Election) In her order, the **ballots will be mailed out on February 26, 2021**. The Regional Director ordered that a Sonotone election take place. The Union challenges the fact that *Sonotone* ballots have been ordered by the Regional Director. The Union also challenges that the Regional Director denied the Union's request to amend its Statement Of Position, and present evidence which challenged the use of a *Sonotone* election.

The Union seeks a ruling that *Sonotone* ballots are not necessary in this case. Specifically, the Union respectfully submits that the law in this area should be clarified by this Honorable Board. During the elections hearing before the Regional Director, the Union sought to make a short evidentiary record to support its arguments on the *Sonotone* election. The Regional Director denied this request. The Regional Director also ruled that a *Sonotone* election was necessary in this case, and ordered that the February 26th mail ballot election be conducted with *Sonotone* ballots.

A stay is necessary in this case, due to the extraordinary circumstances presented here. NLRB Rule 102.67(j) provides as follows

"(j) Requests for extraordinary relief.

(1) A party requesting review may also move in writing to the Board for one or more of the following forms of relief:

(i) Expedited consideration of the request;

(ii) A stay of some or all of the proceedings, including the election; or

(iii) Impoundment and/or segregation of some or all of the ballots.

> (2) Relief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case. The pendency of a motion does not entitle a party to interim relief, and an affirmative ruling by the Board granting relief is required before the action of the Regional Director will be altered in any fashion."

Impounding the ballots from the election for an after-the-fact adjudication of the issue is not satisfactory. Indeed, the Union contests the ballots themselves being used, not merely the persons allowed to vote. As such, the stay of the election – to determine the appropriate ballots themselves – is the only manner to assure that the legal position of the Union is adjudicated without prejudice.

For instance, it is unknown whether the *Sonotone* ballot choice will influence a voter's ultimate decision on the question of union representation. Some voters may decide for or against union representation based upon the possibility of professional employees being carved away from the omnibus professional and non-professional unit, which has existed for more than twenty (20) years. Indeed, recent comments made by bargaining unit members underscore the potential of this occurrence.

Further, the language of the ballot itself could influence the ultimate choice of the voter. In the Regional Director's February 10th Decision, the language of the Sonotone ballots will contain the following choices:

> "The professional employees (Voting Group A) will be asked the following two questions on their ballot:
>
> 1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?
>
> 2. Do you desire to be represented for the purposes of collective bargaining by SEIU Healthcare Michigan?"

(Exhibit 1, pg 13) It is possible voters could be confused by the two choices, and construe the first question to be the ultimate question on union representation. Such confusion would necessarily impact the desire of the voter in that instance.

The risk of the voters being unduly impacted as such could easily be avoided by a delay of a manner of weeks, in order to address the serious question about whether a *Sonotone* election is necessary in the first place.

Precursor To *Sonotone* Argument

The Union appreciates the legal barriers involved in seeking clarity concerning the requirement of a *Sonotone* election, in this circumstance. As but one example, this Board has ruled that the *Sonotone* requirements of Section 9(b) are applicable in decertification proceedings. See, ***American Medical Response, Inc.,*** 344 N.L.R.B. 394 (2005). While those barriers will be addressed more fully in a later briefing, the Union briefing will frame the question somewhat differently. Section 9(b)(1) requires the *Board itself* to offer the *Sonotone* election option to professional employees. The question the Union will address is whether the *parties* have the ability to *maintain* an appropriate unit without offering the *Sonotone* election option.

In the Board decision ***In re Retail Clerks Union Local 324***, 144 N.L.R.B. 1247 (1963), the Board considered an unfair labor practice charge against a union, relying on Section 9(b)(1). There, the union insisted on maintaining an existing unit that combined professionals and nonprofessionals. In dismissing the charge, the Board considered the original purpose of Section 9(b)(1). It affirmed the statutory purpose that the Board could not establish a combined professional/nonprofessional unit without offering the *Sonotone* option, but did not find that the parties themselves were so restricted in maintaining a combined unit:

> "Quite clearly, Section 9(b)(1) precludes the Board in a certification proceeding under Section 9 of the Act from itself establishing an appropriate unit containing

> professional employess (sic) among others, unless the self-determination election requirement of Section 9(b)(1) has first been met. The Act does not, however, require prior resort to a Board determination whenever the *parties* establish an appropriate bargaining unit."

Id., at 1251 (*emphasis* in original). In looking at the legislative history, the Board found "[t]he committee reports reflect that Congress intended Section 9(b)(1) to be applicable to situations where the Board itself establishes bargaining units in the first instance.". Id., at 1251. The Board cited to legislative history which largely addressed the *Sonotone* requirement in the initial establishment of a combined unit, as opposed to maintaining a previously-combined unit. Id., at 1251-1252. Moreover, the Board pointed to the long bargaining history of the parties - six years - and that the parties themselves had initially established and maintained the unit for years without challenge. Id. at 1251, 1254. Therefore, given all this, the Board found no sufficient basis for holding the unit as inappropriate nor did it interpret Section 9(b)(1) requiring it to find otherwise. Id. at 1254.

In this case, the parties to this proceeding have gone on record that they prefer the combined unit, without the requirement of a *Sonotone* election. The Petitioner initially filed the Petition without reference to such. The Employer stated on the record that it did not request a *Sonotone* election. (Tr 90) And of course, the Union has opposed the *Sonotone* election for some time. The Union will argue in its briefing that the Region cannot override a decision of all parties to avoid a *Sonotone* election, and maintain the unit as "coextensive with the recognized or certified bargaining unit." ***Arrow Uniform Rental***, 300 N.L.R.B. 246, 247 (1990). This legal argument will be supported by testimonial evidence – if given the chance – that the professional and nonprofessional employees have indeed chosen to remain combined, over the many years of their Union's representation.

Thus, the Union will respectfully request of this Honorable Board to clarify the law in this area: that the parties may all stipulate to a non-*Sonotone* election, particularly in decertification elections where a combined professional-nonprofessional unit has a long-standing existence. The testimony about the historical operation of the combined unit will support the Union's policy argument that such a clarification is justified.

III. Conclusion

For the above reasons, this Board should grant the Union's Request for Extraordinary Relief and stay the election, currently ordered to take place on February 26, 2021.

Respectfully submitted,

/s/Richard G. Mack

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Dated: February 10, 2021

UNITED STASTES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDMICHIGAN MEDICAL CENTER – WEST BRANCH,

Employer **Case No: 07-RD-270474**

and

SEIU HEALTHCARE MICHIGAN

Union

and

RUTH FOURNIER, an Individual

Petitioner

PROOF OF SERVICE

Sheila Manson states that on **February 10, 2021**, she served a copy of: **The Union's Request for Extraordinary Relief, and a copy of this Proof of Service** upon:

Terry Morgan, Regional Director
National Labor Relations Board – Region 7
477 Michigan Avenue, Room 300
Detroit, MI 48226-2569
terry.morgan@nlrb.gov

MidMichigan Medical Center – West Branch
2463 S. M-30
West Branch, MI 48661

Ruth Fournier
2463 S. M-30
West Branch, MI 48661
ruth.fournier@hotmail.com

via email and by placing same in the United States Mail Box in Detroit, Michigan and via overnight delivery.

Sheila Manson

Subscribed and sworn to before me on
this 10th day of February, 2021

Carrie Ellen McLeod, Notary Public
Oakland County, Acting in Wayne County, MI
My commission expires: 04/10/2025

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

MIDMICHIGAN MEDICAL CENTER –
WEST BRANCH[1]

Employer

and **Case 07-RD-270474**

SEIU HEALTHCARE MICHIGAN[2]

Union

and

RUTH FOURNIER, an Individual

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer provides acute care, rehabilitation, and nursing care services at its medical center facilities located in West Branch, Michigan. Petitioner seeks to decertify the Union as the exclusive collective bargaining representative of certain professional and non-professional employees in the existing unit as defined by the recognition clause in the current collective bargaining agreement (CBA) between the Employer and Union.

The parties disagree as to the professional or non-professional status of the graduate nurse classification. While the Union contends that the graduate nurse classification is non-professional, the Employer and the Petitioner contend that such classification is professional.

I. DECISION

A hearing officer of the Board held a video hearing in this matter. As explained below, based on the record and relevant Board law, I find that the graduate nurses are professional employees within the meaning of Section 2(12) of the Act, and therefore, would be permitted to vote subject to challenge as part of Unit B, below.[3]

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[1] The Employer's name appears as corrected by stipulation of the parties.
[2] The Union's name appears as corrected by stipulation of the parties.
[3] The parties have stipulated that any unit found appropriate by the Regional Director will not include a decision regarding whether graduate nurses are included in, or excluded from, the bargaining unit, and individuals in that classification may vote in the election, but their ballots shall be challenged since their eligibility has not yet been resolved.

II. PROCEDURAL MATTERS

A. Rulings on the Union's (1) Motion to Amend Statement of Position and Introduce Evidence at the Hearing Related to the Issue of Direction of a Sonotone Election, and (2) Offer of Proof

In response to Petitioner's original petition, before the hearing commenced, the Employer and Union filed separate Statements of Position (SOPs) on January 5, 2021. In its SOP, the Employer raised, inter alia, certain issues regarding unit employees in certain job classifications in the bargaining unit that it contended were professional employees within the meaning of Section 2(12) of the Act. The Employer attached a list breaking down its designation of professional and non-professional job classifications in which the unit employees are employed. At the hearing, the Employer explained it provided such breakdown because it understood that a *Sonotone*[4] election would be ordered per extant Board law. In its SOP, the Union raised objections to the appropriateness of the unit, specifically that the petition excluded certain job classifications as well as employee classifications such as part-time, contingent, and supervisory. The Union also objected to asserted "supervisory involvement" in the securing of petition signatures as a bar to conducting an election. The Union did not mention any issues concerning the appropriateness of a *Sonotone* election but reserved the right to amend its SOP "to raise additional issues to be litigated at the hearing, as the Union's investigative and discovery process is ongoing."

At the commencement of the hearing, the Union moved to amend its SOP for "good cause" under Section 102.63(b)(3)(i)(A) of the Board's Rules and Regulations[5] based on information it asserted it learned subsequent to the filing of its SOP, that is, that the Region intended to order a *Sonotone* election in this matter. The Union also requested permission to present evidence at the hearing supporting its opposition to a *Sonotone* election.[6] I initially deferred ruling on the Union's motion to amend its SOP and request to present evidence regarding the *Sonotone* issue and I directed the Union to make an offer of proof as to why it should be allowed to amend its SOP and present evidence regarding the direction of a *Sonotone* election.

In its offer of proof, the Union stated it would present evidence regarding the longstanding 20-plus-year history of the bargaining unit to demonstrate that the unit has existed as a wall-to-wall unit of combined professional and non-professional employees since the Employer initially recognized the Union in about 2000, and over the course of eight CBAs negotiated between the Employer and Union to date. In addition, the Union's evidence would

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[4] *Sonotone Corp.*, 90 NLRB 1236 (1950).

[5] Rule 102.63(b)(3)(i)(A) states in pertinent part: "...The Regional Director may permit the employer and the certified or recognized representative of employees to amend their respective Statements of Position in a timely manner for good cause." This is in accord with Section 11217 of the NLRB Casehandling Manual (Part Two) Representation Proceedings, cited by the Union at the hearing, which likewise states, in pertinent part: "...If a party seeks to amend its Statement or Responsive Statement of Position, the Hearing Officer must report this to the Regional Director, who may permit the amendment for good cause shown..."

[6] Neither the Employer or Petitioner objected to the Union's motion to amend its SOP or present evidence regarding the *Sonotone* issue.

demonstrate that each of the facilities in question acts as a small acute care hospital in which unit employees of *all* classifications, professional and non-professional, work as a cohesive unit to respond to medical situations and emergencies.[7] The Union argues that such evidence, as well as the evidence of the Petitioner's petition which does not propose separating professional from non-professional classifications in a *Sonotone* election, would support its argument that a *Sonotone* election is neither necessary or appropriate in this matter.

I determined that the Union's offer of proof was not sufficient to warrant the presentation of evidence regarding the issue of the direction of a *Sonotone* election. I also determined that the Union did not present good cause to amend its SOP in this regard.[8] I hereby affirm my rulings for the following reasons.

Under Section 9(b)(1) of the Act,[9] the Board is prohibited from including professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. Thus, the desires of the professional employees *must* be ascertained as to inclusion in a unit with nonprofessional employees. To carry out the statutory requirement, the Board adopted a special type of self-determination procedure in an election for determining whether professional employees wish to be included in a unit with non-professional employees, known as a *Sonotone* election. *Sonotone Corp.*, 90 NLRB 1236 (1950).[10] Additionally, the Board requires that there be a *Sonotone* election *each time* that there is an election in which professionals and nonprofessionals may be included in the same unit. *American Medical Response, Inc.*, 344 NLRB 1406, 1408-1409 (2005) (emphasis added) (holding that subsequent *Sonotone* elections are required in the same unit regardless of whether the professionals have already voted for inclusion in the overall unit).

I initially reject the Union's argument that "the Region cannot override a decision of all parties to avoid a *Sonotone* election and maintain the unit as 'coextensive with the recognized or certified bargaining unit'"[11] where Petitioner did not raise or request a *Sonotone* election at the time of the filing of its petition and all "parties to this proceeding have gone on record that they prefer the combined unit without the requirement of a *Sonotone* election." The fact that Petitioner did not raise or propose separating professional from non-professional classifications in a *Sonotone* election, or that the parties might agree that a *Sonotone* election is not necessary, is of no significance. "[W]here the Board has sufficient information to put it on notice that there is

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[7] The Union also points out its history of stewards at the facilities not being separated along department or discipline lines demonstrates a cohesive unit of combined as professional and non-professional employees and favors an election in a combined unit.

[8] The Union's request for special appeal was rejected by the Executive Secretary by letter on January 28, 2021 for failure to comply with Section 102.67 of the Board's Rules and Regulations.

[9] Section 9(b)(1) provides in pertinent part that "the Board shall not ... decide that any unit is appropriate ... if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; ..."

[10] In *Leedom v Kyne* 358 U.S. 184, 188 (1958), the Supreme Court found Section 9(b)(1) to be "clear and mandatory" and indicated that the self-determination election is a "right" given by Congress to professional employees and that Congress intended that right to be enforced.

[11] In support of its argument, the Union cites *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990), a case that involved the inappropriateness of a decertification petition for a single-facility location with a bargaining history that has occurred within a multilocation unit.

an issue as to the professional status of employees, it must conduct an inquiry and cannot rely on the failure of the parties to raise the issue." *Pontiac Osteopathic Hospital*, 327 NLRB 1172, 1172-1173 (1999).

I also reject the Union's argument that it should have an opportunity to explore a stipulation to an election without the requirement of a *Sonotone* election in a combined unit of professional and non-professional employees given the bargaining history regarding such unit and the parties' preference for a combined unit. Contrary to the Union's argument, the Board has specifically held that a stipulation dealing with the inclusion or exclusion of professional employees in a mixed unit *cannot* override the requirements of Section 9(b)(1) that professional employees have a right to choose whether to be included in such a mixed unit of professionals and non-professionals. *American Medical Response, Inc.*, 344 NLRB 1406, 1413 (2005), citing *Pontiac Osteopathic Hospital*, 327 NLRB 1172 (1999).

Additionally, I find that the Union's reliance on *Retail Clerks Union Local No. 324,* 144 NLRB 1247 (1963) in support of its argument that the parties should not be restricted by *Sonotone* from maintaining a combined unit is misplaced. That case involved an unfair labor practice allegation against a union for maintaining and enforcing a union-security agreement with the employer covering a unit of both professional and nonprofessional employees where the professional employees had not been afforded a separate *Sonotone* election under Section 9(b)(1). *Id.* at 1248. The narrow issue before the Board in that case was whether the contractual unit was an appropriate collective-bargaining unit. *Id.* at 1250. The Board dismissed the unfair labor practice complaint finding no sufficient basis for holding that the unit was inappropriate noting that its interpretation of Section 9(b)(1) did not require a different result. *Id.* at 1251-1252. The Board did not consider, as argued by the Union, the validity of a *Sonotone* election in a decertification proceeding where the established unit was a combined unit of professionals and non-professionals as in this case. The Union's reliance on *Great Falls Employers Council, Inc*, 114 NLRB 370 (1955) is also misplaced. In that case, the petitioner requested that a decertification election be held exclusively for a professional group of pharmacists contained in a combined unit of professionals and non-professionals. The Board dismissed the decertification petition finding that "the only appropriate unit for decertification is the one coextensive with the existing bargaining unit is equally applicable to groups of professional employees." *Id.* at 371. Contrary to the Union's argument, the Board did not address the mechanics of a decertification election in a properly filed petition for decertification of a combined unit of professionals and non-professionals. Furthermore, the Board's decision in *Great Falls* is not in conflict with my direction of a *Sonotone* election here. Finally, the Union's reliance on *Pennsylvania Power & Light Company*, 122 NLRB 293 (1958) is also inapposite. In that case, the petitioning union sought to represent a unit of professional engineers. The employer sought to include a group of employees classified as junior engineers as professionals even though they were already represented by the intervening union as non-professionals. The employer contended that even though it had previously agreed with the intervening union that the junior engineers were not professionals, they should be included in the petitioned-for professional unit since they had not voted in a professional unit. The Board held that even though the junior engineers were conceded by the petitioning union to be professional employees, since they were *currently*

"represented in a certified unit by a union whose *contract would bar a representation proceeding*," they were excluded. *Id.* at 294. (emphasis added). Such a contract-bar scenario is not presented in this case, nor do any of the holdings in that case directly bear on the appropriateness of a *Sonotone* election here.

Based on the above, I affirm my rulings that the Union's offer of proof was not sufficient to warrant the presentation of evidence with regarding the issue of the direction of a *Sonotone* election nor did the Union present good cause to amend its SOP in this regard. Accordingly, I shall direct a *Sonotone* election in this matter as set forth below.

III. FACTS

A. The Employer's Operations and Bargaining History

The Employer provides acute care, rehabilitation, and nursing care services at three medical center facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan. The parties stipulated that in 2018, through an acquisition, the Employer became a perfectly clear successor. At the same time, the Employer recognized the Union as the representative of the unit employees. The Union currently represents a unit of approximately 245 professional and non-professional employees employed by Employer. The most current collective-bargaining agreement covering professional and nonprofessional employees in the unit referenced in Petitioner's petition is effective from April 1, 2018 through March 31, 2021.

Petitioner seeks to decertify the Union as the exclusive collective bargaining representative of the professional and non-professional unit employees in the existing unit as defined by the recognition clause in the current collective bargaining agreement (CBA) between the Employer and Union.

The parties stipulated that any unit found appropriate will contain the following classifications:

> Accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiac health and rehabilitation EPs, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, case manager RNs, centralized scheduling clerks, certified respiratory therapists, clinical dietitians, clinical information system coordinators, clinical care/wound care coordinators, coding specialists, community outreach workers, cook Is, cook IIs, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, development associates, diabetes education coordinators, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, exercise physiologists, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants,

> laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, magnetic resonance imaging (MRI) technologists, maintenance 1-L employees, maintenance class I employees, maintenance class II employees, mammography technologists, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), medical technologists, network analysts, nuclear medicine technologists, nursing assistants, nutrition services aides, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, rehabilitation technicians/aides, respiratory coordinators, scheduling clerks/rehabilitation services, senior payroll practitioners, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, ultrasound technologists, and ward secretaries.

The parties further stipulated that out of the included classifications, the following employees should be included as non-professional employees in any unit found to be appropriate:

> Accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, centralized scheduling clerks, clinical information system coordinators, coding specialists, community outreach workers, cook Is, cook IIs, development associates, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants, laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, maintenance 1-L employees, maintenance class I employees, maintenance class II employees, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), nursing assistants, nutrition services aides, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, rehabilitation technicians/aides, scheduling clerks/rehabilitation services, senior payroll practitioners, storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, and ward secretaries.

Currently, there are approximately 124 non-professional employees in these classifications in the unit.

The parties further stipulated that out of the included classifications, the following employees should be included as professional employees in any unit found to be appropriate:

> Cardiac health and rehabilitation EPs, case manager RNs, certified respiratory therapists, clinical dietitians, clinical care/wound care coordinators, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, diabetes education coordinators, exercise physiologists, magnetic resonance imaging (MRI) technologists, mammography technologists, medical technologists, network analysts, nuclear medicine technologists, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, respiratory coordinators, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), and ultrasound technologists.

Currently, there are approximately 121 professional employees in these classifications in the unit.

Finally, the parties stipulated that any unit found appropriate will exclude the following classifications: physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

As noted in the professional employees unit description above, the bargaining unit contains three separate registered nurse (RN) job classifications – RNs, case manager RNs, and special procedures RNs[12] – which the parties have agreed should be included as professional employees in any unit found to be appropriate herein. Given that the CBA is silent as to the inclusion or exclusion of graduate nurses, the parties have agreed that any unit found appropriate by the Regional Director will not include a decision whether the graduate nurses are included in, nor excluded from, the bargaining unit, and those individuals may vote in the election but their ballots shall be challenged since their eligibility has not yet been resolved.

The parties disagree as to the professional or non-professional status of the graduate nurse classification and therefore in which voting group those individuals may vote subject to challenge. While the Union contends that the graduate nurse classification is non-professional, the Employer, with agreement by Petitioner, contends that such classification is professional.

B. The Classification of Graduate Nurse

The parties stipulated that graduate nurses are nursing school graduates who perform duties under RN supervision[13] until such time as they pass the state licensing exam. While the

[12] Special procedures RNs are also known as "cardiac cath RNs."
[13] No party argues that the RNs are supervisors within the meaning of Section 2(11) of the Act and I make no such finding herein.

record indicates there are about two graduate nurses employed each year, currently the Employer employs one graduate nurse, Brian Bowen,[14] in the med-surg unit. The record demonstrates that graduate nurses work under the direction of a RN, specifically referred to as a "RN mentor," and perform all patient care duties performed by RNs, except that they do not receive their own assignments and they are not permitted to pass medications. Like RNs, graduate nurses report to the Nursing Manager. The current Nursing Manager is Amanda Grayhill. The record does not address any further reporting structure in nursing. Upon passing their state-administered nursing board exams and receiving their license, graduate nurses are eligible to transfer into the RN position in the unit. While there is some record evidence indicating that graduate nurses are typically in the graduate nurse position for about three to four weeks before transitioning into the RN position, the CBA references a "Graduate Nurse Externship Program" which runs approximately three months for graduate nurses in the med-surg unit.

IV. ANALYSIS

A. Board Law

Section 2(12) of the Act defines a professional employee as:

> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, physical processes; or
>
> (b) any employee, who has completed courses of specialized instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Accordingly, under Section 2(12) individuals are deemed to be professional in terms of their job content and the responsibilities that they perform, rather than their academic or technical training, job title or compensation. See *Lincoln Park Zoological Society*, 322 NLRB 263 (1996). The fact that a group of employees is predominantly composed of individuals possessing a degree in the field to which the profession is devoted, may tend to show that the

[14] In its employee list attached as Exhibit A to its Statement of Position (SOP) (listing names, work locations, shifts and job classifications for individuals in the bargaining unit employed as of the payroll period preceding the filing of the petition (December 18, 2020) who remain employed as of the date of the SOP, January 5, 2021) the Employer lists the name of the Graduate Nurse as Caitlin Krebs.

work they perform requires knowledge of an advanced type. *Western Electric Co.*, 126 NLRB 1346, 1348-1349 (1960). However, this factor is not controlling, and all circumstances relevant to the inquiry must be examined. *Express-News Corp.*, 223 NLRB 627 (1976). In the health care field, registered nurses are generally held to be professionals (*Centralia Convalescent Center*, 295 NLRB 42 (1989)), as are those waiting to pass their examinations. *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765, 768 (1975).

In *Mercy Hospitals of Sacramento, Inc.,* 217 at 768, the Board included "nurse permittees" in a unit of registered nurses sought by the union. The nurse permittees therein were nurses who graduated from accredited nursing schools and had either taken or were about to take the registration examination required by the State to become licensed as RNs, and performed essentially the same functions and duties as RNs under supervision of a RN, except for the handling of narcotics. The average length of time before a nurse permittee became a registered nurse was less than three months. The Board found that the nurse permittees were properly included as professional employees within the meaning of the Act in the RN bargaining unit "by virtue of the nature of their training and working conditions." *Id.* at 768. See also, *St. Mary's Hospital*, 220 NLRB 496, 497, fn. 3 (1975) (the Board included nurse interns, defined as nursing school graduates who had not yet been state-certified as professional employees, in a unit of registered nurses "in view of their training and working conditions."); *Sisters of Mercy Health Corp.,* 298 NLRB 483, 486 (1990) (Board found "graduate nurses are professional employees like RNs because they have completed the extensive medical training required to be an RN, perform the same functions and duties as an RN, and share the same working conditions with the RNs."); *Meharry Medical College,* 219 NLRB 488, 489–90 (1975) (graduate nurses who graduated from accredited nursing schools and either took or were about to take registration examination required by the state to become licensed as RNs and worked under state permits performing essentially the same functions and duties as the RNs, except for the handling of narcotics, under the supervision of the director of nursing, should be included in the bargaining unit with RNs).

B. Application of Board Law

The Union argues that the status of the graduate nurse classification as non-professional is evidenced by comparing the graduate nurse duties to those of licensed practical nurses (LPNs) whom the parties have stipulated should be included in the unit as non-professionals. While acknowledging that the LPN position was eliminated by the Employer about six years ago, the Union argues that LPNs, like graduate nurses, worked under the direction of RNs, except that they received their own assignments and were permitted to pass medications. Thus, the Union argues, graduate nurses who have even less responsibility than non-professional LPNs must be classified as non-professionals. Initially, I note that the record was not fully developed regarding the non-professional nature of the LPN classification, including duties and responsibilities. Additionally, although the classification continues to exist in the unit, the LPN classification was eliminated approximately six years ago and the parties stipulated there are no employees currently employed as LPNs. Moreover, as noted, the Board has long held that nurse permittees and graduate nurses, who were not licensed as RNs, are properly included in a unit consisting of

RNs or in a unit consisting of professional employees which also includes RNs. Like in the Board cases cited above, the graduate nurses herein are nursing school graduates who perform duties under the direction of a RN mentor until such time as they pass the state licensing exam and are eligible to transfer into the RN position in the unit. Importantly, the record additionally demonstrates that these graduate nurses perform all patient care duties performed by RNs, except that they do not receive their own assignments and they are not permitted to pass medications, and they work under the same supervision as the RNs.

Based on the record, I find that I find that the graduate nurse is a professional employee within the meaning of Section 2(12) of the Act.[15]

V. CONCLUSION

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

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

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[16]

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.[17]

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 unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiac health and rehabilitation EPs, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, case manager RNs, centralized scheduling clerks,

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[15] The parties stipulated that professional employees are those who meet the definition of Section 2(12) of the Act.
[16] The parties stipulated that the Employer, MidMichigan Medical Center – West Branch, is a Michigan nonprofit corporation engaged in the operation of a hospital providing acute care, rehabilitation and nursing care services at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan. In conducting its operations during the calendar year ending December 31, 2020, the Employer derived gross revenues in excess of $250,000 and purchased and received at its West Branch, Michigan and Prudenville, Michigan facilities goods valued in excess of $50,000 directly from points outside the State of Michigan.
[17] The parties stipulated that the Union is a labor organization within the meaning of the Act.

certified respiratory therapists, clinical dietitians, clinical information system coordinators, clinical care/wound care coordinators, coding specialists, community outreach workers, cook Is, cook IIs, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, development associates, diabetes education coordinators, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, exercise physiologists, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants, laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, magnetic resonance imaging (MRI) technologists, maintenance 1-L employees, maintenance class I employees, maintenance class II employees, mammography technologists, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), medical technologists, network analysts, nuclear medicine technologists, nursing assistants, nutrition services aides, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, rehabilitation technicians/aides, respiratory coordinators, scheduling clerks/rehabilitation services, senior payroll practitioners, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, ultrasound technologists, and ward secretaries, employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

The unit set out above includes professional and nonprofessional employees. However, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees must be ascertained as to inclusion in a unit with nonprofessional employees.

Therefore, I shall direct separate elections in the following voting groups:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

All full-time and regular part-time cardiac health and rehabilitation EPs, case manager RNs, certified respiratory therapists, clinical dietitians, clinical care/wound care coordinators, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, diabetes education coordinators, exercise physiologists, magnetic resonance imaging (MRI) technologists, mammography technologists, medical technologists,

network analysts, nuclear medicine technologists, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, respiratory coordinators, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), and ultrasound technologists employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

VOTING GROUP – UNIT B (NONPROFESSIONAL UNIT)

All full-time and regular part-time accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, centralized scheduling clerks, clinical information system coordinators, coding specialists, community outreach workers, cook Is, cook IIs, development associates, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants, laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, maintenance 1-L employees, maintenance class I employees, maintenance class II employees, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), nursing assistants, nutrition services aides, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, rehabilitation technicians/aides, scheduling clerks/rehabilitation services, senior payroll practitioners, storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, and ward secretaries, employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

Others permitted to vote: The parties have agreed that the graduate nurse classification is neither included in nor excluded from the appropriate collective-bargaining unit and those individuals may vote in the election subject to challenge. The eligibility or inclusion of these individuals will be resolved, if necessary, following the

election. Individuals in this classification will vote subject to challenge in Voting Group – Unit A.

The non-professional employees (Voting Group B) will be polled to determine whether they wish to be represented by the Union. The professional employees (Voting Group A) will be asked the following two questions on their ballot:

1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?

2. Do you desire to be represented for the purposes of collective bargaining by SEIU Healthcare Michigan?

If a majority of the professional employees (Voting Group A) vote "Yes" to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their votes on the second question then will be counted together with the votes of the non-professional employees (Voting Group B) to determine whether the employees in the overall unit wish to be represented by the Union. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the non-professional employees. Their votes on the second question will be separately counted to determine whether they wish to be represented by the Union in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find the following single unit will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiac health and rehabilitation EPs, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, case manager RNs, centralized scheduling clerks, certified respiratory therapists, clinical dietitians, clinical information system coordinators, clinical care/wound care coordinators, coding specialists, community outreach workers, cook Is, cook IIs, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, development associates, diabetes education coordinators, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, exercise physiologists, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants, laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, magnetic resonance imaging (MRI) technologists, maintenance 1-L employees, maintenance class I employees, maintenance class II employees,

mammography technologists, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), medical technologists, network analysts, nuclear medicine technologists, nursing assistants, nutrition services aides, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, rehabilitation technicians/aides, respiratory coordinators, scheduling clerks/rehabilitation services, senior payroll practitioners, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, ultrasound technologists, and ward secretaries, employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A (PROFESSIONAL UNIT):

All full-time and regular part-time cardiac health and rehabilitation EPs, case manager RNs, certified respiratory therapists, clinical dietitians, clinical care/wound care coordinators, computed tomography (CT) technologists, CT/picture archiving and communication systems (PAC) technologists, diabetes education coordinators, exercise physiologists, magnetic resonance imaging (MRI) technologists, mammography technologists, medical technologists, network analysts, nuclear medicine technologists, radiology technologists (registered), radiology technologists (registry eligible), registered nurses, registered respiratory therapists, respiratory coordinators, social workers master of social work (MSW), special procedures registered nurses, special procedures technologists (cardiac cath techs), and ultrasound technologists employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

UNIT B (NONPROFESSIONAL UNIT):

All full-time and regular part-time accounting clerks, admission clerks, billing clerks, bio medical technicians, bio medical technicians – certified, cardiology technician IIs, cardiology technicians IIs – with EEG, cardiopulmonary technician IIs, case manager LPNs, centralized scheduling clerks, clinical information system coordinators, coding specialists, community outreach workers, cook Is, cook IIs, development associates, echo techs, emergency department technicians, endoscopy technicians, environmental services secretaries, equipment and inventory control coordinators, financial transaction clerks, HIM clerks, housekeeping aides, inventory control clerks, laboratory assistants, laboratory registration clerks, lead diagnostic imaging aides, licensed practical nurses (LPNs), linen services aides, maintenance 1-L employees, maintenance class I employees, maintenance class II employees, medical assistants, medical laboratory technicians (registered), medical laboratory technicians (registry eligible), nursing assistants, nutrition services aide, pharmacy technicians-licensed, phlebotomists, plant operations coordinators, procurement clerks, radiology aides, rehabilitation technicians/aides, scheduling clerks/rehabilitation services, senior payroll practitioners, storeroom clerks/couriers, surgical boarding clerks, surgical services assistants, surgical technicians (certified), surgical technician trainees, transcriptionists, ultrasonography technologists, and ward secretaries, employed by the Employer at its facilities located at 335 East Houghton Avenue, West Branch, Michigan; 2463 South M-30, West Branch, Michigan; and 200 Grand Avenue, Prudenville, Michigan; but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential employees, contingent employees, temporary employees, auxiliary staff, and paid and unpaid co-op students.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by SEIU Healthcare Michigan.

A. Election Details

The election be conducted by mail ballot.[18] The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit/voting groups at 4:00 p.m. on **Friday,**

[18] The parties are in agreement for a mail ballot election.

February 26, 2021 by personnel of the National Labor Relations Board, Region 7. 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 by mail and do not receive a ballot in the mail by **March 10, 2021**, should communicate immediately with the National Labor Relations Board by calling Board Agent Natalie Rygiel at 313-335-8073, Election Specialist Callie Clyburn at (313) 335-8049, the Region 7 Office at (313) 226-3200, or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters should return their mail ballots so that they will be received in the National Labor Relations Board, Region 7 Regional Office by the close of business, 4:45 p.m. (EST) on **March 26, 2021**. All ballots will be commingled and counted at 1:00p.m. (EST) on Wednesday, **March 31, 2021**. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots. The method for the count will be determined by the Regional Director and will require video participation.

B. Voting Eligibility

Eligible to vote are those in the unit/voting groups who were employed during the bi-weekly payroll period ending **February 6, 2021**, 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.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classification whose eligibility remains unresolved as specified above and in the Notice of Election.

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. The Employer shall provide a separate list for each voting group. The

Employer must also include in a separate section of the list for Voting Group A the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the lists must be *received* by the regional director and the parties by **February 12, 2021.** The lists 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 lists in the required form, the lists 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 lists must begin with each employee's last name and the lists must be alphabetized (overall or by department) by last name. Because the lists will be used during the election, the font size of the lists 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 lists is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

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

No party shall use the voter lists 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

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.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. 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: February 10, 2021

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, Michigan 48226