

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

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

**Union**

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**EMPLOYER’S RESPONSE IN OPPOSITION TO  
SEIU HEALTHCARE MICHIGAN’S REQUEST FOR REVIEW OF  
REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

The Employer, MidMichigan Medical Center – West Branch, provides the following Response in Opposition to SEIU Healthcare Michigan’s (the “Union”) Request for Review of the Regional Director’s Decision and Direction of Election (the “Request for Review”). As set forth below, the Union’s Request for Review is meritless on all grounds and should be denied.

**I. Background**

The Union and Employer are parties to a collective bargaining agreement that expires on March 31, 2021. Through this collective bargaining agreement, the Union represents all full-time and regular part-time employees at three of Employer’s locations identified in the CBA, but excluding “physicians, physician assistants, nurse practitioners, managers and

supervisors, guards, confidential, contingent and temporary employees, auxiliary staff and paid and unpaid coop students.” (**Exhibit A:** Recognition Clause.) The bargaining unit is a combined unit that includes professional and non-professional employees under Section 2(12) of the Act. (**Exhibit B:** Appendix A to CBA.)

On December 18, 2020, the Petitioner, Ruth Fournier, filed a decertification petition requesting a decertification election for the bargaining unit employees of Employer. (**Exhibit C.**) The unit description in the Petition referenced the Recognition Clause in the parties’ CBA. Following the filing of the Petition, both the Union and Employer submitted Statements of Position on January 5, 2021. (**Exhibits D, E.**)<sup>1</sup> In these Statements of Position, neither the Union nor Employer objected to the Region holding a *Sonotone* election. Likewise, the Petitioner did not file a Responsive Statement of Position objecting to a *Sonotone* election. (**Exhibit F.**)

The Region held phone conferences with the parties on January 6 and January 11. In these calls, the Region made clear that it intended to hold a *Sonotone* election, as required under Board law. Despite this disclosure, the Union did not seek to file an amended Statement of Position prior to the hearing. Instead, at the January 19 hearing, the Union made an oral motion to amend its Statement of Position to object to a *Sonotone* election. (Hearing Transcript “Tr.” at 12.)

In response, the Regional Director allowed the Union to make an offer of proof as to why it should be permitted to amend its Statement of Position and why the Region should review evidence regarding its direction of a *Sonotone* election. (Tr. at 13.) The Union made its offer of proof on both issues. (Tr. at 84-89.) After considering the Union’s offer of proof, the Regional Director denied the Union’s motion to amend its Statement of Position and determined that the

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<sup>1</sup> The Employer’s Statement of Position is provided without Exhibits D-H, which are various job descriptions.

Union's offer of proof did not present sufficient evidence to question the legitimacy of a *Sonotone* election. (Tr. at 93.)

Following the hearing, both the Union and Employer filed post-hearing briefs. (**Exhibits G, H.**) In the Union's post-hearing brief, the Union again argued that it had good cause to amend its Statement of Position and that a *Sonotone* election was not necessary. (Exhibit G.)

After reviewing the parties' post-hearing briefs, the Regional Director issued a Decision and Direction of Election on February 10. (**Exhibit I.**) In the Decision and Direction of Election, the Regional Director again addressed the Union's motion to amend its Statement of Position and whether the Union's offer of proof was sufficient to warrant the presentation of evidence regarding the issue of the direction of a *Sonotone* election. The Regional Director determined that the Union had failed to demonstrate "good cause" to amend its Statement of Position and that the Region was required to order a *Sonotone* election under extant Board law.

The Regional Director consequently ordered that a *Sonotone*, mail ballot election be conducted in this decertification election. Ballots were mailed out to the bargaining unit on February 26. The employees have until March 26 to return their ballots to the Region. Ballots will be counted on March 31.

## **II. The Regional Director Did Not Err in Denying the Union's Request to Amend Its Position Statement.**

The Union's first argument is that the Regional Director erred in denying its request to amend its Statement of Position and present evidence of the propriety of a *Sonotone* election. The Union did not demonstrate "good cause" to amend its Statement of Position.

The Union's argument is essentially that the Petition did not raise the issue of a *Sonotone* election, so the Union was not on notice that the Region would require this type of election. The Union's argument ignores the clarity of the Board's law in this area. As the Regional

Director correctly noted, the Board requires that a *Sonotone* election must be held any time there is an election where professional and non-professional employees might be included in the same bargaining unit. *See American Medical Response, Inc.*, 344 NLRB 1406, 1408-09 (2005). This is the reason that the Employer provided its position on the professional and non-professional classifications in the unit in its Statement of Position. The Union's failure to appreciate Board procedure in this area is not "good cause" to amend its Statement of Position.

Further, the Union's argument that it should have been allowed to amend its Statement of Position is a red herring. In its post-hearing brief, the Union made the same arguments to the Regional Director that it now repeats in its Request for Review. The Regional Director considered and rejected the Union's legal arguments, properly finding that Board law clearly required a *Sonotone* election in this matter and that each of the cases cited by the Union was factually inapposite and did not support its position that the Region could elect not to hold a *Sonotone* election.

While the Union contends that it should have been able to present evidence on the record to bolster its opposition to a *Sonotone* election, this is not a factual or evidentiary matter. It is strictly a legal issue. The Union's Request for Review confirms this point—it does not identify any case where the Board has weighed the factual circumstances or the parties' preferences in deciding whether to order a *Sonotone* election.

In short, additional facts are unnecessary, and the Regional Director has already considered, and rejected, the Union's arguments against a *Sonotone* election.

### **III. The Regional Director Did Not Err In Ordering a *Sonotone* Election.**

The Union independently argues that the Regional Director erred in ordering a *Sonotone* election. The Union's argument is baseless and contrary to controlling Board precedent.

As noted above, the Board addressed this exact issue in *American Medical Response, Inc.*, 344 NLRB at 1408-09. In that case, the Board reversed the ALJ, who had concluded that “a *Sonotone* ballot was not necessary in this election...based on the assumption that professional employees need only have one opportunity to vote on inclusion in a mixed professional/nonprofessional unit.” *Id.* at 1408. In reversing the ALJ’s decision, the Board found that ALJ erred in making this assumption because it was inconsistent with the Board’s decision in *Westinghouse Electric Corp.*, 116 NLRB 1545, 1547 (1956). *Id.* The Board noted that in *Westinghouse* it had already “rejected the argument that separate *Sonotone* balloting was unnecessary because the professionals had, 6 years earlier, already enjoyed the statutory privilege of separately expressing their desire to be included in a mixed professional/nonprofessional unit.” *Id.* (internal quotations omitted).

The Board further noted that “[t]here is nothing in the statute limiting the privilege thus accorded to professional employees to a single opportunity in the course of their employment for a particular employer. Nor do we perceive anything in the statutory language which frees the Board, in its unit determinations, from the limitation imposed by Section 9(b)(1) after it has once conformed to it with respect to any particular group of professional employees.” *Id.* quoting *Westinghouse Electric Corp.*, 116 NLRB at 1547. Therefore, the Board set aside the election and directed a new election providing *Sonotone* ballots for the applicable professional employees. *Id.* at 1409.

*American Medical Response* and *Westinghouse* are both directly on point and required the Regional Director to order that the professional employees receive *Sonotone* ballots in this election. None of the cases cited by the Union give cause to ignore this binding precedent.

Finally, the Union's contention that the parties are able to stipulate to a non-*Sonotone* election in a unit with professional and non-professional employees is also contrary to Board precedent. In *Oberthur Technologies of Amer. Corp.*, 362 NLRB 1820 (2015), the Board held that the parties' stipulation to a conventional, non-*Sonotone* election in a unit involving two professional employees was not proper. Thus, the Board affirmed the ALJ's finding that "because [the two challenged employees] are professional employees under Section 2(12), they cannot be included in the stipulated unit as a matter of law absent an election that conforms to the requirements of *Sonotone Corp.*" *Id.* at 1821 (emphasis added). The Board held that "[g]iving effect to the parties' stipulation in that circumstance would contravene Section 9(b)(1) of the Act, which permits a bargaining unit to include professional and nonprofessional employees only if the professional employees are afforded a separate self-determination election." Therefore, as the Regional Director properly concluded, the parties could not stipulate to a non-*Sonotone* election.<sup>2</sup>

#### **IV. The Regional Director Properly Classified Graduate Nurses as Professional Employees.**

The Union also argues that the Regional Director erred in finding that the graduate nurses are professional employees under Section 2(12) of the Act. As an initial matter, the Regional Director's classification of graduate nurses as professional employees will have no impact on the election because there will be no graduate nurses voting in the election (the two graduate nurses in the bargaining unit at the time of the hearing both became registered nurses (RNs) following the hearing).

Regardless, the Regional Director did not err in finding that the Employer's graduate nurses are professional employees. To the contrary, longstanding Board precedent fully supports the Regional Director's finding. As the ALJ observed in *Meadowlands Hospital Medical*

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<sup>2</sup> It bears mentioning that the parties did not in fact stipulate to a non-*Sonotone* election.

*Center*, 2016 WL 5115522 (NLRB Div. Judges 2016), “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 registered nurses or in a unit consisting of professional employees which also includes RNs.”

Likewise, the NLRB’s General Counsel observed in General Counsel Memo 91-4 that “[t]he following classifications have generally been included in RN units: Graduate Nurses or Nurse Permittees [who are] Nursing School graduates who, pursuant to temporary state permits, perform RN duties under RN supervision until such time as they pass the state-licensing exam.”

Both the ALJ in *Meadowlands Hospital* and General Counsel Memo 91-4 note that since 1975, the Board has found that graduate nurses are professional employees who are properly included in a bargaining unit with registered nurses.

- In *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765, 768 (1975), the Board held that “nurse permittees” are professional employees under the Act. The Board noted that, like graduate nurses, nurse permittees “are nurses who have graduated from accredited nursing schools and have either taken or are about to take the registration examination required by the State to become licensed as [RNs]” and “until such time as they...have passed the examination, the nurse permittees...perform[] essentially the same functions and duties as the [RNs], under the supervision of a registered nurse, except handling narcotics.” *Id.* (emphasis added). The Board found that “nurse permittees, by virtue of the nature of their training and working conditions, are professional employees within the meaning of the Act, and we shall include them in the nurses’ unit.” *Id.*
- In *Meharry Medical College*, 219 NLRB 488, 489-90 (1975), the Board found that graduate nurses, defined almost exactly the same as the nurse permittees in *Mercy Hospitals*, were properly included in a bargaining unit with registered nurses given “the nature of the training and working conditions of graduate nurses.”
- In *St. Elizabeth’s Hospital of Boston*, 220 NLRB 325 (1975), the Board again held that graduate nurses, defined as those who “have graduated but not yet passed the registration examination for registered nurses, either because they have not taken the exam or because they have failed it before” are considered “to be professional employees within the meaning of the Act.”

The only witness at the hearing, RN Jeanann Kaiser, confirmed that the graduate nurses in the bargaining unit fit the exact definition set forth in the cases cited above. As Ms.

Kaiser testified, the Employer's graduate nurses: (1) have graduated from nursing school, (2) are waiting to take the state-mandated licensing test to become an RN or are awaiting the test results, (3) will become RNs once they pass the licensing test, (4) work alongside RNs and under the supervision of an RN mentor, (5) perform the same patient care responsibilities as RNs, except passing medication, and (6) report to the same Nursing Manager as RNs. (Hearing Tr. at pp. 23-26.)

Based on this testimony and the aforementioned precedent, the Regional Director properly concluded that graduate nurses are professional employees under the Act.

**V. Conclusion**

For the reasons set forth above, the Regional Director did not err in making any of the findings or rulings challenged by the Union in its Request for Review. The Board should deny the Union's Request for Review.

Respectfully,

MILLER JOHNSON  
Attorneys for MidMichigan Medical Center- West Branch

Dated: March 1, 2021

By /s/ Patrick M. Edsenga  
Nathan D. Plantinga  
Patrick M. Edsenga  
Business Address:  
45 Ottawa Avenue SW, Suite 1100  
Grand Rapids, Michigan 49503  
Telephone: (616) 831-1700

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**CERTIFICATE OF SERVICE**

This is to certify that on this 1st day of March, 2021, a copy of this document and exhibits was e-Filed at my direction using the NLRB e-filing system and also served via email and regular US mail to Terry Morgan, Regional Director – Region 7, Petitioner Ruth Fournier, and Richard Mack, attorney for SEIU Healthcare Michigan.

Dated: March 1, 2021

By /s/ Patrick M. Edsenga  
Patrick M. Edsenga

# **EXHIBIT A**

**AGREEMENT BETWEEN**  
**MIDMICHIGAN MEDICAL CENTER - WEST BRANCH**

**and**

**SEIU HealthCare Michigan**

**April 1, 2018 – March 31, 2021**

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# AGREEMENT

This Agreement is made and entered into this 1<sup>st</sup> day of April, 2018, by and between the MidMichigan Medical Center - West Branch, for its facilities at 2463 S. M-30, the Medical Arts Center at 335 E. Houghton Ave., and the Lakeside Specialty Clinic at 200 Grand Avenue, Prudenville, Michigan (hereinafter referred to as the "Medical Center") and the SEIU HealthCare Michigan (Hereinafter referred to as "Union").

## ARTICLE 1 RECOGNITION

1. The Medical Center recognizes the Union as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment for employees of the Medical Center who are included in the following described bargaining unit:

All full-time and regular part-time Medical Center employees employed at either of the following three locations:

335 East Houghton Avenue  
West Branch, Michigan 48661

2463 South M-30  
West Branch, Michigan 48661

200 Grand Avenue  
Prudenville, Michigan 48651;

but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential, contingent and temporary employees, auxiliary staff and paid and unpaid coop students.

2. Full-time employees are those who are regularly scheduled to work 70 hours or more in a pay period.
3. Regular part-time A are employees who are regularly scheduled to work between 40 but less than 70 hours in a pay period.
4. Regular part-time B are employees who are regularly scheduled to work 16 hours, but less than 40 hours, in a pay period.
5. The Employer shall not mandate part-time A employees to work 70 hours or more in a pay period. The Employer shall not mandate part-time B employees to work 40 hours or more in a pay period.
6. Occasionally a full-time position may be offered to two part-time employees, who would then "job share". It is understood that if employees agree to a "job sharing" arrangement the employees must coordinate their work schedule and time off with each other (and as approved by the supervisor and by the union).
7. Employees who are hired or transfer into more than one position and/or more than one department in more than one status will accrue benefits according to their total hired in work hours. For benefit purposes, those regular employees who are hired or transfer into more than one position for more than (70) hours bi-weekly are eligible for health, dental, life insurance, vacation and sick hours the same as a full-time employee. In order to be eligible for this benefit status, at least one of the positions held must be a part-time A position. Employees filling temporary and contingent positions do not qualify for this benefit.

Part-time B employees who are hired or transfer into more than one position and/or more than one department in a part-time B status and who are scheduled to work at least (40) hours or more between both of the positions will accrue benefits the same as a part-time A employee.

8. A contingent employee is one who is not regularly scheduled for work and is available to work as needed by the Medical Center as supplemental or replacement for staff who are absent or unavailable. Alternatively, a contingent employee is one who works 16 hours or less in a 2 week pay period. At no time shall the Medical Center employ more than 45 contingent employees.

Further, employees who change their employment status from either full-time, part-time A or part-time B to contingent, will permanently lose their prior seniority and benefit rights as a full-time, part-time A or part-time B employee upon changing their employment status to contingent.

9. A temporary employee is one who is hired to replace one or more employees during their absence because of illness, pregnancy, leave of absence, or vacation, or for a job, which is of limited duration, not to exceed three (3) consecutive months (however, on mutual agreement of the Medical Center and the union, such period may be extended to a total maximum of six (6) consecutive calendar months), and who is so informed at the time he/she is hired, shall be considered a temporary employee, and he/she shall not acquire seniority, nor does he/she qualify for fringe benefits or wage increases by virtue of such temporary employment. However, if he/she is given the status of a regular employee before the termination of his/her temporary employment his/her employment shall be deemed to have commenced on his/her date of hire and he/she shall acquire seniority upon or as of the completion of his/her probationary period and his/her name shall be placed on the seniority list in the job classification to which he/she is assigned as a regular employee. The Medical Center shall have no responsibility for the re-employment of a temporary employee whose employment is terminated for any reason. Temporary employees will not be hired for the purpose of avoiding the payment of overtime on a regular basis unless they are being hired to replace an absent bargaining unit employee, as described in this section.
10. The union recognizes that several volunteer organizations and individuals perform services in and for the Medical Center that are a valuable contribution to the welfare of the patients and to the Medical Center's public relations. The Medical Center shall continue to have the right to avail itself of all service of that nature except that all Auxiliary/Volunteers will not be assigned any unsupervised patient responsibilities unless qualified to perform the duty/responsibilities. Neither the union nor employees shall interfere in any way with the structure of any such volunteer organizations. Supervision of such individual volunteers, in order to ensure patient care, will not be deemed to be interference with the organization.

The Medical Center may continue to use Auxiliary/Volunteers to perform all of the duties such Auxiliary/Volunteers had performed in the past, except that if bargaining unit members are on layoff in a specific classification, the Auxiliary/Volunteers shall not perform the duties of that classification until all such laid off bargaining unit members have been recalled. In addition, Auxiliary/Volunteers will not perform work that would result in any present or future layoffs or a reduction of current hours of any bargaining unit members.

The Medical Center shall have the right to provide a clinical setting for unpaid students who are functioning under a clinical agreement between their school and the Medical Center. Such students will not replace or displace bargaining unit members.

The same rules of confidentiality that apply to employees shall apply to volunteers.

## **ARTICLE 2 UNION SECURITY**

1. Employees are free to join the union and/or pay dues, service fees, etc. to the union if they voluntarily choose to do so. However, no employee is required to join the union, or to financially support the union, in order to be employed by the MidMichigan Medical Center - West Branch.
2. The Employer and the Union shall cooperate to ensure the Union a reasonable opportunity to participate in the initial orientation meeting of new employees to the bargaining unit. Once during each orientation, one steward will be allowed up to fifteen (15) minutes of paid time to introduce new employees to the Union and to present an authorization card authorizing the Employer to make deductions for Union dues, initiation fees, and assessments as designated by the Union, as well as to provide new employees with a packet of information regarding contact information for Union Representatives and other Union related information. The Employer shall not be obligated to provide this information on behalf of the Union but shall provide adequate secured space

# **EXHIBIT B**

## APPENDIX A

Position Classification	0	1	2	3	4	5	6	7	8	9	10	11	12
Accounting Clerk	\$10.92	\$11.24	\$11.56	\$11.88	\$12.20	\$12.53	\$12.85	\$13.17	\$13.49	\$13.81	\$14.13	\$14.45	\$15.38
Admission Clerk	\$10.25	\$10.60	\$10.95	\$11.30	\$11.65	\$12.00	\$12.35	\$12.70	\$13.05	\$13.40	\$13.75	\$14.10	\$14.77
Billing Clerk	\$10.25	\$10.60	\$10.95	\$11.30	\$11.65	\$12.00	\$12.35	\$12.70	\$13.05	\$13.40	\$13.75	\$14.10	\$14.77
Bio-Med Tech	\$16.99	\$17.43	\$17.87	\$18.31	\$18.75	\$19.19	\$19.63	\$20.07	\$20.51	\$20.95	\$21.39	\$21.83	\$22.27
Bio-Med Tech Certified	\$18.66	\$19.12	\$19.58	\$20.05	\$20.52	\$20.98	\$21.43	\$21.90	\$22.37	\$22.84	\$23.31	\$23.78	\$25.27
Cardiac Health & Rehab EP	\$17.49	\$17.93	\$18.37	\$18.81	\$19.25	\$19.69	\$20.13	\$20.57	\$21.01	\$21.45	\$21.89	\$22.33	\$23.72
Cardiology Technician II	\$12.91	\$13.23	\$13.55	\$13.87	\$14.19	\$14.51	\$14.83	\$15.15	\$15.47	\$15.79	\$16.11	\$16.43	\$17.45
Cardiology Technician II with EEG	\$12.91	\$13.23	\$13.55	\$13.87	\$14.19	\$14.51	\$14.83	\$15.15	\$15.47	\$15.79	\$16.11	\$16.43	\$17.45
Cardiopulmonary Technician II	\$10.55	\$10.79	\$11.03	\$11.26	\$11.50	\$11.74	\$11.98	\$12.22	\$12.45	\$12.69	\$12.93	\$13.17	\$13.97
Case Manager/LPN	\$15.42	\$15.78	\$16.14	\$16.50	\$16.86	\$17.22	\$17.58	\$17.93	\$18.29	\$18.65	\$19.01	\$19.37	\$20.12
Case Manager/RN	\$26.00	\$26.59	\$27.18	\$27.77	\$28.36	\$28.95	\$29.54	\$30.13	\$30.72	\$31.31	\$31.91	\$32.49	\$33.73
Centralized Scheduling Clerk	\$10.92	\$11.24	\$11.56	\$11.88	\$12.20	\$12.53	\$12.85	\$13.17	\$13.49	\$13.81	\$14.13	\$14.45	\$15.38
Certified Respiratory Therapist	\$13.26	\$13.60	\$13.94	\$14.29	\$14.63	\$14.97	\$15.31	\$15.65	\$16.00	\$16.34	\$16.68	\$17.02	\$17.73
Clinical Coordinator/Wound Care	\$27.00	\$27.59	\$28.18	\$28.77	\$29.36	\$29.95	\$30.54	\$31.13	\$31.72	\$32.31	\$32.90	\$33.49	\$34.75
Clinical Dietitian	\$21.00	\$21.82	\$22.84	\$23.76	\$24.88	\$25.60	\$26.52	\$27.44	\$28.36	\$29.28	\$30.22	\$31.12	\$32.70
Clinical Information System Coordinator	\$17.83	\$18.52	\$19.21	\$19.90	\$20.59	\$21.28	\$21.97	\$22.66	\$23.35	\$24.04	\$24.73	\$25.42	\$27.22
Coding Specialist	\$17.66	\$18.14	\$18.62	\$19.10	\$19.58	\$20.26	\$20.54	\$21.02	\$21.50	\$21.98	\$22.46	\$22.94	\$24.41
Community Outreach Worker	\$11.02	\$11.33	\$11.65	\$11.96	\$12.27	\$12.59	\$12.90	\$13.21	\$13.53	\$13.84	\$14.15	\$14.47	\$15.39
Cook 1	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
Cook 2	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
CT Technologist	\$20.66	\$21.41	\$22.16	\$22.92	\$23.67	\$24.42	\$25.17	\$25.92	\$26.67	\$27.43	\$28.18	\$28.93	\$30.94
CT/PACS Technologist	\$22.66	\$23.41	\$24.16	\$24.92	\$25.67	\$26.42	\$27.17	\$27.92	\$28.67	\$29.43	\$30.18	\$30.93	\$32.94
Development Associate	\$12.77	\$13.10	\$13.43	\$13.76	\$14.09	\$14.42	\$14.74	\$15.07	\$15.40	\$15.73	\$16.06	\$16.39	\$17.43
Diabetes Education Coordinator	\$26.00	\$26.59	\$27.18	\$27.77	\$28.36	\$28.95	\$29.54	\$30.13	\$30.72	\$31.31	\$31.91	\$32.49	\$33.73
Echo Tech	\$14.68	\$15.06	\$15.44	\$15.82	\$16.20	\$16.58	\$16.96	\$17.34	\$17.72	\$18.10	\$18.48	\$18.86	\$20.05
Emergency Department Tech	\$11.55	\$11.83	\$12.11	\$12.39	\$12.67	\$12.95	\$13.23	\$13.51	\$13.79	\$14.07	\$14.35	\$14.63	\$15.00
Endoscopy Technician	\$10.74	\$11.00	\$11.27	\$11.53	\$11.79	\$12.05	\$12.32	\$12.58	\$12.84	\$13.10	\$13.37	\$13.63	\$14.46
Environmental Services Secretary	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
Equipment & Inventory Control Coordinator	\$18.33	\$18.85	\$19.37	\$19.88	\$20.40	\$20.92	\$21.44	\$21.95	\$22.47	\$22.99	\$23.51	\$24.02	\$25.58
Exercise Physiologist	\$17.49	\$17.93	\$18.37	\$18.81	\$19.25	\$19.69	\$20.13	\$20.57	\$21.01	\$21.45	\$21.89	\$22.33	\$23.72
Financial Transaction Clerk	\$10.92	\$11.24	\$11.56	\$11.88	\$12.20	\$12.53	\$12.85	\$13.17	\$13.49	\$13.81	\$14.13	\$14.45	\$15.38
HIM Clerk	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
Housekeeping Aide	\$9.25	\$9.50	\$9.75	\$10.00	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.52
Inventory Control Clerk	\$12.76	\$12.92	\$13.08	\$13.24	\$13.40	\$13.56	\$13.73	\$13.89	\$14.05	\$14.21	\$14.37	\$14.53	\$15.29
Laboratory Assistant	\$12.26	\$12.56	\$12.87	\$13.17	\$13.48	\$13.78	\$14.08	\$14.39	\$14.69	\$15.00	\$15.30	\$15.60	\$16.57
Laboratory Registration Clerk	\$10.94	\$11.21	\$11.48	\$11.75	\$12.02	\$12.29	\$12.56	\$12.83	\$13.10	\$13.37	\$13.64	\$13.91	\$14.77
Lead Diagnostic Imaging Aide	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.25	\$13.80
Licensed Practical Nurse	\$13.97	\$14.32	\$14.67	\$15.02	\$15.37	\$15.72	\$16.07	\$16.42	\$16.77	\$17.12	\$17.47	\$17.82	\$18.94
Linen Services Aide	\$9.25	\$9.50	\$9.75	\$10.00	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.52
Maintenance 1-L	\$18.66	\$19.12	\$19.58	\$20.05	\$20.52	\$20.98	\$21.43	\$21.90	\$22.37	\$22.84	\$23.31	\$23.78	\$25.27
Maintenance Class I	\$14.00	\$14.48	\$14.97	\$15.46	\$15.94	\$16.43	\$16.91	\$17.40	\$17.88	\$18.37	\$18.85	\$19.34	\$20.65
Maintenance Class II	\$12.00	\$12.27	\$12.54	\$12.81	\$13.08	\$13.35	\$13.62	\$13.89	\$14.16	\$14.43	\$14.70	\$14.97	\$15.89
Mammography Technologist	\$21.00	\$21.70	\$22.40	\$23.10	\$23.80	\$24.50	\$25.20	\$25.90	\$26.60	\$27.30	\$28.00	\$28.70	\$30.05
Medical Assistant	\$10.85	\$11.13	\$11.41	\$11.68	\$11.96	\$12.24	\$12.52	\$12.80	\$13.08	\$13.35	\$13.63	\$13.91	\$14.79
Medical Laboratory Technician Registered	\$18.11	\$18.58	\$19.05	\$19.51	\$19.98	\$20.45	\$20.92	\$21.38	\$21.85	\$22.32	\$22.79	\$23.25	\$24.72
Medical Laboratory Technician Registry Elig.	\$14.68	\$15.06	\$15.44	\$15.82	\$16.20	\$16.58	\$16.96	\$17.34	\$17.72	\$18.10	\$18.48	\$18.86	\$20.05
Medical Technologist	\$23.00	\$23.75	\$24.50	\$25.25	\$26.00	\$26.75	\$27.50	\$28.25	\$29.00	\$29.75	\$30.50	\$31.25	\$32.70
MRI Technologist	\$20.66	\$21.41	\$22.16	\$22.92	\$23.67	\$24.42	\$25.17	\$25.92	\$26.67	\$27.43	\$28.18	\$28.93	\$30.94
Network Analyst	\$23.87	\$24.37	\$24.86	\$25.36	\$25.85	\$26.35	\$26.85	\$27.34	\$27.84	\$28.33	\$28.83	\$29.32	\$31.09
Nuclear Medicine Technologist	\$20.66	\$21.41	\$22.16	\$22.92	\$23.67	\$24.42	\$25.17	\$25.92	\$26.67	\$27.43	\$28.18	\$28.93	\$30.94
Nursing Assistant	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.25	\$13.80
Nutrition Services Aide	\$9.25	\$9.50	\$9.75	\$10.00	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.52
Pharmacy Technician - Licensed	\$11.50	\$11.84	\$12.18	\$12.52	\$12.86	\$13.20	\$13.54	\$13.88	\$14.22	\$14.56	\$14.90	\$15.24	\$15.92
Phlebotomist	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.25	\$13.80
Plant Operations Coordinator	\$10.00	\$10.26	\$10.52	\$10.78	\$11.03	\$11.29	\$11.55	\$11.80	\$12.06	\$12.32	\$12.58	\$12.84	\$13.63
Procurement Clerk	\$12.26	\$12.42	\$12.58	\$12.74	\$12.90	\$13.06	\$13.23	\$13.39	\$13.55	\$13.71	\$13.87	\$14.03	\$14.78
Radiology Aide	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
Radiology Tech - Registered	\$18.50	\$19.15	\$19.80	\$20.45	\$21.10	\$21.75	\$22.40	\$23.05	\$23.70	\$24.35	\$25.00	\$25.65	\$26.88
Radiology Tech - Registry Eligible	\$16.45	\$16.88	\$17.30	\$17.73	\$18.15	\$18.58	\$19.01	\$19.43	\$19.86	\$20.28	\$20.71	\$21.14	\$22.49
Registered Nurse	\$26.00	\$26.59	\$27.18	\$27.77	\$28.36	\$28.95	\$29.54	\$30.13	\$30.72	\$31.31	\$31.91	\$32.49	\$33.73
Rehabilitation Technician/Aide	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.25	\$13.80
Respiratory Therapist Registered	\$20.00	\$20.66	\$21.32	\$21.98	\$22.64	\$23.30	\$23.96	\$24.63	\$25.30	\$25.97	\$26.64	\$27.31	\$28.31
Respiratory Coordinator	\$22.00	\$22.66	\$23.32	\$23.98	\$24.64	\$25.30	\$25.96	\$26.63	\$27.30	\$27.97	\$28.64	\$29.31	\$30.31
Scheduling Clerk/Rehab Services	\$10.92	\$11.24	\$11.56	\$11.88	\$12.20	\$12.53	\$12.85	\$13.17	\$13.49	\$13.81	\$14.13	\$14.45	\$15.38
Senior Payroll Practitioner	\$13.01	\$13.32	\$13.63	\$13.93	\$14.24	\$14.55	\$14.86	\$15.17	\$15.47	\$15.78	\$16.08	\$16.40	\$17.39
Special Procedures Registered Nurse	\$26.00	\$26.59	\$27.18	\$27.77	\$28.36	\$28.95	\$29.54	\$30.13	\$30.72	\$31.31	\$31.91	\$32.49	\$33.73

Special Procedures Technologist (Cardiac Cath Tech)	\$20.66	\$21.21	\$21.77	\$22.32	\$22.87	\$23.43	\$23.98	\$24.53	\$25.08	\$25.64	\$26.19	\$26.74	\$28.46
Staff Pharmacist	\$45.01	\$45.40	\$45.80	\$46.19	\$46.59	\$46.98	\$47.37	\$47.77	\$48.16	\$48.56	\$48.95	\$49.34	\$51.85
Storeroom Clerk/Courier	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54
Surgical Boarding Clerk	\$12.50	\$12.88	\$13.25	\$13.62	\$14.00	\$14.38	\$14.75	\$15.12	\$15.50	\$15.88	\$16.25	\$16.63	\$17.72
Surgical Services Assistant	\$10.44	\$10.70	\$10.95	\$11.21	\$11.46	\$11.72	\$11.97	\$12.23	\$12.48	\$12.74	\$12.99	\$13.25	\$14.06
Surgical Technician - Certified	\$16.50	\$17.00	\$17.50	\$18.00	\$18.50	\$19.00	\$19.50	\$20.00	\$20.50	\$21.00	\$21.50	\$22.00	\$23.00
Surgical Technician Trainee	\$11.22	\$11.51	\$11.79	\$12.08	\$12.37	\$12.65	\$12.94	\$13.23	\$13.51	\$13.80	\$14.09	\$14.37	\$15.28
Transcriptionist	\$11.77	\$12.06	\$12.35	\$12.64	\$12.93	\$13.22	\$13.50	\$13.79	\$14.08	\$14.37	\$14.66	\$14.95	\$15.87
Ultrasonography Technologist	\$20.66	\$21.21	\$21.77	\$22.32	\$22.87	\$23.43	\$23.98	\$24.53	\$25.08	\$25.64	\$26.19	\$26.74	\$28.46
Ultrasound Technologist/Echocardiography/Reg	\$21.00	\$21.70	\$22.40	\$23.10	\$23.80	\$24.50	\$25.20	\$25.90	\$26.60	\$27.30	\$28.00	\$28.70	\$30.05
Ward Secretary	\$10.25	\$10.50	\$10.75	\$11.00	\$11.25	\$11.50	\$11.75	\$12.00	\$12.25	\$12.50	\$12.75	\$13.00	\$13.54

# **EXHIBIT C**

FORM NLRB-502 (RD)  
(8-18)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RD PETITION

Case No. 07-RD-270474 Dec 18, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, [www.nlrb.gov](http://www.nlrb.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 7 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: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. 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.

2a. Name of Employer: *Mid Michigan Medical West Branch*  
2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code): *2463 S. M 30 West Branch, MI 48610*

3a. Employer Representative - Name and Title: *Ruth Fournier, Individual*  
3b. Address (If same as 2b - state name): *2463 S. M 30 West Branch, MI 48610.*

3c. Tel. No.: *989.345.3660* 3d. Fax No.: *989.343.3282*  
3e. Cell No. 3f. E-Mail Address

4a. Type of Establishment (Factory, mine, wholesaler, etc.): *Healthcare/Hospital*  
4b. Principal product or service: *health/medical*

5a. Description of Unit Involved  
Included: *See Attached "Articles of Recognition"*  
Excluded:  
5b. City and State where unit is located: *West Branch Michigan*

6. No. of Employees in Unit: *248*  
7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative?  Yes  No

8a. Name of Recognized or Certified Bargaining Agent: *SEIU*  
8b. Affiliation, if any

8c. Address: *3031 W. Grand Blvd. Suite 555 Detroit, MI 48202*  
8d. Tel. No.: *313.963.3847*  
8e. Cell No.  
8f. Fax No.: *313.965.4422*  
8g. E-Mail Address: *Kevin.Liane11@seihealthcaremi.org*

9. Date of Recognition or Certification: *April 1, 2018*  
10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year): *March 31, 2021*

11a. Is there now a strike or picketing at the Employer's establishment(s) involved?  Yes  No  
11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) *N/A*  
(Insert Address) since (Month, Day, Year)

12. Organizations or individuals other than those named in items 8 and 11c, 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 5 above. (If none, so state)

12a. Name 12b. Address 12c. Tel. No. 12d. Fax No.  
12e. Cell No. 12f. E-Mail Address

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.  
13a. Election Type:  Manual  Mail  Mixed Manual/Mail  
13b. Election Date(s): *1-15-2021*  
13c. Election Time(s): *10AM*  
13d. Election Location(s)

14. Full Name of Petitioner: *Ruth Fournier*

14a. Address (Street and number, city, state, ZIP code): *2463 S. M 30 West Branch MI 48610*  
14b. Tel. No.: *989.345.3660*  
14c. Fax No.: *989.343.3282*  
14d. Cell No. 14e. E-Mail Address: *ruth.fournier@midmichigan.org*

14f. Affiliation, if any

15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

15a. Name 15b. Title  
15c. Address (Street and number, city, state, ZIP code)  
15d. Tel. No. 15e. Fax No.  
15f. Cell No. 15g. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): *Ruth Fournier* Signature: *Ruth Fournier* Title: *Individual* Date Filed: *18 Dec. 2020*

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 will cause the NLRB to decline to invoke its processes.

12/10/20  
11:11  
X2 GRQ

**AGREEMENT**

This Agreement is made and entered into this 1<sup>st</sup> day of April, 2018, by and between the MidMichigan Medical Center-West Branch, for its facilities at 2463 S. M-30, the Medical Arts Center at 335 E. Houghton Ave., and the Lakeside Specialty Clinic at 200 Grand Avenue, Prudenville, Michigan (hereinafter referred to as the "Medical Center") and the SEIU HealthCare Michigan (Hereinafter referred to as "Union").

**J ARTICLE 1 RECOGNITION**

I. The Medical Center recognizes the Union as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment for employees of the Medical Center who are included in the following described bargaining unit:

...7 All full-time and regular part-time Medical Center employees employed at either of the following three locations:

335 East Houghton Avenue  
West Branch, Michigan 48661

2463 South M-30  
West Branch, Michigan 48661

200 Grand Avenue  
Prudenville, Michigan 48651;

but excluding physicians, physician assistants, nurse practitioners, managers and supervisors, guards, confidential, contingent and temporary employees, auxiliary staff and paid and unpaid coop students.

2. Full-time employees are those who are regularly scheduled to work 70 hours or more in a pay period.
3. Regular part-time A are employees who are regularly scheduled to work between 40 but less than 70 hours in a pay period.
4. Regular part-time B are employees who are regularly scheduled to work 16 hours, but less than 40 hours, in a pay period.
5. The Employer shall not mandate part-time A employees to work 70 hours or more in a pay period. The Employer shall not mandate part-time B employees to work 40 hours or more in a pay period.
6. Occasionally a full-time position may be offered to two part-time employees, who would then "job share". It is understood that if employees agree to a "job sharing" arrangement the employees must coordinate their work schedule and time off with each other (and as approved by the supervisor and by the union).
7. Employees who are hired or transfer into more than one position and/or more than one department in more than one status will accrue benefits according to their total hired in work hours. For benefit purposes, those regular employees who are hired or transfer into more than one position for more than (70) hours bi-weekly are eligible for health, dental, life insurance, vacation and sick hours the same as a full-time employee. In order to be eligible for this benefit status, at least one of the positions held must be a part-time A position. Employees filling temporary and contingent positions do not qualify for this benefit.

Part-time B employees who are hired or transfer into more than one position and/or more than one department in a part-time B status and who are scheduled to work at least (40) hours or more between both of the positions will accrue benefits the same as a part-time A employee.

MI X2 EK @

8. A contingent employee is one who is not regularly scheduled for work and is available to work as needed by the Medical Center as supplemental or replacement for staff who are absent or unavailable. Alternatively, a contingent employee is one who works 16 hours or less in a 2 week pay period. At no time shall the Medical Center employ more than 45 contingent employees.

Further, employees who change their employment status from either full-time, part-time A or part-time B to contingent, will permanently lose their prior seniority and benefit rights as a full-time, part-time A or part-time B employee upon changing their employment status to contingent.

9. A temporary employee is one who is hired to replace one or more employees during their absence because of illness, pregnancy, leave of absence, or vacation, or for a job, which is of limited duration, not to exceed three (3) consecutive months (however, on mutual agreement of the Medical Center and the union, such period may be extended to a total maximum of six (6) consecutive calendar months), and who is so informed at the time he/she is hired, shall be considered a temporary employee, and he/she shall not acquire seniority, nor does he/she qualify for fringe benefits or wage increases by virtue of such temporary employment. However, if he/she is given the status of a regular employee before the termination of his/her temporary employment his/her employment shall be deemed to have commenced on his/her date of hire and he/she shall acquire seniority upon or as of the completion of his/her probationary period and his/her name shall be placed on the seniority list in the job classification to which he/she is assigned as a regular employee. The Medical Center shall have no responsibility for the re-employment of a temporary employee whose employment is terminated for any reason. Temporary employees will not be hired for the purpose of avoiding the payment of overtime on a regular basis unless they are being hired to replace an absent bargaining unit employee, as described in this section.

10. The union recognizes that several volunteer organizations and individuals perform services in and for the Medical Center that are a valuable contribution to the welfare of the patients and to the Medical Center's public relations. The Medical Center shall continue to have the right to avail itself of all service of that nature except that all Auxiliary/Volunteers will not be assigned any unsupervised patient responsibilities unless qualified to perform the duty/responsibilities. Neither the union nor employees shall interfere in any way with the structure of any such volunteer organizations. Supervision of such individual volunteers, in order to ensure patient care, will not be deemed to be interference with the organization.

The Medical Center may continue to use Auxiliary/Volunteers to perform all of the duties such Auxiliary/Volunteers had performed in the past, except that if bargaining unit members are on layoff in a specific classification, the Auxiliary/Volunteers shall not perform the duties of that classification until all such laid off bargaining unit members have been recalled. In addition, Auxiliary/Volunteers will not perform work that would result in any present or future layoffs or a reduction of current hours of any bargaining unit members.

The Medical Center shall have the right to provide a clinical setting for unpaid students who are functioning under a clinical agreement between their school and the Medical Center. Such students will not replace or displace bargaining unit members.

The same rules of confidentiality that apply to employees shall apply to volunteers.

## ARTICLE 2 UNION SECURITY

1. Employees are free to join the union and/or pay dues, service fees, etc. to the union if they voluntarily choose to do so. However, no employee is required to join the union, or to financially support the union, in order to be employed by the MidMichigan Medical Center - West Branch.
2. The Employer and the Union shall cooperate to ensure the Union a reasonable opportunity to participate in the initial orientation meeting of new employees to the bargaining unit. Once during each orientation, one steward will be allowed up to fifteen (15) minutes of paid time to introduce new employees to the Union and to present an authorization card authorizing the Employer to make deductions for Union dues, initiation fees, and assessments as designated by the Union, as well as to provide new employees with a packet of information regarding contact information for Union Representatives and other Union related information. The Employer shall not be obligated to provide this information on behalf of the Union but shall provide adequate secured space

# **EXHIBIT D**

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

DO NOT WRITE IN THIS SPACE

Case No:  
07-RD-270474

Date Filed

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position: SEIU Healthcare Michigan		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code): 3031 W. Grand Blvd., Suite 555, Detroit, MI 48202		1d. Cell No.:	1f. e-Mail Address:
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) See Attachment B			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: See Attachment B Excluded: See Attachment B			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing. See Attachment B			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://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</a> (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit; (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s): 21 days from the direction of election	8c. Time(s): 5 week period to turn in ballots	8d. Location(s): See Question 3 Above	
8e. Eligibility Period (e.g. special eligibility formula):	8f. Last Payroll Period Ending Date:	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative Richard Mack Attorney		9b. Signature of authorized representative /s/ Richard Mack	9c. Date 1/5/2021
9d. Address (Street and number, city, state, and ZIP code) 7700 Second Ave Suite 335 Detroit MI 48202		9e. e-Mail Address richardmack@millercohen.com	
9f. Business Phone No.: (313)-964-4454	9g. Fax No.: (313) 964-4490	9h. Cell No.:	

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solidation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**MidMichigan Medical Center – West Branch**  
07-RD-270474

**ATTACHMENT B**

- **Question 3a:** The petitioned-for unit appears inappropriate because:
  - (1) The Petition would exclude certain job titles that perform functions which are done for the West Branch facilities listed in the Union contract recognition clause, either by Employees working in locations outside of these facilities or not within the bargaining unit. Such positions include but are not limited to:
    - a. Employees who work remotely (i.e., from home);
    - b. Employees working in the Health Information Management function (i.e., Coding Specialists, HIM Clerks);
    - c. Employees who work in hospice care and/or home health care (i.e., nurses, nurse assistants, Billing Clerks, etc);
    - d. Assistant Biomedical Technician(s);
    - e. Billing Clerks and Employees performing the function in billing; and
    - f. Certain transcriptionist functions.
  - (2) The Petition could be construed to exclude Employees who were regular part time, but improperly prohibited from working sufficient hours that would enable them to be eligible to vote.

No other alternative unit is appropriate. The Union reserves the right to amend this Statement of Position as more information is discovered.

- **Question 3(b):** All employees performing unit work outside of the locations listed in the recognition clause of the Collective Bargaining Agreement should be included. All contingent employees should be excluded from the Unit.
- **Question 4:** SEIU Healthcare Michigan reserves the right to present a specific list of persons it deems ineligible to vote, upon receipt of the Employer's most recent list of unit Employees and further investigation, up to and including challenges during the election process. As an initial matter, SEIU HCMI will raise challenges to supervisory Employees, persons no

longer employed in the bargaining unit, and Employees who truly work insufficient hours to be eligible to vote.

- **Question 5:** The supervisory involvement in the petition signatures being secured constitutes a “bar” to this election.
- **Question 6:** The Union reserves the right to amend this Statement of Position to raise additional issues to be litigated at the hearing, as the Union’s investigative and discovery process is ongoing.

# **EXHIBIT E**



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

DO NOT WRITE IN THIS SPACE	
Case No. 07-RD-270474	Date Filed 1-5-2021

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in Item 7.

1a. Full name of party filing Statement of Position: MidMichigan Medical Center - West Branch		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code): 2463 S. M-30 West Branch, MI 48661		1d. Cell No.:	1f. e-Mail Address:
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) See Attached			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: Excluded: See Attached			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing. See Attached			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s): See Attached	8c. Time(s): See Attached	8d. Location(s): See Attached	
8e. Eligibility Period (e.g. special eligibility formula): See Attached	8f. Last Payroll Period Ending Date: See Attached	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative Nathan D. Plantinga	9b. Signature of authorized representative /s/ Nathan D. Plantinga	9c. Date 1-5-2021	
9d. Address (Street and number, city, state, and ZIP code) Miller Johnson 45 Ottawa Ave SW, Suite 1100 Grand Rapids, MI 49506		9e. e-Mail Address plantingan@ millerjohnson.com	
9f. Business Phone No.: 616-831-1773	9g. Fax No.: 616-988-1773	9h. Cell No.: 616-560-3641	

**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. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

**Union**

---

**EMPLOYER'S STATEMENT OF POSITION**

MidMichigan Medical Center – West Branch (“MidMichigan”) by its undersigned counsel, hereby submits this “Statement of Position” described under NLRB Rule 102.63. MidMichigan’s Statement of Position includes this attachment, the information provided on a FORM NLRB-505, and the Questionnaire on Commerce Information. By filing and serving this Statement of Position, MidMichigan does not waive any objections and fully reserves all rights and arguments on any issues that it is permitted to raise at the hearing scheduled in this matter. MidMichigan also still remains willing to enter into a stipulated election agreement if acceptable terms can be reached.

**1. NLRB Jurisdiction**

MidMichigan does not contest the NLRB’s jurisdiction over the Employer under the Act.

**2. Scope and Composition of the Proposed Bargaining Unit**

MidMichigan does not contend that the proposed unit is inappropriate.

However, MidMichigan believes that two job classifications in the bargaining unit should be excluded as they are supervisors under Section 2(11) of the Act. Those two positions, involving only two employees in the bargaining unit, are Respiratory Coordinator and Clinical Coordinator/Wound Care. These two job classifications provide direct supervision to clinical staff, including evaluating employees' performance, recommending discipline or corrective action, scheduling employees, and/or using their judgment to responsibly direct other employees.

### **3. Employee List**

**Exhibit A** is the initial list of names, work locations, shifts and job classifications for individuals in the bargaining unit as of the payroll period preceding the filing of the petition (December 18, 2020) who remain employed as of the date of this Statement of Position. **Exhibit B** is a separate list of those two individuals who MidMichigan contends should be excluded from the bargaining unit because they are supervisors under Section 2(11) of the Act.<sup>1</sup>

*Please Note:* all employees in the lists contained in Exhibit A and Exhibit B work at the same location, MidMichigan Medical Center – West Branch, which is located at 2463 S. M-30, West Branch, MI 48661.

### **4. Election Bar**

There is no bar to conducting an election in this case.

### **5. Other Issues to Be Raised**

MidMichigan will raise the issue of those employees in certain job classifications in the bargaining unit that are “professional employees” as defined by Section 2(12) of the Act. **Exhibit C** contains a table of those job classifications that MidMichigan contends employ

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<sup>1</sup> MidMichigan reserves the right to make additional or different challenges during the election, as permitted by the Board's Rules and Regulations.

professional employees and those that employ non-professional employees, as defined by the Act.

Below is a brief explanation of MidMichigan's reasoning for those job classifications in Exhibit C that employ "professional employees" under the Act:

#### Registered Nurse Classifications

- The bargaining unit has several registered nurse job classifications. Those job classifications include: Registered Nurse, Case Manager/RN, and Special Procedures Registered Nurse (i.e. Cardiac Cath RN).
- Registered Nurses are professional employees under the Act. *See, e.g., Memorandum GC 91-4, "Health Care Unit Placement Issues,"* from the Office of General Counsel (June 5, 1991).
- The bargaining unit also employs one Graduate Nurse who recently completed nursing school and is permitted to perform RN duties under RN supervision until she is able to pass the state-licensing examination.
- Graduate nurses are also considered professional employees under the Act. *See Memorandum GC 91-4* and the cases cited therein.

#### Technologist Classifications

- The bargaining unit has numerous medical technologist job classifications. Those job classifications include: Medical Technologist, CT Technologist, CT/PACs Technologist, Mammography Technologist, MRI Technologist, Nuclear Medicine Technologist, Special Procedures Technologist (i.e. Cardiac Cath Tech), Ultrasonography Technologist, and Ultrasound Technologist/Echogradiography/Reg.

- The Board has adopted a rebuttable presumption that medical technologists are professional employees. *Group Health Association, Inc.*, 317 NLRB 238 (1995); *see also Memorandum GC 91-4* and the cases cited therein. MidMichigan does not dispute that this presumption applies to the above-referenced technologist job classifications.

#### Social Worker MSW

- The bargaining unit has one employee in the Social Worker MSW job classification. This job classification was added to the bargaining unit during the term of the CBA without objection by the Union.
- This individual's primary job function is to provide social work intervention in an emergency setting in various scenarios where individuals are experiencing, or have experienced, significant difficulty, illness, and/or trauma. This work requires independent judgment and discretion and is primarily intellectual in nature.
- The Board has held that social workers are professional employees under the Act. *See Memorandum GC 91-4* and the cases cited therein. MidMichigan believes that the Board's precedent applies to this job classification, particularly because it requires a Master Degree's in Social Work.
- A copy of the Social Worker MSW Job Description is attached as **Exhibit D**.

#### Diabetes Education Coordinator

- The Diabetes Education Coordinator must have a Bachelor's Degree in Nursing or Dietetics and two years of experience in a hospital or medical setting.
- The Diabetes Education Coordinator exercises independent judgment and performs primarily intellectual work, as it analyzes and develops plans to teach patients and their

caregivers about diabetes and effective methods for managing their diabetes. This position is also responsible for designing classes and clinics regarding diabetes.

- The Diabetes Education Coordinator also works closely with physicians and other care providers to plan and provide quality care to diabetic patients.
- The Board has previously found employees in the positions of Educator and Educational Programmer to be professional employees under the Act. *See Memorandum GC 91-4* and the cases cited therein.
- A copy of the Diabetes Education Coordinator Job Description is attached as **Exhibit E**.

#### Clinical Dietitian

- The collective bargaining agreement between Employer and Union lists Clinical Dietitian as a bargaining unit position. No employee currently occupies this position, or is expected to occupy this position in the near future.
- The Board has previously found the position of Dietician is a professional employee under the Act. *See Memorandum GC 91-4* and the cases cited therein.
- The Clinical Dietitian's work requires independent judgment and is primarily intellectual in nature. Specifically, this job classification is responsible for the nutritional care of patients by assessing and developing care plans to meet patients' nutritional needs, including counseling patients and their families in medical nutrition therapy and adapting dietary plans to their specific needs.
- This job classification requires the individual to be a registered dietitian with previous experience in dietetics and a Bachelor's Degree in Dietetics or a Bachelor's Degree with an ACEND (Accreditation Council for Educations in Nutrition and Dietetics) accredited program.

- A copy of the Clinical Dietitian Job Description is attached as **Exhibit F**.

#### Network Analyst

- This position requires a Bachelor's Degree in Computer Science or related fields or an equivalent combination of education and experience with emphasis in network engineering or healthcare.
- The Network Analyst is responsible for analyzing and maintaining MidMichigan's computer network, including analyzing, coordinating, and maintaining network hardware and software. The Network Analyst is also responsible for analyzing any problems that arise in the network, determining the cause, and initiating corrective action. This work requires the exercise of independent judgment and discretion and is primarily intellectual in nature.
- A copy of the Network Analyst Job Description is attached as **Exhibit G**.

#### Clinical Coordinator/Wound Care

- If this job classification is determined to be part of the appropriate bargaining unit, it should be considered a professional job classification.
- This position requires a Bachelor's degree from a four-year institution, or an Associate's Degree with one to two years of related experience, or an equivalent combination of education and experience. It also requires prior supervisory experience.
- The Clinical Coordinator/Wound Care is responsible for the coordination of the clinical activities of the Wound Center, including planning, implementing, evaluating and providing patient care through the use of hospital and nursing standards. This individual organizes and prioritizes clinical responsibilities and provides direct supervision to clinical staff (i.e., RNs, LPNs, Medical Assistants, etc.)

- The Clinical Coordinator/Wound Care also collaborates with healthcare providers, the Program Director, and the Medical Director regarding clinic and patient needs.
- A copy of the Clinical Coordinator/Wound Care Job Description is attached as **Exhibit H**.

**6. Employer Position on Election**

MidMichigan proposes the following with respect to the election:

Manner: Mail

Date: Ballots to be mailed on Monday, February 1, 2021 and received on or before the close of business on February 23, 2021.

Times: Ballots to be counted on March 2, 2021.

**7. Eligibility Period**

The voting eligibility period would be payroll period immediately preceding the mailing of ballots.

**8. Payroll Period**

MidMichigan has a biweekly payroll period that ends on Saturday of the biweekly calendar week. The most recent payroll period began on December 13, 2020 and ended on Saturday, December 26, 2020, with checks issued on December 31, 2020.

MILLER JOHNSON  
Attorneys for MidMichigan Medical Center- West Branch

Dated: January 5, 2021

By   
Nathan D. Plantinga  
Patrick M. Edsenga  
Business Address:  
45 Ottawa Avenue SW, Suite 1100  
Grand Rapids, Michigan 49503  
Telephone: (616) 831-1700

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

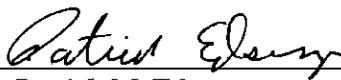
**Union**

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**CERTIFICATE OF SERVICE**

This is to certify that on this 5<sup>th</sup> day of January, 2021, a copy of this document and exhibits, the NLRB Form 505 Statement of Position Statement, and the Questionnaire on Commerce Information was e-Filed at my direction using the NLRB e-filing system and also served via email and, if requested upon emailing, by regular US mail to the Petitioner Ruth Fournier and Richard Mack, the attorney for SEIU Healthcare Michigan.

Dated: January 5, 2021

By   
Patrick M. Edsenga

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

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**Case 07-RD-270474**

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**Union**

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**EMPLOYER'S STATEMENT OF POSITION –**

**EXHIBIT A**

**Exhibit A to Employer's Position Statement**

07-RD-270474

*\*All Unit Employees Located at Employer's West Branch Location*

<b>Last Name</b>	<b>First Name</b>	<b>Job Classification</b>	<b>Shift</b>
Almada	Michael	RN	Days
Amerson	William	MRI Technologist	Days
Anderson	Amy	CT Technologist	Days
Anderson	Pamela	Housekeeping Aide	Afternoon
Andrews	Vivian	Cardiac Rehab RN	Days
Anthony	Katlyn	RN	Nights
Awrey	Lisa	RN	Days
Bailey	Kevin	Phlebotomist	Days
Baird	Noreen	RN	Days
Barratt	David	Nuclear Med Technologist	Days
Baynton	Megan	Phlebotomist	Afternoons
Beckley	Jessica	Housekeeping Aide	Nights
Bell	Joseph	Respiratory Therapist	
Berthiaume	Nicole	IP RN	Days
Bilbrey	Matthew	Maintenance I-L	Afternoons
Bock	Stephanie	RN	Days
Bonnell	Amber	Central Scheduling Clerk	Days
Borre	Jessica	RN	Nights
Bosnak	Cynthia	RN	Days
Bragg	Lisa	Surgical Tech	Days
Breining	Courtney	RN	Nights
Brindley	Erin	Phlebotomist	Days
Brookshire	Brianna	Nursing Assistant	Days
Buhlman	Cathy	Surgical Tech	Days
Buhlman	Ky	RN	Days
Butler	Andrea	Ward Secretary	Days
Buzzie	Kelly	Surgical Tech	Days
Champion	Sheila	RN	Nights
Christian	Michelle	Nursing Assistant	Nights
Chrivia	Angela	Case Manager	Days
Cline	Danae	Equipment And Inventory Control Coordinator	Days
Coleman	Laura	Housekeeping Aide	Days
Collins	Moniquic	Phlebotomist	Days
Comstock	Jenifer	IP RN	Days
Crawford	Rachelle	Exercise Physiologist	Days
Crawford	David	Endoscopy Technician	Days
Crowley	Kimberly	Admission Clerk	Afternoons
Czewski	Sharon	Pharmacy Technician	Days
Daugherty	Jeffrey	Maintenance Class II	Nights
Davis	Dorothy	HIM Clerk	Days
Davis	Robert	RN	Days
Delaney	Patricia	Registered Radiology Tech	Days
Delph	Angela	RN	Days

**Exhibit A to Employer's Position Statement**

**07-RD-270474**

*\*All Unit Employees Located at Employer's West Branch Location*

Denise	Megan	Housekeeping Aide	Nights
Denslow	Bradley	RN	Days
Denstedt	Jennifer	RN	Days
Derosia	Darian	Nutrition Service Aide	Days
Deshano	Amanda	Nursing Assistant	Days
Deshano	Nichole	RN	Days
DeWalt	Donald	Housekeeping Aide	Afternoons
Dichtel	Patty	Social Worker MSW	Days
Donn	Kelly	Registered Radiology Tech	Days/Afternoons
Duguay	Julieanna	CT Technologist	Nights
Eddens	Lisa	Housekeeping Aide	Days
Edmonds	Danielle	RN	Nights
Eilf	Tammy	RN	Days
Erickson	Tiffany	Nutrition Service Aide	Days
Evans	Dena	Ward Secretary	Days
Felts	John	CT Technologist	Nights
Ferrara	Kayla	Nutrition Service Aide	Afternoons
Fitzgerald	Kaytlin	RN	Afternoons
Forton	Toni	RN	Days
Foster	Lisa	Medical Technologist	Afternoons
Fournier	Ruth	Admission Clerk	Variable
Franciosi	Arianna	Admission Clerk	Days
Gagnon	Sara	Nutrition Service Aide	Days
Gesink	Pamela	RN	Days
Gillette	Andrea	Exercise Physiologist	Days
Goff	Lynda	RN	Days
Greenlick	Michelle	HIM Clerk	Days
Greenwood	Rebecca	CT Technologist	Afternoons
Grezeszak	Jennifer	Pharmacy Technician	Days
Haley	Tara	OP RN	Days
Hamilton	Stephanie	Medical Assistant	Days
Hannah	Lindsey	RN	Days
Harrington	Angela	Exercise Physiologist	Days
Harrington	Jacky	Technician/Aide	Days
Heaton	Seth	RN	Nights
Heintz	Danella	Registered Radiology Tech	Days
Henretta	Jaycee	Admission Clerk	Days
Hines	Jennifer	OP RN	Days
Howard	Sherry	Admission Clerk	Days
Hoydic	Jonathan	RN	Nights
Hughes	Judy	Respiratory Therapist	Nights
Hughey	Jamie	Admission Clerk	Nights
Jackson	Peter	Community Outreach Worker	Days
James	Wendy	Housekeeping Aide	Days
Jansen	Valarie	Nursing Assistant	Days

**Exhibit A to Employer's Position Statement**

**07-RD-270474**

*\*All Unit Employees Located at Employer's West Branch Location*

Jaseck	Laurie	Admission Clerk	Days
Jewell	Devon	Registered Radiology Tech	Days/Afternoons
Johnson	Stacy	Mammography Technologist	Days
Jones	Debra	RN	Days
Jones	Rachelle	Cardiology Technician II	Days
Kaiser	Dorothy	RN	Nights
Kaiser	Jeanann	RN	Days
Kalinowski	Lou	Network Analyst	Days
Kehring	Kristie	RN	Nights
Kelly	Shawna	Surgical Tech	Days
Killinger	Cayla	RN	Days
Killinger	Stacie	RN	Days
Klann	Kimberly	Pharmacy Technician	Days
Klein	Nichole	Registered Radiology Tech	
Kline	Dana	HIM Clerk	Days
Koehn	Samantha	RN	Nights
Kovach	Kristina	Nutrition Service Aide	Afternoons
Kozlow	Erin	IP RN	Days
Krebs	Caitlin	Graduate RN	Days
Kukla	Karla	Ultrasound Technologist / Echocardiography/Reg	Afternoons
Lacross	Antonia	RN	Nights
LaFave	Gabriel	RN	Nights
LaMoria	Lisa	Nursing Assistant	Days
Laporte	Adrienne	RN	Days
Lauria	Cindy	Billing Clerk	Days
Lawrence	Renee	Admission Clerk	Days
Lebaron	Candide	Phlebotomist	Nights
Leforce	Hannah	CT Technologist	Days/Afternoons
Lehman	Diane	Surgical Tech	Days
Lesarge	Courtney	IP Nursing Assist	Nights
Letts	Fay	Cook 1	Days
Lewis	Kathy	Admission Clerk	Days
Lindsey	Kelli	Phlebotomist	Days
Lyle	Kayla	RN	Days
Macklem	Hope	Emergency Department Technician	Days
Masters	Doreen	Lead Diag Imag Aide	Days
Mccarthy-Riley	Bridget	Admission Clerk	Days
Mcfalda	Tess	Medical Technologist	Days
McGeary	Ayme	IP RN	Days
Mcintosh	Cal	Medical Technologist	Nights
Mcpherson	Linda	HIM Clerk	Days
Mcpherson	Noelle	RN	Days
Mcquiston	Duane	Respiratory Therapist	Nights

**Exhibit A to Employer's Position Statement**

07-RD-270474

*\*All Unit Employees Located at Employer's West Branch Location*

Mcquiston	Stephen	Maintenance Class II	Afternoons
Meir	Sharon	OP RN	Days
Mester	Holly	RN	Days
Mikolaiczik	Angela	Housekeeping Aide	Days
Mikula	Kacey	Surgical Services Assistant	Days
Miller	Ashley	Ultrasound Technologist / Echocardiography/Reg	Days
Miller	Kimberly	Surgical Boarding Clerk	Days
Miller	Lorraine	RN	Days
Miller	Angela	Housekeeping Aide	Days
Milligan	Tina	Housekeeping Aide	Days
Millikin	Tashiana	Pharmacy Technician	Days
Miracle	Alyssa	Phlebotomist	Days
Morley	Jennifer	Nursing Assistant	Days
Morris	Derek	Surgical Tech	Days
Morris	Desirae	IP RN	Nights
Motsinger	Kenneth	Maintenance Class II	Nights
Mrozinski	Lesa	Respiratory Therapist	Days
Mullett	Jordan	Maintenance 1-L	Days
Nelson	Ashlee	Clinic Info Sys Coordinator	Days
Neubecker	Jessica	Radiology Aide	Days
Newkirk	Holly	Ultrasound Technologist	Days
Newman (Crego)	Skylar	Radiologic Tech – Registry Eligible	
Nielsen	Teriesa	Financial Transaction Clerk	Days
Nisonger	Janet	RN	Nights
Noble	Josephine	CT Tech	Days
Noble	Lorna	RN	Days
Nogle	Anita	Case Manager	Days
Norton	Sandra	Pharmacy Technician	Days
Ososki	Joann	Nursing Assistant	Days
Ott	Melissa	Medical Assistant	Days
Paisley	Jessica	Housekeeping Aide	Nights
Papple	Rebecca	Storeroom Clerk Courier	
Peters	Georgia	RN	Days
Peterson	Dawn	Housekeeping Aide	Afternoons
Phillips	Elizabeth	Housekeeping Aide	Afternoons
Phillips	Shannan	Coding Specialist	Days
Pieper	Lisa	Housekeeping Aide	Days
Pierce	Benjamin	Cook 2	Afternoons
Pleiman	Steven	RN	Days
Plutt	Jessica	RN	Days
Polishak	Brian	Nutrition Service Aide	Afternoons
Prager	Joann	Coding Specialist	Days
Preston	Melissa	Housekeeping Aide	Nights

**Exhibit A to Employer's Position Statement**

07-RD-270474

*\*All Unit Employees Located at Employer's West Branch Location*

Pretzer	Melanie	RN	Days
Prince	Laurel	Billing Clerk	Days
Pruett	Jeri-Rhea	RN	Days
Quinnan	Loretta	Emergency Department Technician	Days
Rabidue	Stefany	RN	Afternoons
Rau	Kathleen	Inventory Control Clerk	
Reetz	Rabecka	Nursing Assistant	Days
Rice	Hannah	IP RN	Nights
Robbins	Ella	CT/Pacs Technologist	Days
Rosebrugh	Jody	OP RN	Days
Roy	Donald	Maintenance 1-L	
Savasky	Jennifer	RN	Nights
Schaefer	Robert	Maintenance Class II	Days
Schaub	Christina	Medical Assistant	Days
Schliter	Doreen	Coding Specialist	Days
Schmidt	Michelle	Billing Clerk	Days
Schnautz	Kathy	Billing Clerk	Days
Scott	Cara	Nursing Assistant	Days
Scott	Karen	Scheduling Clerk Rehab Services	Days
Sczpekowski	Mary	IP RN	Nights
Senkler	Tina	MRI Technologist	Days
Seymour	Chelsea	Ultrasound Technologist	Days/Afternoons
Simmons	Emily	Nursing Assistant	Days
Simmons	Brandi	Ward Secretary	Days
Sincerbeau	Andrea	Housekeeping Aide	Days
Sipl	Kaytlin	Emergency Department Technician	Afternoons
Sisco	Charity	Diabetes Education Coordinator	Days
Sloan	Jaime	RN	Nights
Smith	Kendra	Housekeeping Aide	Afternoons
Smith	Justine	RN	Nights
Smith	Belinda	Lab Tech	Nights
Smith	Phyllis	RN	Days
Snedden	Teri	RN	Days
Spencer	Melissa	Cook 2	Afternoons
Stearns	Jeff	Maintenance Class II	Days
Stephens	Morgan	Nursing Assistant	Days
Stillwagon	Bobbie	RN	Nights
Stillwagon	Kelsey	Radiology Aide	Days
Stillwagon	Joni	Mammography Technologist	Days
Stinson	Stacey	RN	Days
Stube	Barbara	RN	Days
Tabayoyong	Cheryl	Admission Clerk	Days
Taber	Paul	Cardiology Technician II	Days
Tambs	Tanya	RN	Nights
Taylor	Ashley	Ultrasound Technologist	Days

**Exhibit A to Employer's Position Statement**

07-RD-270474

*\*All Unit Employees Located at Employer's West Branch Location*

Thompson	Jennifer	Nutrition Service Aide	Afternoons
Tolfree	Charles	Admission Clerk	Nights
Tomczak	Kelly	IV Therapy RN	Days
Van Horn	Beverly	Ward Secretary	Days
Vervoort	Donnelle	Surgical Tech	Days
Villarreal	Sherri	Nutrition Service Aide	Days
Von Matt	Amy	Cardiac Cath Tech	Days
Ward	Cory	Registered Radiology Tech	Days
Ware	Megan	Ultrasound Technologist	Afternoons
Warner	David	Phlebotomist	Days
Warner	Lucas	IP RN	Days
Weiler	Raelynn	RN	Nights
Welters	Pamela	Central Scheduling Clerk	Days
Whetstone	Emily	RN	Days
White	Nicole	Housekeeping Aide	Days
Wiergowski	Julie	Respiratory Therapist	Days
Wilcox	Ashley	Registered Radiology Tech	Days/Afternoons
Williams	Cheryl	Emergency Department Technician	Nights
Willoughby	Cheryl	Medical Technologist	Afternoons
Winters	Lindsay	RN	Nights
Wisniewski	Jason	Bio Med Tech	Days
Witherspoon	Kimberly	OP RN	Days
Wolpert	Victoria	Registered Radiology Tech	Days
Yenna	Debra	RN	Days
York	Terri	Admission Clerk	Days
Zettel Ross	Rochelle	Medical Technologist	Days
Zettle	Theresa	IV Therapy RN	Days
Zwierzelewski	Robert	Emergency Department Technician	Days

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

**Union**

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**EMPLOYER'S STATEMENT OF POSITION –**

**EXHIBIT B**

**Exhibit B to Employer's Position Statement**

**07-RD-270474**

*\*All Unit Employees Located at Employer's West Branch Location*

<b>Last Name</b>	<b>First Name</b>	<b>Job Classification</b>	<b>Shift</b>
Champ	Danielle	Clinical Coordinator/Wound Care	Days
Clemens	Wayne	Respiratory Coordinator	Days

**UNITED STATES OF AMERICA  
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**and**

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**Union**

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**EMPLOYER'S STATEMENT OF POSITION –**

**EXHIBIT C**

Professional Classifications	Non-Professional Classifications
<ul style="list-style-type: none"> <li>• Registered Nurse</li> <li>• Case Manager/RN</li> <li>• Special Procedures Registered Nurse (i.e. Cardiac Cath RN)</li> <li>• Social Worker MSW</li> <li>• Medical Technologist</li> <li>• Graduate Nurse</li> <li>• CT Technologist</li> <li>• CT/PACs Technologist</li> <li>• Mammography Technologist</li> <li>• MRI Technologist</li> <li>• Nuclear Med Technologist</li> <li>• Special Procedures Technologist (Cardiac Cath Tech)</li> <li>• Ultrasonography Technologist</li> <li>• Ultrasound Technologist / Echoradiography/Reg</li> <li>• Diabetes Education Coordinator</li> <li>• Clinical Dietitian</li> <li>• Network Analyst</li> <li>• Clinical Coordinator/Wound Care*</li> </ul>	<ul style="list-style-type: none"> <li>• Bio Med Tech</li> <li>• Bio Med Tech - Certified</li> <li>• Exercise Physiologist</li> <li>• Cardiac Health &amp; Rehab EP</li> <li>• Cardiology Technician II</li> <li>• Cardiology Technician II with EEG</li> <li>• Cardiopulmonary Technician II</li> <li>• Case Manager/LPN</li> <li>• Radiology Tech – Registered</li> <li>• Radiology Tech – Registry Eligible</li> <li>• Radiology Aide</li> <li>• Lead Diagnostic Imaging Aide</li> <li>• Licensed Practical Nurse</li> <li>• Linen Services Aide</li> <li>• Nutrition Service Aide</li> <li>• Cook 1</li> <li>• Cook 2</li> <li>• Emergency Department Tech</li> <li>• Housekeeping Aide</li> <li>• Environmental Services Secretary</li> <li>• Maintenance I-L</li> <li>• Maintenance Class I</li> <li>• Maintenance Class II</li> <li>• Plant Operations Coordinator</li> <li>• Procurement Clerk</li> <li>• Nursing Assistant</li> <li>• Ward Secretary</li> <li>• HIM Clerk</li> <li>• Lab Assistant</li> <li>• Lab Registration Clerk</li> <li>• Phlebotomist</li> <li>• Endoscopy Technician</li> <li>• Surgical Boarding Clerk</li> <li>• Surgical Technician</li> <li>• Surgical Technician Trainee</li> <li>• Surgical Services Assistant</li> <li>• Medical Assistant</li> <li>• Medical Laboratory Technician Registered</li> <li>• Medical Laboratory Technician Registry Elig.</li> <li>• Community Outreach Worker</li> <li>• Accounting Clerk</li> <li>• Billing Clerk</li> <li>• Admission Clerk</li> <li>• Financial Transaction Clerk</li> <li>• Pharmacy Technician – Licensed</li> <li>• Rehabilitation Technician/Aide</li> <li>• Certified Respiratory Therapist</li> <li>• Registered Respiratory Therapist</li> <li>• Scheduling Clerk/Rehab Services</li> <li>• Centralized Scheduling Clerk</li> <li>• Inventory Control Clerk</li> </ul>

	<ul style="list-style-type: none"><li>• Storeroom Clerk/Courier</li><li>• Transcriptionist</li><li>• Senior Payroll Practitioner</li><li>• Development Associate</li><li>• Coding Specialist</li><li>• Clinical Information System Coordinator</li><li>• Respiratory Coordinator*</li><li>• Equipment and Inventory Control Coordinator</li></ul>
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*\*MidMichigan Medical Center – West Branch contends that these positions should not be in the bargaining unit because they are supervisors under Section 2(11) of the Act, as set forth in its Statement of Position. However, it has included these jobs in their appropriate classifications in the event they are eligible to vote.*

**EXHIBIT F**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No 07-RD-270474	Date Filed December 18, 2020

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position  
*Ruth P. Fournier*

1c. Business Phone: *574-265-9706* 1e. Fax No: *989-343-3282*

1b. Address (Street and number, city, state, and ZIP code)  
*2463 S M30, West Branch, MI 48801*

1d. Cell No. *574-265-9706* 1f. e-Mail Address

2. Do you agree that the NLRB has jurisdiction over the Employer in this case?  Yes  No  
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate?  Yes  No (If not, answer 3a and 3b)

a. State the basis for your contention that the proposed unit is not appropriate (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)  
*None*

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.

Added <i>None</i>	Excluded
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4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.  
*N/A*

5. Is there a bar to conducting an election in this case?  Yes  No. If yes, state the basis for your position.

6. Describe all other issues you intend to raise at the pre-election hearing.  
*None*

The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4569/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4569/Optional%20Forms%20for%20Voter%20List.docx).  
A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)  
If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)

State your position with respect to the details of any election that may be conducted in this matter. 8a. Type:  Manual  Mail  Mixed Manual/Mail

8b. Date(s) <i>7 January 2021</i>	8c. Time(s) <i>11:34 AM.</i>	8d. Location(s) <i>West Branch</i>
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)

9. Representative who will accept service of all papers for purposes of the representation proceeding

9a. Full name and title of authorized representative <i>Ruth P. Fournier Registration Clerk</i>	9b. Signature of authorized representative <i>Ruth P. Fournier</i>	9c. Date <i>7 JAN. 2021</i>
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9d. Address (Street and number, city, state, and ZIP code)  
*2463 S. M30 West Branch, MI 48801*

9e. e-Mail Address  
*ruth.fournier@hotmail.com*

9f. Business Phone No <i>989-343-3193</i>	9g. Fax No <i>989-343-3282</i>	9h. Cell No. <i>574-265-9706</i>
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WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION 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. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 7492-3 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(4) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in Federal court.

# **EXHIBIT G**

**UNITED STATES 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**

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**UNION SEIU HEALTHCARE MICHIGAN's  
POST HEARING BRIEF**

NOW COMES SEIU HCMI, by and through its counsel, with this Post Hearing Brief, and for its brief, SEIU HCMI states as follows:

**I. INTRODUCTION**

In this objections case, the SEIU raises two central objections: 1) That Graduate Nurse is not a professional position and 2) that the Sonotone election is not necessary.

Concerning these two issues, the Union addresses the Graduate Nurse issue below. As to the second issue, the Union has requested of the National Labor Relations Board the right to reopen the record to present evidence on this issue. The Union will briefly touch on the issue, but reserve the right to more fully brief the issue at a later point.

## **II. STATEMENT OF FACTS**

### **A. Graduate Nurse**

The Union and Employer disagreed about whether the Graduate Nurse was a professional employee. In Board Exhibit 2, the parties stipulated that LPNs are nonprofessional employees. Thus, the Union presented evidence that compared the position of LPN to the duties of Graduate Nurse, in an effort to demonstrate that Graduate Nurses also should be deemed nonprofessional.

The only evidence in the record on this issue was a Registered Nurse who works with Graduate Nurses, Jeanann Kaiser. Ms. Kaiser has been a nurse at the hospital for the past seventeen (17) years. (Tr 20) While the Licensed Practical Nurse("LPN") position has been eliminated at the Hospital recently, the in the past Ms. Kaiser worked with LPNs for a period of about ten (10) years. (Tr 20-21) She worked with LPNs on a weekly basis during this time frame. (Tr 21)

As to Graduate Nurses, Ms. Kaiser testified that she worked with them about twice each year for the last ten (10) years. (Tr 22) She testified that Graduate Nurses are typically in the hospital for about three to four week stints. (Id) She last worked with a Graduate Nurse last week. (Id)

Ms. Kaiser is confident that she was able to confidently work with LPNs and Graduate Nurses enough to know a lot about the work duties that they perform. (Id) She described the differences between the duties of these two positions. Graduate Nurses do not have their own patient assignments, but LPNs do. (Tr 22-23) Additionally, LPNs are able to pass medicine to the patients, where as Graduate Nurses are not. (Id) Other than that, the work of LPNs and Graduate Nurses is identical. (Id) Ms. Kaiser even agreed that LPNs have "more responsibility" than Graduate Nurses, given the ability to care for patients directly and pass medicine. (Id, Tr 25)

### **B. Sonotone election**

The Union was only allowed to put on an offer of proof concerning this issue. Currently, the Union is seeking a special appeal of the Regional Director's decision to deny the amendment of the statement of position, and to refuse the chance to place evidence into the record. The offer of proof presented by the Union is found on Transcript pages 86 – 90.

## **III. ARGUMENT**

### **A. Graduate Nurses Are Not Professional Employees**

The Union argues in this case that the Graduate Nurses – in the instant hospital – are not professional employees.

A Regional Director decision, *New York University*, 2-RD-104101, Decision And Order Dismissing Petition, 2013 BL 469787, outlines some general principles concerning how to define professional employees. Section 2(12) is meant to apply to small and narrow classes of employees. *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12) before they qualify as professional employees within the definition. *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993). Although employee background is examined for the purpose of deciding whether the work of the group satisfies the "knowledge of an advanced type" requirement of Section 2(12)(a), it is the character of the work required rather than the individuals' qualifications that determine professional status. *The Express News Corp.*, supra at 628; *Western Electric Co., Inc.*, 126 NLRB 1346, 1348-1349 (1960). An employer's requirement that all of its employees in a classification have an advanced degree in the field to which the profession is devoted would be persuasive evidence that the employees are professionals, but such evidence is not necessarily conclusive. Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through

a prolonged course of study in specialized schooling. *Aeronca, Inc.*, 221 NLRB 326, 327 (1975). Further, while an employee's academic or other qualifications are relevant to this determination, the controlling factor is generally the nature of the work the employee performs. *Ohio St. Legal Services Ass'n*, 239 NLRB 594 (1978). Expertise gained through limited, technical coursework does not rise to the level of advanced knowledge requiring a prolonged course of instruction at an institution of higher learning. *Ohio St. Legal Services Ass'n*, at 595-96; *Taft Broadcasting Co.*, 226 NLRB 540 (1976). Furthermore, a position that requires only a general college education is not professional. *Express-News Corp.*, supra at 629-30 (1976). And even when a specialized job function is performed primarily by persons with advanced degrees in the field, if the work is routine, the job is not professional. *A.A. Mathews Assocs.*, 200 NLRB 250, 251 (1981). Salary is not determinative of professional status. *E. W. Scripps Co.*, 94 NLRB 227, 240 (1951).

It is clear that an assessment of the duties of each employee, as opposed to reliance on presumed duties addressed in other cases, is critical in making the professional assessment. The General Counsel Memorandum 91-4 outlines prior rulings on various types of positions. The cases analyze Graduate Nurses, and draw the conclusion that those positions are professional. However, a close review of the cases cited within GC 91-4 reveals that their rulings are distinguishable from the facts at hand.

The first case is *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975), enf. denied and case remanded 589 F.2d 968 (9th Cir. 1978), cert. denied 440 U.S. 910 (1979), where the Board considered “nurse permittees” – or Graduate Nurses – who have graduated from nursing school and were about to take the exams in order to become licensed as registered nurses. *Id.*, at 768. The record reflected that “the nurse permittees work under state permits performing essentially the same functions and duties as the registered nurses, under supervision of a registered

nurse, except for the handling of narcotics.” Id. The case did not reflect any comparison to other nonprofessional employees who may perform similar duties, such as LPNs. The Board conducted similar limited analyses in *Meharry Medical College*, 219 NLRB 488, 489-490 (1975); *St. Elizabeth’s Hospital of Boston*, 220 NLRB 325 (1975); and *St. Mary’s Hospital, Inc.*, 220 NLRB 496 n. 3 (1975).

The *Lydia E. Hall Hospital*, 227 NLRB 573 (1976) case, found within GC-91, examined the role of Graduate Nurses in much more detail than the other cases. In addition to the mention that the Graduate Nurses have graduated from school but not yet taken/passed their exams, the Board described the Graduate Nurses as follows:

“They are hired by the Employer to perform the duties of registered nurses, under the supervision of registered nurses. Those who become certified move into registered nurse status; those who fail to obtain certification within the year covered by their temporary permits will, if the Employer decides to retain them, be demoted to licensed practical nurse status. [footnote omitted]”

The opinion continued by discussing the fact that Graduate Nurses are counted in the patient scheduling ratio:

“The scheduling process for both registered nurses and graduate nurses is the same and, although they appear on the shift schedules as graduate nurses, they are counted as registered nurses for the purpose of determining the required nursing complement for each floor.”

Id. Thus, the Graduate Nurses are at least treated as if they have their own patient assignment.

In the instant record, there is very little concerning the work actually performed by Graduate Nurses. What is clear in the record is that the Graduate Nurses work is nearly identical to that of Licensed Practical Nurses, who the parties have stipulated are nonprofessional. Board precedent is clear that when assessing whether a position is professional or not, the duties of that position should be assessed and compared to the duties performed by other positions in the unit. In *A. A. Mathews Assocs.*, *supra*, the Board assessed whether engineer-inspectors were

professionals. The Board compared the work of these inspectors to that of engineers who were clearly professionals, as well as to nonprofessional employees also within the unit. Those employees who performed inspection work and had engineering degrees were classified as engineers. Employees performing inspection work without degrees were deemed “engineering-inspectors”. *Id.* at 250. This is similar to Graduate Nurses, in the instant case, who are not Registered Nurses because they have yet to successfully complete their licensing exams.

The Board cited the principle that “it is the work performed and the ‘consistent exercise of discretion and judgment in its performance,’ rather than the employee's qualifications, which is controlling in determining whether an individual is a professional employee. [citation omitted]” *Id.*, at 251. It then compared the work of engineering-inspectors to that of other nonprofessional employees in the unit:

“the major portion of the engineer-inspectors' work involves inspection of construction work similar to that performed by admittedly nonprofessional employees herein. Moreover, such inspection work is similar to that of others whom the Board has found not to be professional employees.”

*Id.*

This analysis applies to the circumstances in the instant case. The duties of the Graduate Nurses bear little, if any, distinction to the work of the LPNs. However, unlike, Registered Nurses and LPNs for that matter, the Graduate Nurses do not have their own patient assignments and do not administer any medicine. LPNs exercise more “discretion and judgment” (29 U.S.C. § 152(12)) on the job than Graduate Nurses. Thus, the Graduate Nurses should be considered nonprofessional.

Even more, the Board considered the fact that the engineering-inspectors' work resembled that of professional engineers, and inconsistently required discretion and judgment: “Even assuming the other duties assigned the engineer-inspectors involve the exercise of discretion and

judgment predominantly intellectual in character, the record before us does not warrant finding that these employees consistently exercise such discretion and judgment as required by Section 2(12).” Id. In the instant case, similarly, the record does not reflect that Graduate Nurses exercise ANY discretion and judgment required of a professional employee.

#### **B. The Sonotone Election Is Not Necessary**

The Union is unable to fully brief the necessity of the *Sonotone* issue, having been blocked from making a record on the issue. Nonetheless, the Union outlines certain legal principles, which it hopes to have the chance to flesh out following a remand order from the Board.

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). The subsequent Union briefing will frame the question somewhat differently than in *American Medical Response*. 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*, supra. 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's request is for the opportunity 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.

Further, decisions occurring after *Sonotone Corp* support such reasoning. In *Great Falls Employers Council, Inc.*, 114 N.L.R.B. 370 (1955), which involved a unit of professional and non-professional employees, the Petitioner requested that a decertification election should only be held for the professional employees. *Id.* at 371. The Board, noting the holding in *Standard Oil Company of California (Richmond Refinery, Richmond, California)*, 113 NLRB 475 (1955), stated "We are convinced the principle 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.* Therefore the Board dismissed the petition. *Id.*

This principal continued to be applied and expanded upon. In *Pennsylvania Power & Light Co.*, 122 N.L.R.B. 293 (1958), the Employer attempted to include 21 junior engineers in the unit of the Petitioner seeking to represent professional employees. *Id.* at 294. However, the junior engineers were already part of a unit which included non-professional employees, represented by the Intervenor in a contract between it and the Employer. *Id.* While the Board seemed to agree that these employees were professional, it did not agree with the Employer's position that the junior engineers should be included in the petition because they had never had the ability to vote under Section 9(b)(1). *Id.* at 294 & n.2. In making its decision, the Board stated "...as they are presently represented in a certified unit by a union whose contract would bar a representation proceeding with respect to this category, we shall exclude them." *Id.* at 294.

The Union is aware of this Region's recent ruling in *Gladwin Pines Operating, LLC d/b/a Gladwin Pines Nursing and Rehabilitation Center*, 07-RD-227480, Decision and Direction of Election, 2018 BL 380566. In that case, the Union, Employer and decertification petitioner all stipulated that registered nurses were not professional employees. This Region rejected that stipulation. Respectfully, the Union believes that the parties in that case should have been allowed to conduct a non-*Sonotone* election.

#### **IV. CONCLUSION**

WHEREFORE, and for the above-stated reasons, SEIU seeks that the Regional Director find that Graduate Nurse are nonprofessional employees, and that a *Sonotone* election is not necessary in this matter.

Respectfully submitted,

**MILLER COHEN, P.L.C.**

By: /s/Richard G. Mack, Jr.  
Richard G. Mack, Jr. (P58657)  
Attorney for SEIU  
7700 Second Avenue, Suite 335  
Detroit, MI 48202  
(313) 964-4454

Dated: January 28, 2021

**UNITED STATES 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**

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**PROOF OF SERVICE**

Sheila Manson states that on January 28, 2021, she served a copy of:  
**The Union SEIU Healthcare Michigan’s Post Hearing Brief, and a copy of this Proof of Service** upon:

Via email [edsengap@millerjohnson.com](mailto:edsengap@millerjohnson.com)  
Patrick Edsenga  
Miller Johnson, PLC  
45 Ottawa Ave. SW, Ste. 1100  
P.O. Box 306  
Grand Rapids, MI 49501-0306

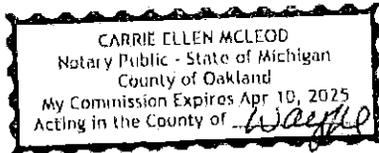
Via email [ruth.fournier@hotmail.com](mailto:ruth.fournier@hotmail.com)  
and US Mail  
Ruth Fournier  
2463 S. M-30  
West Branch, MI 48661

by placing same in the United States Mailbox in Detroit, Michigan and via overnight delivery.

Sheila Manson  
Sheila Manson

Subscribed and sworn to before me  
on this 28th day of January, 2021

Carrie Ellen McLeod  
Notary Public Oakland County  
Acting in Wayne County, MI  
My Commission Expires: 4/10/25



# **EXHIBIT H**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

**Union**

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**EMPLOYER’S POST-HEARING BRIEF**

MidMichigan Medical Center – West Branch (“MidMichigan”) by its undersigned counsel, submits this post-hearing brief as permitted by 29 C.F.R. § 102.66(h).<sup>1</sup>

**I. INTRODUCTION**

As the Region is aware, the bargaining unit at issue in these proceedings contains a mixture of professional employees and employees that are not considered professional employees, as defined by Section 2(12) of the National Labor Relations Act (the “Act”). At the hearing held on January 19, 2021, with one exception discussed below, MidMichigan, SEIU Healthcare Michigan (the “Union”), and the Petitioner stipulated on the record as to those job classifications that employ “professional employees” and those job classifications that employ non-professional employees. The parties disagreed on only one job classification: graduate

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<sup>1</sup> 29 C.F.R. 102.66(h) provides that a party must submit its post-hearing brief to the Regional Director within five business days after the close of the hearing. However, the Regional Director granted, in part, the Union’s motion for an extension of time for the parties to file post-hearing briefs and directed that post-hearing briefs must be filed on or before January 28, 2021.

nurses. MidMichigan and the Petitioner contend that graduate nurses are professional employees under Section 2(12) of the Act, and the Union contends that graduate nurses are not professional employees.

As discussed below, the law on this issue is clear and well settled. Graduate nurses are professional employees under the Act. Therefore, the Region should adopt the position of MidMichigan and the Petitioner and find that graduate nurses are professional employees for the upcoming decertification election.

## **II. THE GRADUATE NURSES IN THE BARGAINING UNIT ARE PROFESSIONAL EMPLOYEES UNDER THE ACT.**

The Act, 29 U.S.C. § 152(12), defines professional employees as follows:

(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 a 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 of 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, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual 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).

Consistent with longstanding Board precedent, the parties agree, and stipulated on the record, that registered nurses (RNs) are professional employees under the Act. (Hearing Transcript (“Tr.”) at p. 71.) While the Union disputes that graduate nurses are also professional employees, it is equally clear that graduate nurses – or “nurse permittees” – are professional

employees under the Act because of their community of interest with the RNs who work alongside and monitor the graduate nurses until they become RNs themselves.

Longstanding NLRB precedent supports this conclusion. As the ALJ observed in *Meadowlands Hospital Medical Center*, 2016 WL 5115522 (NLRB Div. Judges 2016), “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 registered nurses or in a unit consisting of professional employees which also includes RNs.” Likewise, the NLRB’s General Counsel observed in General Counsel Memo 91-4 that “[t]he following classifications have generally been included in RN units: Graduate Nurses or Nurse Permittees [who are] Nursing School graduates who, pursuant to temporary state permits, perform RN duties under RN supervision until such time as they pass the state-licensing exam.”

Both the ALJ in *Meadowlands Hospital* and General Counsel Memo 91-4 note that since 1975, the Board has found that graduate nurses are professional employees who are properly included in a bargaining unit with registered nurses.

- In *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765, 768 (1975), the Board held that “nurse permittees” are professional employees under the Act. The Board noted that, like graduate nurses, nurse permittees “are nurses who have graduated from accredited nursing schools and have either taken or are about to take the registration examination required by the State to become licensed as [RNs]” and “until such time as they...have passed the examination, the nurse permittees...perform[] essentially the same functions and duties as the [RNs], under the supervision of a registered nurse, except handling narcotics.” *Id.* (emphasis added). The Board found that “nurse permittees, by virtue of the nature of their training and working conditions, are professional employees within the meaning of the Act, and we shall include them in the nurses’ unit.” *Id.*
- In *Meharry Medical College*, 219 NLRB 488, 489-90 (1975), the Board found that graduate nurses, defined almost exactly the same as the nurse permittees in *Mercy Hospitals*, were properly included in a bargaining unit with registered nurses given “the nature of the training and working conditions of graduate nurses.”
- In *St. Elizabeth’s Hospital of Boston*, 220 NLRB 325 (1975), the Board again held that graduate nurses, defined as those who “have graduated but not yet passed the registration examination for registered nurses, either because they have not taken the exam or because

they have failed it before” are considered “to be professional employees within the meaning of the Act.”

The only witness at the hearing, RN Jeanann Kaiser, confirmed that the graduate nurses in the bargaining unit fit the exact definition set forth in the cases cited above. As Ms. Kaiser testified, the graduate nurses at MidMichigan: (1) have graduated from nursing school, (2) are waiting to take the state-mandated licensing test to become an RN or are awaiting the test results, (3) will become RNs once they pass the licensing test, (4) work alongside RNs and under the supervision of an RN mentor, (5) perform the same patient care responsibilities as RNs, except passing medication, and (6) report to the same Nursing Manager as RNs. (Hearing Tr. at pp. 23-26.)

Therefore, the Region should find that the graduate nurses employed by MidMichigan are professional employees under the Act for the upcoming decertification election.

MILLER JOHNSON  
Attorneys for MidMichigan Medical Center- West Branch

Dated: January 28, 2021

By *Nathan D. Plantinga*  
Nathan D. Plantinga  
Patrick M. Edsenga  
Business Address:  
45 Ottawa Avenue SW, Suite 1100  
Grand Rapids, Michigan 49503  
Telephone: (616) 831-1700

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MidMichigan Medical Center – West Branch,**

**Employer**

**and**

**Case 07-RD-270474**

**Ruth Fournier**

**Petitioner**

**and**

**SEIU Healthcare Michigan**

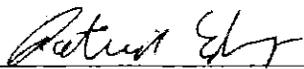
**Union**

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**CERTIFICATE OF SERVICE**

This is to certify that on this 28<sup>th</sup> day of January, 2021, a copy of this document and exhibits was e-Filed at my direction using the NLRB e-filing system and also served via email and, if requested upon emailing, by regular US mail to the Petitioner Ruth Fournier and Richard Mack, the attorney for SEIU Healthcare Michigan.

Dated: January 28, 2021

By   
Patrick M. Edsenga

# **EXHIBIT I**

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

**MIDMICHIGAN MEDICAL CENTER –  
WEST BRANCH<sup>1</sup>**

**Employer**  
**and**

**Case 07-RD-270474**

**SEIU HEALTHCARE MICHIGAN<sup>2</sup>**

**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.<sup>3</sup>

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<sup>1</sup> The Employer's name appears as corrected by stipulation of the parties.

<sup>2</sup> The Union's name appears as corrected by stipulation of the parties.

<sup>3</sup> 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*<sup>4</sup> 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<sup>5</sup> 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.<sup>6</sup> 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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<sup>4</sup> *Sonotone Corp.*, 90 NLRB 1236 (1950).

<sup>5</sup> 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..."

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> I hereby affirm my rulings for the following reasons.

Under Section 9(b)(1) of the Act,<sup>9</sup> 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).<sup>10</sup> 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'"<sup>11</sup> 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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<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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; ..."

<sup>10</sup> 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.

<sup>11</sup> 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<sup>12</sup> – 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<sup>13</sup> until such time as they pass the state licensing exam. While the

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<sup>12</sup> Special procedures RNs are also known as “cardiac cath RNs.”

<sup>13</sup> 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,<sup>14</sup> 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

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<sup>14</sup> 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.<sup>15</sup>

## 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.<sup>16</sup>
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.<sup>17</sup>
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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<sup>15</sup> The parties stipulated that professional employees are those who meet the definition of Section 2(12) of the Act.

<sup>16</sup> 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.

<sup>17</sup> 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 I-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.<sup>18</sup> The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit/voting groups at 4:00 p.m. on **Friday**,

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<sup>18</sup> 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(I) 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.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).

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.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 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.nlr.gov](http://www.nlr.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.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.

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



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