VITALANT

Employer

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 120¹

Petitioner

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

Case 18-RC-284869

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of approximately 13 full-time and regular part-time Donor Care Specialists and Assistant Donor Care Supervisors (collectively referred to as “the Donor Care staff”) employed by the Employer at and out of its Rapid City, South Dakota facility. The Employer asserts that the only appropriate unit must also include approximately five other employees employed as Donor Relations Specialists, Hospital Services Technicians, and Senior Facility Resource Coordinators.

A hearing officer of the Board held a video hearing in this matter and the parties subsequently filed briefs with me. As described below, based on the record and relevant Board cases, I find that the petitioned-for unit limited to the Employer’s full-time and regular part-time Donor Care Specialists and Assistant Donor Care Supervisors is an appropriate unit.

I. FACTS

A. THE EMPLOYER’S OPERATIONS

The Employer operates blood banks in about 150 donor facilities located in 45 states and employs approximately 5,000 employees nationwide; its headquarters are in Scottsdale, Arizona. Specifically, the Employer employs approximately 29 employees at its Rapid City blood bank facility, including the petitioned-for employees and the other employees the Employer seeks to include in the unit.² The petitioned-for employees collect blood and blood products from donors at the Rapid City fixed donor facility, as well as other mobile donor sites set up in surrounding areas, which are provided to area hospitals.

¹ The Petitioner’s name appears as amended by stipulation of the parties.

² The record is absent regarding other non-management job classifications at the Rapid City facility.
The Rapid City facility consists of a single building with two primary employee entrances, one located near the main donor entrance to the facility and the other located next to the warehouse. Electronic scanners located at each employee entrance allow employee access into the facility during all hours. The Rapid City fixed donor facility and surrounding mobile sites operate seven days a week with varied times between the hours of 5:30 a.m. and 10:00 p.m. as set forth in more detail below.

Senior Donor Care Manager, Steve Kuske, oversees the Rapid City facility and surrounding mobile donor sites; he reports to Senior Director Donor Carrier, Angela Spicola, in Denver, Colorado. The petitioned-for employees all report directly to two Donor Care Supervisors, Aubree Boyler and Trisha Osborn, who both report to Kuske. The Donor Relations Specialists report directly to Donor Outreach Supervisor, Lisa Sloane, in Billings, Montana; the Hospital Services Technicians report directly to Hospital Services Manager Alyssa Johnson in Rapid City; and the Senior Facilities Resource Coordinators report directly to Facilities Resources Supervisor, Dana Miller, in Fargo, North Dakota.

Human Resources Manager Scott Horkey also works at the Rapid City facility and is responsible for human resources and personnel matters for all Rapid City employees as well as some other unidentified employees employed by the Employer at blood banks located in other states. Personnel policies for all Rapid City employees are maintained on and accessed through the Employer’s SharePoint internal website, including the Vitalant employee handbook; employee drug/alcohol policy; employee attendance policy; and employee paid time off (PTO), leave of absence, and family medical leave policies. All Rapid City employees are subject to the same personnel policies and also enjoy the same benefits, including health care, 401(k), short and long-term disability, life insurance, and vacation and paid holidays. All employees also use the same timekeeping system, Workforce Dimensions, to electronically clock in and out via computer software, as well as share the same employee parking lot, lockers, break room, and rest rooms.

B. DONOR CARE SPECIALISTS

There are nine Donor Care Specialists employed at the Rapid City facility who are primarily responsible for setting up blood drives and performing appropriate phlebotomy procedures at the Rapid City fixed donor site and mobile donor sites. Four of them work

3 The record interchangeably refers to the warehouse as the garage, which houses the Employer’s fleet vehicles.

4 The parties stipulated the Employer currently employs one Donor Relations Specialist at the Rapid City facility.

5 The parties stipulated the Employer currently employs three Hospital Services Technicians at the Rapid City facility.

6 The parties stipulated the Employer currently employs one Senior Facilities Resource Coordinator at the Rapid City facility.

7 The record is silent regarding who these supervisors report to.
exclusively at the Rapid City fixed donor facility and five of them work mostly at mobile donor sites in surrounding areas and less regularly at the Rapid City site.

At the Rapid City fixed donor site, Donor Care Specialists work at booths set up on the main floor, called the “draw floor.” Donors are either scheduled by appointment or appear as walk-ins at the facility and enter via the main entrance where they are greeted in the reception area, typically by the Donor Relations Specialist, or, by a Donor Care Specialist in her absence, as further described below. Once they receive some general reading materials explaining blood donation procedures, the Donor Care Specialists are responsible for interviewing and screening all potential blood donors regarding donor eligibility. The interview process consists of providing prospective donors with a standard donor questionnaire approved by the U.S. Food and Drug Administration (FDA) and the Association for the Advancement of Blood & Biotherapies (AABB). The screening process involves a brief physical examination performed by the Donor Care Specialist to ensure that donor vital signs, including temperature, blood pressure, and pulse, are within acceptable ranges. Once the donor is cleared per the interview and screening processes, the Donor Care Specialist performs appropriate phlebotomy procedures to draw blood and/or blood products from the donor. Whole blood may be drawn in whole blood bags or by an apheresis machine, also referred to as an “ALYX machine.” Automated machines called “Treatment Devices,” which separate blood from blood products, are also used to draw blood for donors who are providing separate blood products. After the phlebotomy procedures are completed, the Donor Care Specialist or Donor Relations Specialist escorts the donor to the canteen area for a snack and monitoring for adverse reactions. The Donor Relations Specialist immediately alerts a Donor Care Specialist in the event of any adverse reaction by a donor. The Donor Care Specialists are additionally responsible for completing all documentation, labeling and packaging of collected blood and blood products. This includes labeling and packaging the collected blood units into pre-designated boxes, gathering the boxes onto a cart, and transporting the cart to the warehouse. The Donor Care Specialists place the boxes on a pallet in designated areas of the warehouse where they are stored until they are picked up by third-party couriers for transportation to and final processing by a lab in Denver. After the blood is processed in Denver, it is transported back to the Rapid City facility and received by the Hospital Services Technicians for distribution to area hospitals, as further described below.

Donor Care Specialists assigned to mobile sites initially report to the Rapid City facility at the beginning of each mobile blood drive to gather phlebotomy supplies, equipment, and

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8 The record erroneously references the AABB as the “AAPB” without identifying the institution. An internet Google search reveals that the AABB (https://www.aabb.org/) is an organization which represents individuals and institutions involved in the field of transfusion medicine and biotherapies and works to advance the field through the development and delivery of standards, accreditation and education programs regarding transfusion medicine and biotherapies.

9 Neither party contends that the Employer is a health care institution under Section 2(14) of the Act or that medical procedures performed by Donor Care staff related to obtaining donor vitals create an issue as to whether the Employer is a health care institution under the Act.
packaging materials and to load them into a company-provided vehicle for transportation to the mobile site. At the mobile site, they perform the same activities described above (interview, screening, phlebotomy, monitoring, and labeling and packaging procedures.) At the end of the mobile blood drive, the Donor Care Specialists are responsible for loading supplies, equipment, and boxes of packaged blood and blood products into their vehicles for transportation back to the Rapid City facility. They place the boxes in designated areas of the warehouse, as described above, for storage and pickup by third-party couriers for transportation to Denver. Most mobile blood drives are conducted for a set number of hours in a single day, between the hours of 5:30 a.m. and 10:00 p.m. However, about six to 10 mobile blood drives per month, called “runs,” are conducted in multiple communities located in close proximity to each other over a two to three-day consecutive period – these runs often involve a one to two-overnight stay by the Donor Care Specialist(s). The record does not identify the average number of Donor Care Specialists assigned to individual mobile sites.

Although Donor Care Specialists are not required to possess any formal phlebotomy license or certification, they all possess knowledge and experience in phlebotomy and donor care procedures. In this regard, the Employer has sent new Donor Care Specialists to a six-week training program in Denver and has provided continuing on-the-job education and training as well. Donor Care Specialists are sub-classified as Donor Care Specialist-II, Donor Care Specialist-III, and Donor Care Specialist-Non-therapeutic. There are no significant differences in the structure and course of their job duties performed at the Rapid City and mobile sites except that Donor Care Specialist-IIs, as the least experienced phlebotomists, mainly draw whole blood from donors using whole blood bags or the ALYX machine, while Donor Care Specialist-IIIis and Non-therapeutics are qualified to draw red blood cells, platelets and/or plasma from donors using more advanced automated Treatment Devices. Donor Care Specialists exclusively attend regular monthly meetings, called “training down days,” held by Donor Care Supervisors Osborn and Boyler to discuss donor care issues. There is also some record evidence that Donor Care Specialists have attended five to 10-minute informal meetings called “huddles” with other scheduled employees at the Rapid City and mobile sites, during which work and staffing issues such as the schedule of donor appointments and employee break times have been discussed. However, this evidence is in conflict with other record evidence that only Donor Care Specialists work at mobile sites and the only meetings they attend are the training down day meetings when working at the Rapid City fixed site.

There is limited record evidence, without transfer dates provided, that two former Donor Care Specialists are current Hospital Services Technicians. Additionally, without details or specific dates, the record references that some Donor Care Specialists have temporarily transferred to the Hospital Services Technician position as well as some Hospital Services Technicians, who are qualified as Donor Care Specialists, have temporarily transferred to the Donor Care Specialist position.

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10 There is limited record evidence that at least one Donor Care Specialist possesses a “medical screening card” issued by an unidentified department of transportation to be permitted to drive the Employer’s box truck to mobile blood drives.

11 These meetings are split into two groups: one group of mobile phlebotomists and one group of Rapid City fixed site phlebotomists.
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Donor Care Specialists typically work 40 to 45 hours per week. At the Rapid City facility, they are scheduled to work fixed shift hours within a seven-day workweek. At the mobile sites, they are scheduled to work varied hours between 5:30 a.m. and 10:00 p.m. during a seven-day workweek. Like all other non-exempt employees, they earn time-and-a-half overtime pay for over 40 hours in a week. Additionally, they are eligible for shift differential pay for working outside of regular business hours and premium pay for working weekend hours and mobile shifts. There is some limited record evidence that some Donor Care Specialists are scheduled as “on-call” or “relief” employees to replace employees who call off work – there is no record evidence that they receive any premium on-call pay. Wages for Donor Care Specialists fall within the Employer’s established wage grades 114 to 116. Eight Donor Care Specialist-IIs and Non-therapeutics are within wage ranges 114 and 115 from $15.00 to $23.59 per hour, and one Donor Care Specialist-III is within wage range 116 from $17.12 to $26.54 per hour. Donor Care Specialists, as well as all other non-management Rapid City employees, receive annual performance evaluations that determine merit-based wage increases within their pay range. The Donor Care Specialists wear hospital scrub uniforms to work.

C. ASSISTANT DONOR CARE SUPERVISORS

There are four Assistant Donor Care Supervisors, two of whom work exclusively at the Rapid City donor facility and two of whom work between the Rapid City and mobile donor sites. They perform the same duties and, except for one, work the same hours as the Donor Care Specialists described above. In addition, they communicate any issues to management that arise during blood drives and they have some additional paperwork responsibilities. They wear the same hospital scrub uniforms and receive the same uniform allowance as the Donor Care Specialists. They are subject to the same personnel policies and enjoy the same benefits that apply to all Rapid City employees. Wages for Assistant Donor Care Supervisors fall within wage range 116 from $17.12 to $26.54 per hour. As noted, all non-management employees at Rapid City, including the Assistant Donor Care Supervisors, receive annual performance evaluations that determine merit-based wage increases within their pay range.

D. DONOR RELATIONS SPECIALISTS

There is one Donor Relations Specialist, Kristen Moulton, currently employed at the Rapid City facility. She works exclusively at the Rapid City fixed facility and is primarily

12 Fixed shift hours are Monday through Wednesday from 6:45 a.m. to 5:30 p.m., Thursday from 8:45 a.m. to 6:30 p.m., Friday from 8:45 a.m. to 4:30 p.m., Saturday from 6:45 a.m. to 1:30 p.m., and Sunday from 8:45 a.m. to 1:30 p.m.

13 There is some limited record evidence that Donor Care Specialists who are eligible to drive the company box truck are additionally eligible for a one dollar per hour premium pay rate.

14 Donor Care Specialists receive a fixed partial uniform allowance for the purchase of scrubs.

15 One Assistant Donor Care Supervisor is employed in “occasional” part-time status and works less than 20 hours per week.

16 There is no claim by either party that the Assistant Donor Care Supervisors are statutory supervisors within the meaning of the Act.
responsible for greeting donors in the reception area as they sign in and monitoring the daily donor appointment schedule. The reception area and canteen are separated by a half wall from the draw floor. As she checks in the donors, she provides them with reading materials and advises the Donor Care staff regarding the order of call for donors onto the draw floor. Throughout her shift, she keeps the Donor Care staff apprised of scheduled appointments and waiting room status and she reaches out to Donor Care staff to answer any donor questions she is unable to answer herself. Moulton is also responsible for stocking the canteen area with donor snacks and refreshments, and after phlebotomy procedures are completed, she provides snacks to donors and monitors their recovery progress in the canteen before they leave the facility. Moulton immediately alerts the Donor Care staff in the event of any adverse reaction by a donor. There is also some limited record evidence that Moulton works with Donor Care staff to rebook donors for future blood donation appointments. In her position as Donor Relations Specialist, she is not trained in and does not perform any phlebotomy or other medical procedures, or labeling, packaging, and warehousing procedures related to blood collections performed by the petitioned-for Donor Care staff, as described above. Moulton wears business casual dress attire at work.

When a blood drive is being conducted at the Rapid City facility outside of Moulton’s scheduled work hours, such as after-hours, during the weekend, or when Moulton is absent from work, the Donor Care staff will perform Moulton’s job duties as needed to the extent of greeting and checking in donors, monitoring the daily appointment schedule and order of call, and monitoring donor recovery and progress in the canteen. The Donor Care staff do not spend the entire time sitting at Moulton’s desk, performing all the functions of her job.

Like the Donor Care staff, Moulton works 40 to 45 hours per week. She works the following fixed shift hours at the Rapid City facility Monday through Friday: Monday through Wednesday from 8:30 a.m. to 5:00 p.m., Thursday from 8:30 a.m. to 5:30 p.m., and Friday from 8:30 a.m. to 4:00 p.m. As a Donor Relations Specialist, Moulton is subject to the same personnel policies and enjoys the same benefits that apply to all Rapid City employees. Wages for Donor Relations Specialists fall within wage range 113 from $15.00 to $18.40 per hour. As noted, all non-management employees at Rapid City, including Donor Relations Specialists, receive annual performance evaluations that determine merit-based wage increases within their pay range.

E. SENIOR FACILITIES RESOURCE COORDINATORS

There is one Senior Facility Resource Coordinator, Dor-shal Stanley, currently employed at the Rapid City facility. He works exclusively at the Rapid City fixed facility and is primarily responsible for maintaining the facility and performing general maintenance duties such as fixing damaged doors and roof leaks, repairing blood carts, and changing light bulbs. He also places orders for blood drive supplies and equipment from his desk located inside the warehouse. Supplies include items such as blood bags, test tubes, lancets, microcuvettes, medical gloves and other personal protection equipment (PPE), packing boxes, and cleaning materials. Equipment includes items such as heat sealers, hemo-flow scales, and machines for taking vitals. Petitioned-for Donor Care staff submit written requests to Stanley for blood drive supplies and/or

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17 Used to cap off test tubes.
18 Used to weigh blood and blood products.
equipment and Stanley places requested orders electronically via his computer. As Senior Facility Resource Coordinator, Stanley is also responsible for maintaining and organizing supply inventory in the warehouse. This includes organizing the boxes used by the Donor Care staff and the Hospital Services Technicians. Stanley also maintains the Employer’s fleet of vehicles used by Donor Care staff traveling to and from mobile blood sites and responds to requests for a company vehicle or vehicle repairs. There is some record evidence that, as Senior Facility Resource Coordinator, Stanley also performs the role of safety representative at the facility. This includes discussing safety issues such as proper lifting techniques with other employees and occasionally passing out safety information or presenting a safety video to Donor Care staff at their training down day meetings. In his position as Senior Facility Resource Coordinator, Stanley is not trained in and does not perform any phlebotomy or other medical procedures, or labeling/packaging procedures related to blood collections performed by the petitioned-for Donor Care staff, as described above. Occasionally, Stanley assists Donor Care staff in loading their company vehicle with supplies from the warehouse at the beginning of a mobile blood drive. Stanley wears casual dress attire at work.

Like Donor Care staff and Donor Relations Specialists, Stanley works 40 to 45 hours per week. He works 8:00 a.m. to 4:30 p.m. at the Rapid City facility Monday through Friday. As a Senior Facility Resource Coordinator, Stanley is subject to the same personnel policies and enjoys the same benefits described above, which apply to all Rapid City employees. Wages for Senior Facility Resource Coordinators fall within wage range 116 from $17.12 to $26.54 per hour. As noted, all non-management employees at Rapid City, including Senior Facility Resource Coordinators, receive annual performance evaluations that determine merit-based wage increases within their pay range.

F. HOSPITAL SERVICES TECHNICIANS

There are three Hospital Services Technicians currently employed at the Rapid City facility. They work exclusively at the Rapid City facility in an area next to the warehouse. They primarily perform shipping and receiving duties, which include ensuring that collected blood and blood products are properly shipped out of the Rapid City to the Denver lab and returned to Rapid City for distribution to area hospitals. Specifically, regarding distribution, the Hospital Services Technicians initiate and fulfill shipping orders for hospitals, which includes packing the returned and processed blood products into designated boxes stored in the warehouse. The Hospital Services Technicians either coordinate deliveries by a third-party or make the delivery themselves. While the Hospital Services Technicians are sub-classified as Hospital Services Technician-III and IV, the record does not address any differences between these sub-classifications with the exception of wage rates described below. The Hospital Services Technicians are not trained in and do not perform phlebotomy procedures or, for the most part, any other duties performed by the petitioned-for Donor Care staff. Without detail, the record references that, on rare occasion, the Hospital Services Technicians travel to mobile sites to pick up collected and packaged blood units and return the boxes to the Rapid City warehouse. They wear the same hospital scrub uniforms and receive the same uniform allowance as the Donor Care staff.

As noted above, there is limited record evidence, without transfer dates provided, that two current Hospital Services Technicians are former Donor Care Specialists. Additionally, without details or specific dates, the record references that some Hospital Services Technicians,
who are qualified Donor Care Specialists, have temporarily transferred to the Donor Care position and that some Donor Care Specialists have temporarily transferred to the Hospital Services Technician position.

Like the Donor Care staff, Donor Relations Specialist, and Senior Facilities Resource Coordinator, the Hospital Services Technicians work 40 to 45 hours per week. They work fixed shift hours at the Rapid City facility – two of them work Monday through Friday from 7:00 a.m. to 3:30 p.m.; and one works Monday through Wednesday from 8:00 a.m. to 4:30 p.m. and Saturday through Sunday from 7:30 a.m. to 4:00 p.m. Like the Donor Care staff, the Hospital Services Technicians are eligible for weekend premium pay. They are also assigned as on-call employees with eligibility for on-call premium pay. The Hospital Services Technicians are subject to the same personnel policies and enjoy the same benefits described above that apply to all Rapid City employees. Wages for the Hospital Services Technician-IIIIs fall within wage range 114 from $15.00 to $20.97 per hour while wages for the Hospital Services Technician-IVs fall within wage range 115 from $15.22 to $23.59 per hour. As noted, all non-management employees at Rapid City, including the Hospital Services Technicians, receive annual performance evaluations that determine merit-based wage increases within their pay range.

II. ANALYSIS

Petitioner seeks to represent all of the Employer’s Donor Care Specialists and Assistant Donor Care Supervisors arguing that the petitioned-for unit is appropriate because these selected employees have certain skills and abilities that are required of them to run blood drives and perform phlebotomy procedures on blood donors. The Employer argues that the smallest appropriate unit must include the Donor Relations Specialists, Hospital Services Technicians, and Senior Facility Resource Coordinators because the Donor Care staff does not share a community of interest meaningfully distinct from the interests of these other employees so as to permit a separate unit. Thus, the sole litigable issue in this case is whether the petitioned-for unit is appropriate under the Board’s traditional community-of-interest standard, or instead, whether the smallest appropriate unit must include additional employees. For the reasons set forth below, I find that the petitioned-for employees share a community of interest sufficiently distinct from the interests of the other employees the Employer seeks to include, and I conclude that the Donor Relations Specialists, Hospital Services Technicians, and Senior Facility Resource Coordinators are appropriately excluded from the proposed unit.

A. BOARD LAW

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be an appropriate one. Wheeling Island Gaming, Inc. 355 NLRB 637, 637 fn. 2 (2010), citing Overnite Transportation Company, 322 NLRB 723, 723 (1996). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” The Boeing Company, 368 NLRB No. 67, slip op. at 3 (2019). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, or it may select a unit different from the proposed alternative units. See e.g., Bartlett Collins Company, 334 NLRB 484, 484 (2001); Overnite Transportation, 331 NLRB at 723.
Typically, to determine whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. See, *Wheeling Island Gaming*, 355 NLRB at 637 fn. 2. Additionally, the Board analyzes “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), slip op. at 11 (emphasis in original). In making these determinations, the Board considers whether the employees: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structural*, 365 NLRB at 11, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board considers all the factors together, as no single factor is controlling. *Id.* at 11. The Board has made clear that it will not approve of fractured units—that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine, Ltd.*, 327 NLRB 556, 556 (1999).

Where, as here, a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is necessary to apply the three-step analysis set forth in *Boeing*, 368 NLRB at 2: (1) whether the petitioned-for employees share an internal community of interest; (2) whether the petitioned-for employees are “sufficiently distinct” from the excluded employees; and (3) consideration of any industry-specific guidelines. Steps one and three of *Boeing*, the requirement that any appropriate unit have an internal community of interest, and that consideration must be given to the Board’s decisions on appropriate units in the particular industry involved, reference broad principles that are generally applicable to unit determinations. Step two considers “whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.* at 4 (community of interest inquiry must include examining whether employees excluded from the unit “have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.”) (emphasis added).

**B. APPLICATION OF BOARD LAW TO THIS CASE**

In the absence of any industry-specific guidelines that govern here, only the first two steps in the *Boeing* three-step analysis remain. Undertaking that analysis and applying the Board’s traditional community of interest test, I find that the petitioned-for unit of Donor Care Specialists and Assistant Donor Care Supervisors is appropriate.

**1. Shared Interests Within the Petitioned-For Unit**

There is no claim that the petitioned-for Donor Care Specialists and Assistant Donor Care Supervisors do not share an internal community of interest. They are organized within the same department, work alongside each other, and share the same skills, job functions, training, supervision, and terms and conditions of employment. Thus, I find that the petitioned-for Donor Care Specialists and Assistant Donor Care Supervisors share an internal community of interest.
2. Shared Interests Between the Petitioned-For and Disputed Employees – Community of Interest

a. Departmental Organization

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. *Buckhorn, Inc.*, 343 NLRB 201, 202 (2004), citing *American Cyanamid Company*, 131 NLRB 909 (1961). Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. See *Check Printers, Inc.*, 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit even though other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289-1291 (2000).

The Employer argues that the Donor Care staff and disputed employees working at the fixed Rapid City site all function as one team without separate identification or differences. The record does not contain an organizational chart or specifically address how the employees are grouped together either departmentally or within the larger organization. However, notably, except for the petitioned-for Donor Care staff and the Hospital Services Technicians, who report to different supervisors at the Rapids City facility, each of the other disputed classifications report to different direct supervisors located in entirely different states. This distinct level of supervision supports a finding of departmental separation between the petitioned-for and disputed employees. Additionally, the record evidence demonstrates that the Employer has established distinct administrative groupings differentiating the petitioned-for Donor Care staff from the other employees the Employer seeks to include in the unit. Specifically, all of the petitioned-for Donor Care staff possess a high degree of skill, knowledge, and experience in performing phlebotomy and other medical procedures, none of which any of the disputed employees possess or are qualified to perform. In performing their job duties, the disputed employees do not use any of the specialized equipment used by Donor Care staff to draw blood, check donor vitals, or perform any of their primary job duties as phlebotomists. Besides the Senior Facilities Resource Coordinator occasionally assisting Donor Care staff in loading their vehicles for mobile blood drives and the Hospital Services Technicians occasionally assisting Donor Care staff in picking up packaged boxes of collected blood units from mobile blood sites, the record is absent of evidence that the disputed employees share tasks performed by the petitioned-for Donor Care staff. Likewise, the Donor Care staff does not regularly share equipment used by or tasks performed by the disputed employees, as further discussed below.

These factors weigh in favor of the proposed unit of Donor Care staff excluding the Donor Relations Specialists, Hospital Services Technicians, and Senior Facility Resource Coordinators sought to be included by the Employer.

b. Common Supervision

Another community of interest factor the Board considers when evaluating the appropriateness of a petitioned-for unit is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees’ supervisors who have the authority to hire, fire, or discipline employees (or effectively recommend those
actions) or supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. Executive Resource Associates, 301 NLRB at 402. Common supervision weighs in favor of placing the employees in dispute in one unit but separate supervision does not mandate separate units. Casino Aztar, 349 NLRB 603, 607, fn. 11 (2007). However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. United Operations, 338 NLRB at 125.

Here, the record demonstrates that the petitioned-for Donor Care staff and each of the other disputed classifications report to different direct supervisors, none of whom share any supervisory responsibilities with one another. There is no record evidence that any of the petitioned-for Donor Care staff have any contact with the disputed employees’ direct supervisors or vice versa. Although Senior Donor Care Manager Kuske oversees the entire Rapid City facility and the mobile sites, there is no record evidence that he has any direct or regular contact with any direct supervisors besides Donor Care staff supervisors Osborn and Boyler. The common supervision factor weighs heavily in favor of the proposed unit consisting of Donor Care staff only.

c. The Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic functions or have the same duties, that there is a high degree of overlap in job functions or of performing one another’s work, or that disputed employees work together as a crew, supports a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, participate in the same employer training programs, or use similar equipment, supports a finding of similarity of skills. Casino Aztar, 349 NLRB at 603 (petitioned-for beverage employees have no separate community of interest from restaurant and catering with regard to job function, duties, or skills); J.C. Penney Company, Inc., 328 NLRB 766, 766-767 (1999) (petitioned-for employees in catalog fulfillment department and telemarketing employees “have similar skills and perform similar functions”); Brand Precision Services, 313 NLRB 657, 657-658 (1994) (a unit of operators, apart from other production employees, is not appropriate where “the operators’ training, skills, and functions are not distinct from those of the laborers or leadmen”); Phoenician, 308 NLRB 826, 827-828 (1992) (petitioned-for unit of golf course maintenance employees is too limited in scope and must include the landscape employees where “high degree of overlap in job functions” exists).

Although all of the employees in question are part of one contiguous process of collecting, packaging, storing, and distributing blood and blood products, the record demonstrates that they all perform very different and distinguishable functions in the process. Specifically, the petitioned-for Donor Care staff are more highly skilled and do not have the same basic functions or perform the same job duties as the disputed employees. They possess a high degree of skill, knowledge, and experience and primarily and consistently spend a majority of their working time performing phlebotomy and other medical procedures, none of which any
of the disputed employees possess or are qualified to perform. In contrast, the Donor Relations Specialist primarily and consistently spends a majority of her working time performing receptionist duties which include greeting and checking in donors and monitoring donor flow and recovery; the Senior Facilities Resource Coordinator primarily and consistently spends a majority of his working time performing maintenance and warehouse duties; and the Hospital Services Technicians primarily and consistently spend a majority of their working time performing shipping and receiving duties. As noted above, in performing their job duties, the disputed employees do not use any of the specialized equipment used by Donor Care staff in carrying out their primary job duties as phlebotomists. The record is also largely absent of evidence that the disputed employees share any tasks performed by the petitioned-for Donor Care staff. That the Hospital Services Technicians occasionally “assist Donor Care [staff] at mobile blood drives with picking up boxes” or that the Senior Facilities Resource Coordinator occasionally assists Donor Care staff in loading their vehicles for mobile blood drives does not warrant the inclusion of the Hospital Services Technicians or the Senior Facilities Resource Coordinator in the unit where it is clear that such functions are sporadic and consume an insignificant portion of their time. Likewise, the Donor Care staff does not regularly share equipment used by or tasks performed by the disputed employees, besides using the some of the same boxes used by the Hospital Staff Technicians. While I acknowledge, as argued by the Employer, that there is some evidence of overlap of duties between the petitioned-for Donor Care staff and the Donor Relations Specialist, to the extent that Donor Care staff will at times fill in for Donor Relations Specialist “to perform intake, donor monitoring and canteen refill duties” when the Donor Relations Specialist is not in the facility, the record does not demonstrate that this happens on any consistent basis. Such occasional sharing of limited duties does not constitute a “high degree of overlap in job functions” or of performing one another’s work. See, Phoenician, 308 NLRB at 827.

Overall, the record clearly demonstrates the Employer hired the employees to perform different functions: as skilled Donor Care staff phlebotomists to collect blood, as a Donor Relations Specialist to act as a receptionist, as a Senior Facilities Resource Coordinator to act as a maintenance and warehouse employee, or as Hospital Services Technicians to act as shipping and receiving employees. See, Hydro Constructors Incorporated, 168 NLRB 105, 105 (1967). The record evidence demonstrates that petitioned-for Donor Care staff spend a majority of their working time performing phlebotomy and other medical procedures using specialized and different skills, in contrast to the disputed employees, without any high degree of overlap in job functions among the employees. The Donor Care staff’s primary job duties related to performing phlebotomy procedures constitute “meaningfully distinct interests” that outweigh any limited similarities they have with the disputed employees. Boeing, 368 NLRB at 4. This factor weighs in favor of finding that the Donor Care Specialists and Assistant Donor Care Supervisors share distinct interests and that the petitioned-for unit is appropriate.

d. Contact and Interchange Among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” Hilton Hotel Corp., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest
sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB at 401 (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)). Lack of significant employee interchange between groups of employees is a “strong indicator” that employees enjoy a separate community of interest. *Id.* at 401. Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corporation*, 287 NLRB 359, 359 (1987).

In arguing there is a “significant level of interaction and contact among” the petitioned-for Donor Care staff and the disputed employees, the Employer points to: (1) the contact and interaction between the Donor Care staff and the Donor Relations Specialist; (2) the communication between Hospital Services Technicians and the Donor Care staff about issues related to the shipping and receiving of blood container packages; and (3) the communication between the Senior Facilities Resource Coordinator and the other disputed and petitioned-for employees about issues related to supplies and equipment as well as safety training.

The record largely demonstrates that the Donor Care staff work primarily either on the draw floor at the Rapid City site or at a mobile site and do not work in close proximity or come in regular contact with the Senior Facilities Resource Coordinator or Hospital Services Technicians, whose workstations are located in or near the warehouse. The most concerning extent of contact and interaction between the petitioned-for and disputed employees appears to be between the Donor Care staff and the Donor Relations Specialist at the Rapid City fixed facility. In this regard, Donor Relations Specialist Moulton works in close proximity with the Donor Care staff assigned to work at the Rapid City facility. Moulton advises the Donor Care staff of waiting room status and donor flow and refers donor issues and questions to them. However, such contact is notably limited to a smaller number Donor Care staff who work at the fixed facility versus a larger number of Donor Care staff assigned to mobile sites where no Donor Relations Specialist or any other disputed employees work. The other asserted contact and interchange noted by the Employer regarding the disputed Hospital Services Technicians and Senior Facilities Resource Coordinator amounts to minimal communication between the petitioned-for and disputed employees. That the Donor Care staff and Hospital Services Technicians both use the same boxes does not amount to significant contact between employees. The asserted contact between the Senior Facilities Resource Coordinator and the petitioned-for employees, as well as the other disputed employees about issues related to supplies and equipment, appears to be limited to the Senior Facilities Resource Coordinator fulfilling other employees’ requests for supplies, equipment, maintenance, and repairs and does not amount to significant contact among employees when the record demonstrates that such requests by employees are largely made in writing or electronically without any communication or physical contact between employees. Additionally, that the Senior Facilities Resource Coordinator occasionally assists Donor Care staff in loading their vehicles for mobile blood drives does not amount to significant employee contact where it is clear that such functions are sporadic and consume an insignificant portion of his time. Finally, the Employer’s argument that the petitioned-for and disputed employees “have regular social interactions among themselves during their workday and during breaks” or “routine ‘huddles’ to discuss priorities for the day, such as the need for better donor flow, staffing, and determining when team members can take
their breaks” is not supported by the record and, at any rate, does not establish significant contact and interaction among employees.

I further find that the limited record evidence demonstrating that two former Donor Care Specialists permanently transferred to Hospital Services Technician positions does not amount to a significant amount of interchange among the petitioned-for and disputed employees. Likewise, the record evidence that some Donor Care Specialists have temporarily transferred to the Hospital Services Technician position and that some Hospital Services Technicians, who are qualified Donor Care Specialists, have temporarily transferred to the Donor Care position, is vague and without detail and specific dates and is not sufficient for me to conclude there is frequent interchange among employees to justify inclusion of the disputed employees in a single bargaining unit.

Based on the above, I find that the record does not demonstrate overwhelming and/or undisputed evidence of significant contact or interchange between the petitioned-for Donor Care staff and the disputed employees.

e. **Degree of Functional Integration**

Functional integration refers to when employees’ work constitutes integral elements of an employer’s production process or business. For example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists for community of interest purposes. *Transerv Systems*, 311 NLRB 766, 766 (1993) (emphasis added). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

The record demonstrates functional integration to the extent that the petitioned-for and disputed employees all perform work toward the Employer’s primary objective of collecting, processing, and distributing blood and blood products which can only be accomplished through the coordinated efforts of the employees in question. In this regard, I acknowledge the Employer’s argument that petitioned-for employees along with the disputed employees constitute, as a whole, “the blood donation services team” which “functions as a [cohesive and] integrated operation” in which “each employee’s role is crucial to Vitalant’s mission of providing lifesaving blood and critical transfusion medical services.” However, the lack of any regular and frequent work-related contact or interchange among the employees or performance of similar skills and duties, as I have found above, makes this factor less conclusive.

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19 I note that the record is absent of evidence of any formal process for transfer or promotion among the job classifications in question.

20 The Employer’s reliance on *Desert Palace, Inc.*, 337 NLRB 1096, 1101 fn.16 (2002) that including the disputed employees in the proposed unit “aligns with Board precedent favoring employee inclusion in bargaining units,” is misplaced. In that case the Board considered whether a single employee should be added to the proposed bargaining unit because otherwise “there [was] a possibility that he may be disenfranchised.” That issue is not present in this case.
f. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wages and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies, and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not have sufficient interchange, or work in a physically separate areas. Bradley Steel, Inc., 342 NLRB 215, 215-216 (2004); Overnite Transportation Company, 322 NLRB at 350. Similarly, sharing a common personnel system for hiring, background checks, and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. American Security Corporation, 321 NLRB 1145, 1146 (1996).

Here, the petitioned-for Donor Care staff share many common terms and conditions of employment with the employees whom the Employer seeks to include in the unit. These include an hourly wage rate; the same policies and benefits; the same timekeeping system to electronically clock hours worked; the same annual performance evaluation system which determines merit-based wage increases within their shared pay ranges; and sharing of the same parking lot, lockers, break room, and rest rooms. Additionally, the Donor Care staff and the Hospital Services Technicians share the same medical scrub uniforms. All of the employees, except for the Donor Relations Specialist in wage grade 113, are scattered among wage grades 114, 115 and 116. On the other hand, there are some differences among the petitioned-for and disputed employees regarding hours of work. Although all employees work an average of 40 to 45 hours per week, most of the Donor Care staff work varied hours mostly at mobile donor sites during a seven-day workweek which regularly include early morning (5:30 a.m.) and late-night (up to 10:00 p.m.) hours, weekend work and some overnight stays, while most of the disputed employees work fixed shifts at the Rapid City facility Monday through Friday starting at 7:00 to 8:30 a.m. and ending as late as 6:30 p.m., with no weekend work or overnight stays.

Additional differences in terms and conditions of employment between the petitioned-for and disputed employees include that many of the Donor Care staff, unlike any of the disputed employees, largely perform their work at mobile donor sites and use company vehicles to travel to and from the mobile sites.

In sum, although the employees share some similar employment terms and conditions which might otherwise weigh in favor of a finding of a combined unit based on shared interests, their notable differences regarding their hours and work location and, moreover, that they have little else in common, as described above, supports my overall finding in favor of the petitioned-for unit.

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21 According to the Employer’s records, eight Donor Care staff regularly work varied hours mostly at mobile sites; four work scheduled fixed shifts at the Rapid City facility; and one works part-time.

22 According to the Employer’s records, only one disputed employee (a Hospital Services Technician) is regularly scheduled to work weekend hours.
III. CONCLUSION

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the community of interest factors cited in *PCC Structurals* and *United Operations*, *supra*. More specifically, I find the distinct administrative grouping and difference in skills and functions of the Employer’s donor care operations, separate supervision, and lack of contact and interchange between the employees, strongly weigh in favor of finding that the disputed employees do not share a community of interest with the petitioned-for Donor Care staff sufficient to mandate their inclusion in the same unit. I conclude that, on balance, the Board’s community-of-interest analysis applied at step 2 of the *Boeing* test favors a finding that petitioned-for unit of Donor Care Specialists and Assistant Donor Care Supervisors is appropriate because the record reveals that they are a sufficiently distinct, recognizable group; their distinct interests outweigh their shared interests with the employees the Employer seeks to include.

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. 23

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 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:

   **Included:** All full-time and regular part-time Donor Care Specialists and Assistant Donor Care Supervisors.

   **Excluded:** All Donor Relations Specialists, Hospital Services Technicians, Senior Facility Resource Coordinators, Donor Recruitment Representatives,

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23 The parties stipulated that Vitalant (the Employer) is an Arizona corporation with an office and place of business in Rapid City, South Dakota, the only facility involved herein, where it is engaged in the operation of a blood bank. During the past year calendar year, a representative period, in the course and conduct of its business, the Employer purchased and received good valued in excess of $50,000 directly from points located outside the State of South Dakota, and derived annual gross revenues in excess of $250,000.
Medical Affairs Counselors, and all managers, confidential employees, and guards and supervisors as defined by the Act.24

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local 120.

Those eligible shall vote as set forth in the Direction of Election below.

**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 International Brotherhood of Teamsters, Local 120.

**I. METHOD OF ELECTION**

The Employer contends that a manual election would be most appropriate despite the present COVID-19 pandemic. Petitioner does not take a position as to method of election and has no objection to either a manual or a mail-ballot election. As detailed below, I find that a mail-ballot election is appropriate.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the Board outlined six situations “that will normally suggest the propriety of using mail ballots under the extraordinary circumstances presented by pandemic.” Id. slip op. at 4. The six situations are as follows:

1. The NLRB 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 General Counsel Memorandum 20-10, Suggested Manual Protocols (GC Memo 20-10).
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status.
6. Other similarly compelling considerations.

24 The parties stipulated to the exclusion of Donor Recruitment Representatives, Medical Affairs Counselors, and all managers, confidential employees, and guards and supervisors as defined by the Act.
The Board found that in the presence of any of the above situations, Regional Directors must consider directing a mail-ballot election. However, the presence of any of these situations does not require a mail-ballot election. Furthermore, the Board stated that Regional Directors who direct mail-ballot elections in any of the above situations will not be found to have abused their discretion. Id. slip op. at 8.

The parties were given the opportunity to present their positions regarding the method election in their briefs. Only the Employer addressed method of election in its brief, which I have carefully considered. The Employer argues that the Aspirus factors are now outdated and moot because of the accessibility of COVID-19 vaccines and home testing kits, which were not available when Aspirus was decided. Furthermore, the Employer contends that the availability of home testing kits for COVID skews the positivity rates because “[t]oday, many people are using the home testing kits and those results are not reported to officials and thus never make it into the positivity rate analysis…” Nevertheless, the Employer asserts that a manual election is still appropriate after applying the Aspirus factors, noting that the Region is not operating under mandatory telework status. The Employer argues that access to vaccination and home testing kits warrant the Regional Director’s discretion in ordering a manual election. Additionally, the Employer has acknowledged its general willingness to comply with the protocols for a safe election set forth in GC Memo 20-10 and asserts there is no current COVID-19 outbreak at the Rapid City facility.

After careful examination of the record, the parties’ respective positions, and the current state of the COVID-19 virus in and around Pennington County, South Dakota, I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail-ballot election the most responsible and appropriate method for conducting a secret ballot election at this time. In reaching this conclusion I have relied upon the second Aspirus factor, which considers whether the 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% or higher. The Aspirus Board did not specifically detail how the 14-day trend in the number of new cases should be evaluated, but it did direct that “the 14-day period should be measured from the date of the Regional Director’s determination, or as close to that date as available data allow” and that county-level data for the potential polling place should be accessed through the “Coronavirus Resource Center” website maintained by Johns Hopkins University. 370 NLRB slip op. at 5, fn. 20 & 22.

25 The Employer states it is has “instituted a mandatory COVID vaccination policy such that as the date of an election in this case, most, if not all, of its employees at the Rapid City location will be fully vaccinated against COVID, further reducing any risk of exposure to any participants in a manual ballot election held at the Employer’s facility.”

26 I note, however, that the Employer did not certify, by affidavit, as required by Aspirus, how many individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days).
The Johns Hopkins’ data for Pennington County, where the Employer’s Rapid City facility is located, as reported on December 13, 2021 indicates the 14-day trend in the number of new confirmed cases has fluctuated from 64 cases on November 29 to a daily high of 152 cases on November 30, as well as a high of 114 cases on December 7. There is certainly no consistent downward trend.

Additionally, the South Dakota Department of Health shows no consistent downward trend in its 14-day trend in the number of new confirmed cases in Pennington County from November 26 to December 9:

For the 14-day testing positivity rate, the Board noted that many locales do not report the 14-day testing positivity rate. Rather, experience has shown a 7-day average is more often available from federal, state, county, and municipal health agencies, and the Board has found such metrics to be sufficient. Regional Directors are empowered to use data from state, local and

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27 All dates are in 2021 unless otherwise noted.

28 [https://bao.arcgis.com/covid-19/jhu/county/46103.html](https://bao.arcgis.com/covid-19/jhu/county/46103.html) (accessed December 13) (note that no cases were reported on December 11 and 12 and 4 and 5, which corresponds with Saturdays and Sundays).

federal governments, as well as other credible COVID-19 data gathering entities. *Aspirus*, at *8 and fn. 24, 25; see, e.g., *Hearthside Food Solutions, LLC*, 2020 WL 7056105 at *1, fn. 1 (2020) (relying on Johns Hopkins University data) (not reported in Board volumes).

According to the South Dakota Department of Health, for the 14-day period November 26 to December 9, 2021, the percent positivity rate in Pennington County was 15.8%, over three times higher than the recommended five percent rate.\(^{30}\)

Based on the above, I find that the evidence related to test positivity rates above five percent as well as the 14-day trend for increasing cases is sufficient to satisfy the second *Aspirus* factor of the Board’s guidance for when a mail-ballot election should be considered and leads me to conclude there is too much risk to holding a manual election at this time or in the near future.

**A. Election Details**

I have determined that a mail-ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:00 p.m. on December 21, 2021, ballots will be mailed to voters by an agent of Region 18 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by December 28, 2021, should communicate immediately with the National Labor Relations Board by either calling the National Labor Relations Board, Region 18 Office at (612) 348-1757 or the Board’s national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 18 Office by close of business at 4:30 p.m. on January 10, 2022.

All ballots will be commingled and counted at the Region 18 office at 2:00 p.m. on January 11, 2022. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties’ representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

**B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending December 4, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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\(^{30}\) *Id.*
Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

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

To be timely filed and served, the list must be received by the regional director and the parties by Thursday, December 16, 2021. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.
No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting and, likewise, shall be estopped from objecting to the nondistribution 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 14, 2021

/s/ Jennifer A. Hadsall

Jennifer A. Hadsall, Regional Director
National Labor Relations Board, Region 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, Minnesota 55401-2657

Attachment