DIGNITY HEALTH D/B/A ST. MARY'S MEDICAL CENTER

Employer

and

CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES UNITED

Petitioner

REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION AND

ORDER TO SHOW CAUSE WHY A MANUAL ELECTION SHOULD BE CONDUCTED

California Nurses Association / National Nurses United (Petitioner) seeks an Armour-Globe self-determination election among the Wound Care Program Coordinator employed by Dignity Health d/b/a St. Mary’s Medical Center (Employer) to determine whether that classification wishes to join the existing, Petitioner-represented bargaining unit. The Employer takes the position that the classification sought by Petitioner is not an appropriate voting group on the asserted basis that the Wound Care Program Coordinator (WCPC) is a supervisory and/or managerial position, excluded by the Act.

Petitioner and the Employer agree that the current bargaining unit is appropriate and that the petitioned-for voting group consisting solely of the WCPC at St. Mary’s, assuming it is not supervisory or managerial, is appropriate under the Board’s Armour-Globe doctrine. With regard to the supervisory question, the parties have stipulated that the only § 2(11) supervisory criteria at issue are the authority to assign and to responsibly direct employees.

A hearing officer of the Board held a hearing in this matter, and the parties submitted post-hearing briefs. During the hearing, it was discovered that the Employer also employs a WCPC at its St. Francis Memorial Hospital (St. Francis). However, neither party took the position that the voting group must include that classification. As a result, should the WCPC classification not be found to be supervisory or managerial, the question of including the WCPC at Saint Francis in the voting group must be resolved.

As described below, after a careful review of the record, the parties’ briefs, and extant Board law, I find that the WCPC classification is not supervisory or managerial. I further find that the petitioned-for WCPC classification at St. Mary’s Medical Center, and excluding the

1 I hereby grant the motion made at the hearing by Petitioner to amend its name to that presented in the caption of this Decision and Direction of Election. Tr. Vol. I, 12.

2 I hereby grant the motion made at the hearing by the Employer to amend its name to that presented in the caption of this Decision and Direction of Election. Tr. Vol. I, 9.
WCPC classification at the Employer’s St. Francis Hospital, is not an appropriate voting group. Because the two WCPCs at both facilities are a distinct, identifiable group of employees that share an overwhelming community of interest with each other and a community of interest with the existing unit, both WCPCs constitute an appropriate voting group.

FACTS

I. The Employer’s Operations

The Employer is a California not-for-profit corporation operating an acute-care hospital at St. Mary’s Medical Center, located at 450 Stanyan Street, San Francisco, California. During the past twelve months, in the course of operating this acute care hospital, the Employer derived gross revenues in excess of $250,000 and purchased and received goods valued in excess of $5,000 directly from points located outside the state of California. As such, the Employer affects interstate commerce within the meaning of Sections 2, 6, and 7 of the Act and is an employer, within the meaning of Section 2(2) of the Act. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Petitioner and the Employer are parties to a master collective-bargaining agreement (Joint Exhibit 01) in effect from July 1, 2017 to June 30, 2021. The agreement covers approximately twenty-nine Employer-owned hospitals in the state of California and provides that the Registered Nurses of the referenced hospitals constitute a single bargaining unit. The unit consists of ~14,000 nurses.

Petitioner and the Employer also entered into a local collective-bargaining agreement for the Greater Bay Area that includes the Registered Nurses at Saint Francis Memorial Hospital and St. Mary’s Medical Center (Joint Exhibit 02). St. Mary’s and Saint Francis have historically been sister hospitals, whereby nurses pick up shifts at one or the other but bill their services only to their home hospital. The two hospitals began to merge in October of 2019. That integration process is ongoing, as management and services continue to be integrated and policies updated to cover both facilities.

II. The Wound Care Program Coordinator Classification

The WCPC position exists at St. Mary’s and at Saint Francis. At St. Mary’s, Cecile Dizon has occupied that role since December 2019, after her predecessor left. The WCPC is a full time, exempt position, scheduled Monday through Friday, 8:00 a.m. to 5:00 p.m. Unlike the bargaining-unit nurses who are paid hourly, the WCPC is salaried. The WCPC receives full-time benefits, the same as the bargaining-unit nurses, including healthcare and retirement. The paid-leave structure for the WCPC is different from the contractual structure that applies to the represented nurses.

3 Unless noted otherwise, all descriptions of the WCPC job classification have been derived from testimony and record evidence regarding the WCPC position at St. Mary’s.
Saint Francis has an identical WCPC position, which is filled by Monica Kuechenmeister. Ms. Kuechenmeister has the same job duties, works the same schedule, and receives a similar salary as Ms. Dizon. Both WCPC positions report to Ruth Perry, the Senior Director of Nursing Operations. Ms. Dizon worked at Saint Francis for over three months when there was a vacancy in the WCPC role. She then helped orient Ms. Kuechenmeister in her WCPC position. The two often share ideas and consult with one another.

Under the job description (Joint Exhibit 04), the WCPC is responsible for the development, coordination, and monitoring of the hospital’s wound care program. This includes establishing standards of care, training and education of staff, independently developing and implementing the wound care program, and developing policy related to the program. The position requires licensure as a wound ostomy continence nurse, as obtained through the Wound Ostomy Continence Nursing Certification Board, and wound care certification through the National Alliance of Wound and Ostomy. The job description is the same for the Saint Francis WCPC. Ms. Dizon testified that her duties consist of: wound consults during which she stages and makes treatment recommendations, meeting with vendors regarding wound care products, ordering special beds as needed, conducting patient care orientation for new hires on a monthly basis, conducting wound skills competency annually, organizing wound trainings, meeting with the wound care committee to discuss concerns or issues, revising the wound and skin care policies and the wound care manual. She testified that she never had a discussion about supervisory duties when she was hired or at any time thereafter. (Tr. Vol II, 174.) Ms. Dizon testified that, as a nurse, she directs nursing assistants in the care of the patient, just as bargaining-unit staff nurses direct the assistants.

**Wound Staging / Assessment and “Recommendations”**

When a wound, commonly known as a bedsore or pressure sore, is identified, a consultation request is sent to the WCPC. The WCPC stages the wound to determine the level of severity. Staging involves actual measurements of size and depth as well as observations of the skin granulation, drainage, etc. The severity of the wound is classified as a level one, two, three, or four—four being the deepest tissue pressure injury. Level three and four wounds must be reported to the state. The WCPC must also conduct a root cause analysis and make “recommendations” on the care and treatment of the patient’s wound during their admission. Wound assessments are submitted to quality management and to Ms. Perry. Assessments are also uploaded into the electronic medical record system of the hospital, Cerner. All nurses are required to follow the “recommendations” of the WCPC because they are medical orders that must be followed to ensure proper patient care. Examples of such recommendations include: applying heel protectors; applying proper moisture barriers; checking reposition every two hours; changing the wound dressing every two days. If the treatment plan is not followed, the patient could experience further injury. Ms. Dizon does not always check to verify that her recommendations are being followed, but trusts that the nurses are performing the work. Occasionally, the WCPC follows up with patients to ensure that the appropriate treatment is being given. The WCPC can report any gaps in treatment to the staff nurse’s manager or supervisor, who is in charge of remediating or disciplining the nurse such as through coaching or counseling.
The WCPC stages almost all the wounds because she is the subject matter expert at the hospital. The WCPC spends 3-6 hours a day in bedside care of patients, about 80% of her working hours. That time includes assessing the wound and also educating the patient, family, and staff on the recommendations. Several other bargaining-unit nurses, those on the wound care committee, have a certification as well and can stage a wound if the WCPC is unavailable or the need is urgent. The certified nurses must ultimately collaborate with the WCPC. If the WCPC at one facility were on leave, the WCPC from the sister hospital would be pulled in to consult on wound staging. However, the record shows that at least one bargaining-unit Staff Nurse IV, Ms. Fuller, has filled in when Ms. Dizon was out on jury duty. Ms. Fuller testified that she has a certification through the National Alliance of Wound and Ostomy. Ms. Dizon does not work weekends, and a staff nurse can stage a wound if needed during those times. The staff nurse assessments include the same components: whether it is pressure related; recommendations for treatment; and education for the patient, family, and staff.

Ms. Fuller testified that she worked with wound care at St. Mary’s before Ms. Dizon was hired. Although she is based on a general surgery floor unit, not specifically to a wound care unit, she regularly stages wounds and logs documentation into the Cerner computer system. When she performs wound care, she clocks into a different cost center. Employer Exhibit 12 shows that Ms. Fuller performs wound care about four hours per week. Senior Director of Nursing Operations Ms. Perry testified that she was unaware of, and did not approve, most of those hours and that they were a surprise to her. She did approve the time when the WCPC was on jury duty and Ms. Fuller covered for her.

Committee Membership

The WCPC coordinates the hospital’s wound care program and the skincare and wound care committee, on which five bargaining-unit bedside nurses participate as “wound care champions.” Those five nurses are committee members because they have committed to learning more about, and advocating for, wound care and they are all certified and able to stage a wound. The WCPC leads the group in its monthly meetings, and Ms. Fuller assists. Ms. Perry occasionally attends the meetings. Staff nurses can generally go to a wound care champion to discuss a wound, but the WCPC would ideally get involved, if available. The WCPC has no role in assigning the wound care committee nurses to patients, to floors or departments/units, or scheduling their hours. The committee nurses are assigned to different units on their assigned floors. They do not exclusively work with wound care patients, but if they perform wound care after their eight-hour time frame, they can charge it to the wound care cost center.

The WCPC is a member of the facility implementation team (FIT) regarding any supplies or products that are being evaluated. The team consists mainly of managers and directors and does not include any bargaining-unit nurses. Ms. Dizon testified that she has been invited but has never attended any team meetings. She has never attended a meeting with only managers. Ms.

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4 I granted the Employer’s post-hearing Motion to accept into the record Employer’s Exhibit 12; payroll records discussed at Tr. Vol. 2, 281-82.
Dizon once attended the bed committee meeting, which consists of physical therapists, material management managers, and some others.

**Training and Education**

The WCPC orients all new employees during monthly new-employee orientations with a wound care presentation and demonstration (Employer Exhibit 04). Ms. Dizon testified that she did not create the presentation, as it was developed by the former WCPC at Saint Francis. The certified nursing assistants (CNAs) must complete the one-hour course and take a test, but Ms. Dizon testified that she does not grade the tests. Failing the test would lead to remediation, whereby the WCPC would educate the CNA about which answers were incorrect and why. The WCPC also gives presentations on wound care tips to physicians (Employer Exhibit 09).

The WCPC is responsible for the annual competencies of the registered nurses to make sure the nurses are up to date on the new technologies and evolving standards for wound care. Within the last several months, Ms. Dizon gathered information, drafted, and presented an informative med-surg slideshow for the nurses’ annual competencies (Employer Exhibit 03). Ms. Dizon gathered the substantive information from wound care books, trainings, journals, and conferences. Ms. Dizon testified that she only reviewed and edited the presentation because it was initially drafted by the former WCPC at Saint Francis. The wound care committee nurses (bargaining-unit nurses) assisted with the competency training by collaborating and determining which topics were more important to cover. Nurse Fuller helped put together the resources for the competencies. Once the group finished gathering the new information, Ms. Perry reviewed it and it was fully vetted by the clinical educators for approval before presenting to the nurses.⁵

The nurses must demonstrate competence in wound care through an annual test (Employer Exhibit 06). The test is assessed by the WCPC, who signs off on the nurse’s completion. If a nurse fails to pass, they must go through remediation and receive additional education in consultation with the education department before taking a repeat competency test. If the nurse fails to pass again, their manager becomes involved, and an assessment of the competency is conducted by the WCPC and the education department. The manager carries out discipline and is in charge of transferring or pulling the nurse off the schedule. A performance plan would be coordinated between the education department and the nurse’s manager. The nurse could ultimately be removed from their position if they fail to pass the competency.

There are other bargaining-unit nurses, staff nurse III or IV, who are experts in their field and are responsible for conducting annual competencies, such as wrist restraint competencies or CPR competency. Ms. Dizon testified that she has to take and pass competencies in other areas, as well.

⁵ Ms. Perry testified that she reviewed it prior to approval as the head of the Education Department, and that the clinical educators vetted it: “Looking at the presentations with the subject matter expert to make sure that the information is understandable, readable, applicable, and represents evidence-based standards of care for our patients.”
**Ordering Supplies**

The WCPC meets with vendors and reviews new products and trials to treat wounds, such as wound packs, moisturizers, and other applications. The WCPC can determine whether a product is useful and appropriate and seek approval from her manager, Ms. Perry, and from the supply chain manager in order to order it or run a trial with it. Trials have been run three to four times in the past two years. Sometimes, the WCPC determines that a patient needs a low air loss bed. The WCPC must send the recommendation to supply, which will call a vendor. Ms. Dizon testified that she cannot order anything directly from a vendor on her own. No one at the hospital has the unilateral authority to order supplies or goods. The supply chain manager has to approve any changes to vendor contracts or new vendor contracts. The FIT committee will look at the request, as well.

**Reporting Responsibilities**

The WCPC is responsible for the elimination or reduction of hospital-acquired pressure injuries (HAPIs). During wound assessment, the WCPC determines the root cause and, in coordination with the risk department, determines which wounds are reportable to the state. Wounds that are present on admission are noted. Wounds that have developed during the hospital stay, HAPIs, can cause long-term damage in patients and can cost the hospital money through fines and increased insurance rates. HAPIs are reported and appear in the hospital’s quality ratings. The National Database of Quality Nursing Indicators, NDQNI, is a national nursing database that provides quarterly and annual reporting of structure, process, and outcome indicators to evaluate nursing care at the unit level. The reports are public, and the Employer is required to self-report. Staff nurses fill out documentation quarterly and include chart reviews in their submission. The NDNQI rates nursing performance based on patient outcomes. The hospital also submits metrics for severe HAPIs, those at stage three and four, to the California Department of Health. The hospital’s star rating includes HAPIs and star ratings are important to the Employer because they are published publicly. The risk department fills out the documentation for the reporting, but the WCPC completes the root cause analysis. The WCPC and the risk department both sign off on the report. Ms. Perry reviews the WCPC’s conclusions about the wound before the risk department receives it. She has never overridden or otherwise altered the conclusions of the WCPC.

The hospital’s metrics have a bearing on the WCPC’s annual evaluation and retention because the WCPC is responsible for the “development, coordination, and monitoring of the hospitals Wound Care Program.” (Joint Exhibit 04). The WCPC has never been disciplined for the hospital’s metrics, but they receive merit pay based on performance. In Ms. Dizon’s annual review (Employer Exhibit 11), she summarized her own accomplishments, including the fact that there were no HAPIs for the past year. Ms. Dizon received the highest possible performance ratings. Positive evaluations are tied to merit pay increases. The same evaluation form is used for managers that report to Ms. Perry, but a different evaluation is used for bargaining-unit nurses. Bargaining-unit nurses do not receive merit increases. Although Ms. Fuller takes part in wound care treatment, she is not accountable for the HAPI rates that are submitted to the state.
Office Use

Ms. Dizon has her own office with a locking door. Documentation on patient wounds and consults is kept in cabinets, but they are not locked. The office has a computer, on which she enters medical information into Cerner. Bargaining-unit nurses do not have their own office. However, Ms. Dizon shares the office occasionally with Ms. Fuller, who can also log on to the computer and submit wound documentation. Ms. Fuller’s use of the office is connected to wound care only and totals around 2-3 hours per week. Ms. Fuller occasionally occupies the office at the same time as Ms. Dizon and has her own set of keys. Ms. Fuller oriented Ms. Dizon when she was hired for the WCPC position. The Saint Francis WCPC also has an office with a locking door. Only one bargaining-unit nurse could be identified during the hearing that also has an office.

Policy and Manual Responsibilities

The WCPC is responsible for wound care policy, generally. Ms. Dizon is the “owner” of the Skin Care policy (see Employer Exhibit 02). Ms. Perry testified that the “owner” of a policy is the “person or department” responsible for ensuring that the policy is updated and approved. She explained that, “there's a process that we go through for approval through our Policy and Procedure Review Committee.” During the review process, stakeholders come together to draft policy revisions. For wound and skin care, the stakeholders include the chief nursing executive, the WCPC, the education team, and any unit managers or directors. WCPCs do not have the authority to change policy on their own. Any suggested policy changes go first to Ms. Perry. If she approves, then a draft is sent to the Policy Procedure and Review Committee. Ultimately, it is sent to the medical executive committee and the board committee for the hospital. Staff nurses have been asked for input on policies, but no bargaining-unit nurses are policy owners or co-owners.

All bargaining-unit nurses and the WCPC are required to follow the policy. If the policy is not adhered to, the nurse may be reminded to make sure they understand the concept. Corrective action, including termination, can be taken. No one, including higher-level managers, can diverge from or change a policy unilaterally.

The WCPCs, Ms. Dizon and Ms. Kuechenmeister, are currently reviewing and updating the skin and wound care manual (Employer Exhibit 07). The manual was created by the former Saint Francis WCPC. Again, all revisions must go to Ms. Perry and will then be reviewed by the Policy Procedure and Review Committee for approval.

Overlapping Responsibilities of Bargaining-Unit Nurses

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6 The Saint Francis Memorial Hospital has a policy for Photography of Wounds and Patient Care Areas (Employer Exhibit 05). The WCPC at Saint Francis, Ms. Kuechenmeister, is a policy co-“owner” but there is no evidence or claim that she created or implemented the policy or that she exercises discretion independent of that or any other established Employer policy.
Ms. Fuller testified about the duties of bargaining-unit nurses, specifically higher-level staff nurses. Staff Nurse IV positions are involved in teaching, leadership, and developing new processes/plans of action through involvement in committees. Staff Nurse IV positions are required to sit on a committee. Ms. Fuller testified that her job as a staff nurse IV involves closely supervising specific tasks, such as supervising nurse aides in utilizing skin bundles or turning a patient every two hours. Ms. Fuller testified that she also orders special patient beds because she assists Ms. Dizon in assessing wound care needs. They have a physician co-sign when needed. Ms. Fuller testified that the wound care committee nurses sometimes get called in for product review with vendors.

ANALYSIS

Based on the entire record, and for the reasons explained below, I find that the Wound Care Program Coordinator in the petitioned-for unit is neither a statutory supervisor nor a managerial employee.

I. Supervisory Status

Board Law

Supervisory status under the Act depends on whether the individual possess the authority to act in the interest of the employer in the matters and in the manner set forth in Section 2(11) of the Act, which states:

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

To establish that the individual is a supervisor, the party asserting supervisory status must show: (1) that they have authority to engage in any one of the twelve enumerated supervisory functions; (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment”; and, (3) that their authority is exercised “in the interest of the employer.” Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). A party can prove the requisite authority either by demonstrating that the individuals actually exercise a supervisory function or by showing that they effectively recommend the exercise of a supervisory function. Id. at 88. Also, whenever the evidence is inconclusive on particular indicia or supervisory authority, [the Board] will find that supervisory status has not been established, at

The burden of establishing supervisory status rests on the party asserting that status, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711–712 (2001), and the Board has a duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the rights protected under the Act. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997); *Hydro Conduit Corp.*, 254 NLR 433, 437 (1981). The party must establish supervisory status by “a preponderance of the credible evidence.” *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Purely conclusory evidence is not sufficient to establish supervisory status; rather the party must present evidence that the employee actually possesses the Section 2(11) authority at issue. *Alternate Concepts, Inc.*, 358 NLRB 292, 294 (2012) ("[M]ere inferences or conclusory statements, without detailed, specific evidence are insufficient to establish supervisory authority."). Rather, evidence must be shown that the employee(s) in question actually possess Section 2(11) authority. *Lynwood Manor*, 350 NLRB 489, 490 (2007). The Board has held that a lack of evidence is construed against the party asserting supervisory status. *Volair Contractors, Inc.*, 341 NLRB 673 (2004); *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999). To that end, titles and job descriptions can be irrelevant to a supervisory finding; rather, what matters is an individuals’ duties and authority. *Dole Fresh Vegetables, Inc.*, 339 NLRB 785 (2003). The Act requires “evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority.” *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971); *Chevron, USA*, 309 NLRB 59, 61 (1992).

The parties stipulated that the WCPC does not have, and has never exercised the authority to: hire employees, transfer them, suspend them, lay them off, recall them, promote them, discharge them, reward them, discipline them, adjust their grievances or effectively recommend such actions. The sole issue is whether the WCPC has the authority in the interest of the Employer to assign or to responsibly direct other employees.

**Assign**

The Board holds that the authority to assign refers to the act of designating an employee to a place (such as a location, department, or wing), assigning an employee to a time (such as a shift or overtime period), or assigning significant overall duties as opposed to discrete tasks. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006). The authority to make an assignment, by itself, does not confer supervisory status. Rather, the alleged supervisor must also use independent judgment when making such assignments. *Id.* at 692-93. Regarding independent judgment in relation to the authority to assign, “the Board has stated that the authority to effect an assignment must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the “routine or clerical.” *Croft Metals*, 348 NLRB 717, 721 (2006). Assignments that are based on well-known employee skills also do not involve independent judgment. *KGW-TV*, 329 NLRB 378, 381-382 (1999). Additionally, basing an assignment on whether the employee is capable of performing the job does not show independent judgment. *Volair Contractors, Inc.*, 341 NLRB 673, 675 n. 10 (2004); *Cook Inlet Tug & Barge*,

Here, there is insufficient evidence to establish that the WCPC assigns overall duties at all, much less using independent judgment. No one reports to the WCPC, and the WCPC does not designate duties. When asked specifically if she assigns any of the five bargaining-unit nurses on the wound care committee to a hospital location or to patients, Ms. Dizon denied doing so. (Tr. Vol. II, 198). She likewise confirmed that she has nothing to do with the scheduling of their hours. (Tr. Vol. II, 198). To the extent that the WCPC sets forth specific tasks in the form of “recommendations” to be performed by the staff nurses for wound treatment, she does not assign specific nurses to perform specific tasks. Rather, Ms. Dizon testified that she places the treatment plan into the electronic medical record system, Cerner, and trusts that the nurses will carry out her recommendations. (Tr. Vol. II, 233). Even when assessing a patient, Ms. Dizon requests the “assistance of a nursing assistant to turn a patient….she knows the job. I don’t supervise her.” (Tr. Vol. II, 188).

Additionally, the specific patient care recommended by the WCPC is the same type of work typically performed by the bargaining-unit nurses. Ms. Dizon testified that she “direct[s] because as a nurse and every other staff nurse, we direct the—the care of patients. So under our supervision as a nursing assistant. Yes.” (Tr. Vol. II, 188). Bargaining unit Staff Nurse IV Katherine Fuller likewise testified that supervision is “a major…responsibility as a registered nurse and staff nurse IV.” Staff nurses delegate tasks or duties as needed for the patient’s care, such as applying skin bundles, and must watch to see that they are performed correctly. (Tr. Vol. II, 250). Five bargaining-unit nurses are wound certified and can stage a wound if necessary. The wound assessment includes the same components—nature of the wound, recommendations for treatment, education—as a wound assessment by the WCPC. (Tr. Vol. II, 255). Ms. Fuller testified that a wound can be staged and signed off by two nurses, one of which must be certified. (Tr. Vol. II, 252-53). She inputs the assessments into Cerner. (Tr. Vol. II, 254). The wound care committee nurses are expected to consult with the WCPC about the assessment, and the WCPC then makes her aforementioned “recommendations.” Because those recommendations do not include the assignment of nurses to a place (such as a location, department, or wing), assigning an employee to a time (such as a shift or overtime period), or assigning significant overall duties as opposed to discrete tasks, the WCPC does not possess supervisory authority to assign.

Responsible Direct

In Oakwood Healthcare, the Board held that “for direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” 348 NLRB at 691–692. “Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect
of adverse consequences for the putative supervisor if he/she does not take these steps.” Croft Metals, supra at 721; citing Oakwood Healthcare, at 700. To establish responsible direction, the Employer must show that the WCPC is held accountable for the performance and work of the nurses carrying out her recommendations. It is not enough to show that the WCPC is accountable for her own mistakes. Id. at 695; see Entergy Mississippi, Inc., 357 NLRB 2150, 2154–2155 (2011), enf'd in relevant part 810 F.3d 287 (5th Cir. Dec. 7, 2015) (“Every circuit court that has interpreted Oakwood has read it to require responsibility for others’ actions.” (citations omitted)). Additionally, the criteria of responsible direction will not be met without evidence of the “factors weighed or balanced” in directing employees in order to establish the use of independent, nonroutine judgment. See Croft Metals, Inc., supra at 717, 722 (2006).

Here, the WCPC’s annual evaluation, retention, and merit increase are tied to the overall performance of the hospital in its HAPI metrics. Preventing or reducing the number of pressure wounds developed at the hospital results in a positive evaluation for the WCPC. (Tr. Vol. I, 47). However, the record evidence does not show whether Ms. Dizon is evaluated and rewarded based on the performance of others (nurses carrying out her recommendations) or based on her own performance (making correct recommendations in accordance with Employer policy). Ms. Dizon acknowledged that she makes recommendations to manage and treat wounds, but also testified that it is everyone’s job to help with the prevention and reduction of HAPIs because it’s “a 24-hour job, which means that all the nurses are – are all in this together with me. Teamwork.” (Tr. Vol. I, 204). To be sure, Ms. Dizon’s recommendations for wound care result in the performance of certain routine tasks by unit nurses. The recommendations and wound care accord with the Employer’s guiding policies and procedures. Ms. Dizon does not direct particular nurses in the performance of their work, and there is no evidence that she is held accountable for their poor performance, if any there be. There is no record evidence that Ms. Dizon has ever been negatively appraised or disciplined as a result of another nurse’s poor performance or failure to pass wound-care competency tests. There is no evidence that she possesses the authority to take corrective action in the event a nurse underperforms. In sum, the record evidence is insufficient to show that the WCPC responsibly directs employees. See e.g., Entergy Mississippi, Inc., supra.

Secondary Indicia

The Board has consistently held that if “putative supervisors are not shown to possess any of the primary indicia of supervisory status enumerated in Sec. 2(11), secondary indicia are insufficient to establish supervisory status.” Golden Crest Healthcare Center, 348 NLRB 727, 731, n. 10 (2006). Here, while the annual salary, merit-increase potential, locking office and computer access set the WCPC apart from most bargaining-unit nurses, these secondary indicia are irrelevant given my above determinations.

Conclusion

The WCPC classification is not supervisory because it does not possess any of the primary indicia of supervisory status set forth in Section 2(11) of the Act.

II. Managerial Status
Board Law

A party seeking to exclude an employee from the coverage of the Act based on managerial status bears the burden of proof. *Montefiore Hospital and Medical Center*, 261 NLRB 569, 572 fn. 17 (1982) (party seeking to exclude alleged managers must “come forward with the evidence necessary to establish such exclusion.”) Although the Act makes no specific provision for exclusion of “managerial employees,” under Board policy this category of personnel has historically been excluded from the protection of the Act. See e.g., *Ladies Garment Workers v. NLRB*, 339 F.2d 116, 123 (2d Cir. 1964); *Ford Motor Co.*, 66 NLRB 1317 (1946); *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1948). In *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974), the Supreme Court reasoned that while the Act does not address managerial employees, the Act’s specific exclusion of supervisors evidenced Congress’s general intent to also include managerial employees in an impliedly excluded group. *Id.* at 284. On remand, the Board in *Bell Aerospace*, 219 NLRB 384 (1975), citing *Eastern Camera & Photo Corp.*, 140 NLRB 569 (1962), and *General Dynamics Corp.*, 213 NLRB 851 (1974), defined managerial employees as follows:

[T]hose who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs and independent of their employer's established policy. … [M]anagerial status is not conferred upon rank-and-file workers, or upon those who perform routinely, but rather it is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.

Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Id.*, at 682-683. Thus, the determination of an employee’s managerial status depends on the extent of his discretion, and an employee who exercises limited discretion, bordering on routine performance, will not be deemed managerial. See, e.g., *The Republican Company*, 361 NLRB 93 (2014) (full control over the entire editorial page and the opinion of the newspaper conferred managerial status); *General Dynamics Corp.*, supra (employees who exercise discretion on the basis of their technical expertise are not managerial employees).

The fact that employees train or instruct other employees does not, in itself, make them managerial employees. To the contrary, the Board has found that employees who train or instruct other employees are not managerial employees if they do not exercise sufficient independent discretion or judgment in carrying out those duties. See, e.g., *Roofing, Metal & Heating Associates*, 304 NLRB 155, 161 (1991) (employee who “spent the great bulk of his time as an instructor with virtually no power or authority to act autonomously in any meaningful sense or deviate from . . . established policies” was not managerial), enf’d. sub nom. *NLRB v. Roofers Local 30*, 975 F.2d 1551 (3d Cir. 1992); *A. Barton Hepburn Hospital*, 238 NLRB 95, 96 (1978) (in-service education assistant, who consulted with department
heads who told her what training was needed in their areas, did not use independent judgment in formulating training courses and therefore was not managerial); *Fairfax Family Fund, Inc.*, 195 NLRB 306, 308 (1972) (collection department instructor was not managerial employee because employer failed to produce any evidence he assisted in formulating and developing the policies on which he instructed employees).

With regard to purchasing power, in *Concepts & Designs, Inc.*, 318 NLRB 948 (1995), the Board found an employee whose duties involved purchasing responsibility for a third of her time to be exempt as a managerial employee. The Board affirmed the ALJ in finding that the manner in which she exercised her purchasing authority, the extent of unreviewed discretion that she exercised, and the magnitude of its impact on the employer’s overall business established that she was more than simply a buyer performing routine duties because she was the only company representative to meet with vendors and had the discretion and authority to change vendors in order to obtain better prices or if the current vendors were not meeting their delivery obligations.

**Application**

The WCPC is a policy owner of the wound and skin care policy(ies). However, neither WCPC drafted the current policies or manuals in place at St. Mary’s or St. Francis. Rather, the record is clear that creating and updating policies is a collaborative process. The process includes other stakeholders at the initial level with the WCPC, including bargaining-unit nurses, the chief nursing executive, the education team, and any unit managers or directors. Additionally, any suggested policy changes require the approval from Ms. Perry and the Policy Procedure and Review Committee. While the record shows that no other rank-and-file nurses have policy “ownership,” the record does not demonstrate that “ownership” carries any real meaning. Rather, whatever content changes the WCPCs are involved with and recommend must be approved by their superiors.

Further, the WCPC does not have discretion within or outside the established policies. As Ms. Dizon testified, “I cannot stray from policies that is already part of Dignity Health, and any basic wound care manual would be the same as well.” (Tr. Vol. II, 230.) Her choices in wound care and treatment are limited to the choices laid out in the policy. Her technical expertise in the area of wound care allows for informed decision-making, but does not involve discretion independent from the policy.

The training that the WCPC organizes and conducts for new employees and for nursing competencies is likewise non-managerial. The WCPC does not act autonomously, as the clinical educators and Ms. Perry review and approve the material that is to be presented at the trainings. The WCPC also does not have the independent authority to order supplies. As Ms. Dizon and Ms. Perry testified, all requests for supplies must go through Ms. Perry, the supply chain manager, and the FIT committee. The WCPC independently meets with vendors to gather information on evidence-based practices, but she must discuss the benefits of ordering a certain product and starting a trial at the hospital. The WCPC has no discretion or authority to order products independently or enter into vendor contracts.
For these reasons, I find that the WCPC classification is not managerial.

III. Appropriate Voting Group

Board Law

An Armour-Globe self-determination election, as sought by the Petitioner, permits employees who constitute a distinct identifiable group and who share a community-of-interest with an already represented unit of employees to vote whether to join the existing unit. In Globe Machine and Stamping Co., 3 NLRB 294 (1937), a petitioning union contended that there were three separate bargaining units in the plant, whereas an intervening union argued for treating the plant as one overall unit. The Board found that either arrangement would result in appropriate bargaining units, and concluded that the determining factor should be the desire of the employees themselves. The Globe self-determination doctrine was extended in Armour and Company, 40 NLRB. 1333 (1942). In Armour, the Board concluded that each of the three separate units could be added to the historical unit if the employees so desired. Thus, an Armour-Globe election permits employees sharing a community-of-interest with an already represented unit of employees to vote whether to join that unit. Armour itself has been expanded to permit self-determination elections where there was no separate finding that the group of employees who were voting to join a unit was, by itself, an appropriate unit. See, e.g., Maryland Drydock Co., 50 NLRB. 363 (1943) (Board found that, although the voting unit was not appropriate by itself, the employees were nevertheless entitled to a self-determination election in which a vote for the union would be treated as a vote for inclusion in the existing bargaining unit.) In determining the appropriateness of holding a self-determination election, it is necessary to determine: (1) the extent to which the employees to be included share a community-of-interest with the unit employees, and (2) whether they constitute an identifiable, distinct segment so as to constitute an appropriate voting group. Warner Lambert, Co., 298 NLRB 993, 995 (1990), citing Capital Cities Broadcasting Corp., 194 NLRB 1063 (1972). With regard to community-of-interest in Armour-Globe cases, the Board looks at the same factors to determine whether a group of employees should be added to an existing unit. See, e.g., John Scripps Newspaper Corp., 329 NLRB No. 74 (1999) (citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962)).

In this matter, the parties stipulated that, if the WCPC classification were not found to be supervisory or managerial, that a self-determination election among the WCPC at St. Mary’s would be appropriate. However, that stipulation did not address the WCPC at St. Francis and the propriety of including both WCPCs in the voting group. I address that question now.

To begin, it is beyond cavil that the WCPCs at both hospitals share not only a community of interest with one another, but an overwhelming community of interest. In short, they share the same title, perform the same work under the same supervision, possess the same skills and certifications, share identical terms and conditions of employment, have frequent contact with one another and the same bargaining-unit nurses, and they are functionally integrated, covering for one another when needed. Their interests are identical, such that a voting group consisting of only the WCPC at St. Mary’s is not appropriate because it is not an identifiable, distinct segment. The Board’s decision in Unisys Corporation, 354 NLRB 825 (2009), a case with a
distinguishable set of facts, supports this conclusion and illustrates why the WCPC at St. Francis must be included in the voting group. In *Unisys*, the Board reversed the regional director and found that a voting group consisting of only one of six production control assistants (and also excluding other classifications) was appropriate. Even though the petitioned-for production control assistant (PCA) shared a common title and benefits package with five other PCAs, the Board concluded that the lone PCA constituted a distinct, identifiable segment based on his distinct functions, his distinct supervision, his distinct building and department, and his lack of contact and interchange with the other PCAs. Unlike the facts present here, the Board found that the lone PCA had a “distinctive function and diverse community of interest” from the other PCAs to warrant excluding the other PCAs from the voting group. *Id* at 831. That is simply not the case here, where the two WCPCs work hand-in-glove as a tandem at the two sister hospitals that are currently being “bridged…into one.”

Turning to the common interests among the WCPCs and the existing unit, the record evidence clearly supports a finding that a community of interest exists among the two groups by virtue of their similarity of skills and training, job overlap, job functions, common supervision, frequent contact, and functional integration. Although there are some differences in wages/salary, and other benefits, those largely derive from the existence of the parties’ collective-bargaining agreement. The Board does not give much weight to those differences. *Unisys Corporation*, supra at 830. In sum, the WCPC classification at St. Mary’s and at St. Francis is an identifiable, distinct segment that shares a community of interest with the existing unit and, therefore, is an appropriate voting group.

**IV. Order to Show Cause Why a Manual Election Should be Conducted**

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board, in turn, has delegated the discretion to determine the arrangements for an election to Regional Directors, including the ability to direct a mail ballot election where appropriate. *Ceva Logistics*, US, 367 NLRB 628, 628 (2011) (cases cited therein); *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998) (citing NLRB v. A.J. Tower Co., 329 U.S. 324, 330 (1946); Halliburton Services, 265 NLRB 1154, 1154; *National Van Lines*, 120 NLRB 1343, 1346 (1958)). “It is well established that a Regional Director has broad discretion in determining the method by which an election is held, and whatever determination a Regional Director makes should not be overturned unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998) (citing *San Diego Gas* at 1144 fn. 1; *National Van Lines* at 1346).

The Board’s longstanding policy is that elections should, as a general rule, be conducted manually. However, a Regional Director may reasonably conclude, based on circumstances to conduct an election by mail ballot “where circumstances tend to make it difficult for eligible employees to vote in a manual election” or where a manual election is not practical. See NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11301.2.15. This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or
other “extraordinary circumstances.” In exercising discretion in such situations, a Regional Director should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and what constitutes the efficient use of Board resources. *San Diego Gas*, supra at 1145. Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, Board law vests Regional Directors with discretion to order a mail ballot election under the guidelines in *San Diego Gas*, including extraordinary circumstances, and provides that Regional Directors should tailor the method of conducting an election to “enhance the opportunities of all to vote.” Ibid.

At the hearing, the parties casually agreed to a manual election on an unspecified date “sometime after 2pm” and with a voting period lasting anywhere between 20-120 minutes at an unspecified polling location. However, the parties ignored the Board’s decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which addresses the propriety of mail ballot elections in the context of the COVID-19 pandemic.

In its *Aspirus Keweenaw*, 370 NLRB No. 45 (2020) decision, the Board reiterated its longstanding preference for manual elections under *San Diego Gas & Electric*, supra, while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining the method of election against the backdrop of COVID-19. The Board set forth “six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election” under the extraordinary circumstances presented by the COVID-19 pandemic. *Aspirus*, above, slip op. at 1. Those six situations are:

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

Here, the Employer failed to commit to abide by the GC Memo 20-10 protocols, and neither party addressed how and where an in-person election could be conducted safely. Accordingly, the fourth enumerated situation identified by the Board in *Aspirus* is present, and in light of the uncertainty that causes, I shall direct that the election be conducted by mail ballot, as set forth below, unless the parties show cause why a manual election can safely be conducted on or after December 22, 2021. The showing is due December 13, 2021, and should address the protocols set forth in GC Memo 20-10 and contain a detailed explanation
regarding the proposed polling date, duration, location(s), and provide specifics as to how the Employer can execute the aforementioned protocols.

CONCLUSION

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

1. The rulings 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.

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

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 Wound Care Program Coordinators employed by the Employer at St. Mary’s Medical Center and at St. Francis Memorial Hospital are not statutory supervisors or managers, and they constitute an appropriate voting unit in this self-determination election.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by California Nurses Association/National Nurses United.

Election Details

As discussed above, absent a showing that a manual election can be safely conducted in this matter, I shall direct that the election be conducted by mail ballot for the reasons set forth above.

In that event, the mail ballots will be mailed to employees employed in the appropriate voting unit by personnel of the National Labor Relations Board, Region 20, on December 22, 2021, at 5:00 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by December 30, 2021, should communicate immediately with the National Labor Relations Board by either sending an email to SanFrancisco.Region20@nltb.gov, calling

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All ballots will be commingled and counted via ZOOM Government at 2:00 p.m. (PDT) on January 13, 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.

**Voting Eligibility**

Eligible to vote are those in the voting group who were employed during the payroll period immediately preceding the December 8, 2021, issuance date of this Decision, 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.

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.

**Voter List**

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

To be timely filed and served, the list must be received by the regional director and the parties by December 10, 2021. The list must be accompanied by a certificate of service showing service on all parties. The Region will not serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

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

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

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

**Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the forthcoming Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.
A request for review must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: December 8, 2021

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
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