HEARING OFFICER’S REPORT ON CHALLENGED BALLOTS
AND RECOMMENDATIONS

I. INTRODUCTION

This report contains my findings and recommendations regarding seven determinative challenged ballots, pursuant to the Regional Director of Region 19’s Order Directing Hearing and Notice of Hearing on Challenged Ballots and Objections, dated April 15, 2022.

For the reasons set forth in detail below, I recommend the challenges be sustained.

II. PROCEDURAL HISTORY

Pursuant to a petition filed on January 18, 2022, seeking an Armour-Globe\(^1\) self-determination election, and a Stipulated Election Agreement, a mail ballot election was conducted on February 24, 2022, to determine whether the following unit of employees of Providence Health & Services Oregon d/b/a Providence St. Vincent Medical Center (Employer) wished to be

\(^1\) *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).
represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 701 (Petitioner or Union):

All full-time and regular part-time tech bio med 1 & 2, tech bio med sr., tech imaging svc 1 & 2, tech svc 2, tech instrumentation, and tech sterilizer equipment 1 & 2 employed by the Employer at its acute care hospital located in Portland, Oregon; but excluding guards and supervisors as defined in the Act, and all other employees.

Pursuant to the stipulated election agreement, the following other employees were permitted to vote, subject to challenge:

Others permitted to vote: The parties have agreed that the tech bio med chr may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in this classification or group are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

The tally of ballots prepared on March 18, 2022, at the conclusion of the mail ballot election, shows that of approximately 30 eligible voters, 11 votes were cast for the Petitioner and 11 votes were cast against the Petitioner, with 7 challenged ballots. The challenged ballots, which were cast by biomedical technicians who work for Cooperative Health Resources (CHR), and service medical devices and equipment at a variety of entities and locations, were not opened.

Because the 7 challenged ballots are potentially determinative, a hearing was held on May 4, 2022, in Portland, Oregon, before the undersigned, a duly designated hearing officer of the Board. The Employer and the Petitioner were represented by counsel during the hearing. All parties present at the hearing were afforded a full opportunity to be heard, to call and examine witnesses, and to introduce evidence on the issues to be considered. The Employer and the Petitioner timely submitted briefs summarizing their positions on the issues.

III. THE CHALLENGED BALLOTS

A. Facts

Providence St. Vincent is an acute care hospital in Portland, Oregon. It is part of the Providence Health & Services (Providence) network of care, which includes several hospitals and other facilities in northwest Oregon and southwest Washington. The Employer and the Petitioner
are parties to a collective-bargaining agreement (CBA) that runs from 2019-2022. (Jt. Exh. 1.)

The relevant provisions of the CBA provide:

2.1 The term “engineer or engineers” shall include all engineers operating boilers, generators, and all appliances and appurtenances and auxiliaries thereto, and all plant service and running repairs of boilers and machinery as predicated on jurisdictional award by the American Federation of Labor under date of December 7, 1896, and subsequent awards. Employees hired into the classification of engineer who do not have a Limited Maintenance Electrician (LME) license or higher at the time of hire will be required to enter a State of Oregon approved apprenticeship program for LME or Stationary Engineer within six months of hire, or be subject to termination.

2.2 Hospital recognizes Union as the exclusive collective bargaining representative of all engineers, as defined above, employed by Hospital at Providence St. Vincent Medical Center, Portland, Oregon, but excluding supervisors and any other employees. Providence St. Vincent Medical Center is defined as all facilities operated by Hospital in the area bounded by S.W. 98th Avenue, S.W. Barnes Road, the western edge of the property used for The Catlin Gabel School, and the southern edge of the first ravine located to Hospital's north. Hospital may, but is not required to, assign bargaining unit employees to perform the same or similar work at health care facilities other than Providence St. Vincent Medical Center.

This original unit, referred to herein as the “facilities engineers,” includes skilled maintenance workers who provide services at Providence St. Vincent. They support the facility’s infrastructure, including plumbing, electrical, lighting, HVAC, and any physical aspects of the building. The additional Armour-Globe voters in the stipulated election agreement include biomedical technicians who work predominantly on-site at Providence St. Vincent. This non-contested group of voters is referred to herein as the “PSV technicians.” As discussed more fully below, they service medical devices and other equipment. The contested voters are biomedical technicians who work for CHR, and service medical devices and equipment at a variety of entities and locations. They are referred to as the “CHR technicians.”

CHR is an offshoot of Providence St. Vincent. Prior to CHR’s creation, Providence St. Vincent’s biomedical group also provided services for clinics and some retail customers. As the Providence health system grew, it started up more clinics outside of its hospitals and acquired more

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2 Abbreviations used in this decision are “Jt. Exh.” for joint exhibit, “Emp. Exh.” for employer exhibit, and “Pet. Exh.” for petitioner’s exhibit. Though I have cited to certain exhibits, my decision is based on the entire record.
3 Their votes are not contested and their votes were opened and counted.
4 The retail customers have similar equipment to the Providence clinics.
retail customers. As a result, CHR was formed to support outside clinics and hospitals, both Providence and non-Providence.⁵

Randall Steel manages a group of 12 CHR technicians, including the contested voters, who support various Providence hospitals and clinics throughout the Portland service area as well as some retail customers. Steel’s employer is Providence and his primary office is at Providence St. Vincent.⁶

The contested CHR technicians are Adam Ondrusek, Philip Sasamoto, Stephen Hargett, Jesse Donahue, Jeffrey Coffey, Mark Callison, and Ty Stevenson.

Four of the CHR technicians, Ondrusek, Sasamoto, Hargett, and Donahue, clock in and out of Providence St. Vincent, where there is a shop exclusively for them. (Emp. Exh, 2.) The shop contains a desk for each CHR technician as well as stock room for equipment for the CHR technicians. After clocking in and checking their computers for assignments, the technicians gather their equipment and go to the facility where their services are needed.

Ondrusek repairs and maintains various medical equipment at several facilities. Among the equipment he services is the STERRAD device, a low temperature sterilizer. He is the only CHR technician trained on this device. Shiroma, a PSV technician, works on the STERRAD device with Ondrusek. In 2021, Ondrusek performed 40 hours of service on the STERRAD device at Providence St. Vincent. Ondrusek is also trained on two other devices, including anesthesia machines, and assists the PSV biomedical team in servicing this equipment. (Pet. Exh. 2.) Sasamoto, Hargett, and Donahue do not service devices at Providence St. Vincent. CHR provides each of these technicians (Ondrusek included) with a vehicle to travel to different clinics, as well as test equipment and needed parts.

Coffey works at Providence Willamette Falls Medical Center. He clocks in and out of that facility and is not provided with a car. Callison works at Providence Hood River Memorial Hospital. He clocks in and out of that facility and is provided with a car because he provides support for retail customers and spends one day a week at Mid-Columbia Medical Center in The Dalles, Oregon. He sometimes supports other hospitals, but does not service Providence St. Vincent. Stevenson works at Newberg Medical Center. He clocks in and out of that facility and is

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⁵ The precise timing of CHR’s creation is not established, but Steel testified it was “decades ago” and this is not refuted in the record.

⁶ Steel reports to Bruce Kaylor, Providence’s executive director.
provided with a car because he supports some nearby clinics. CHR has shops at its Newberg, Willamette Falls, and Hood River hospitals for the technicians who work at those facilities.

The CHR technicians have respective specialties. As noted, Ondrusek has specialty knowledge of sterilizers and anesthesia equipment. Sasamoto services EKG machines. Ondrusek’s opinion is that, while he is not as good as Sasamoto at servicing EKG machines, he could do it with a service manual, tech support, and time. Ondrusek also believes he similarly could fill in for the non-CHR biomedical team with training, service manuals, and time.7

A separate cost center covers the CHR technicians’ pay and supplies.8 CHR uses a standard contract that governs services it provides to the retail customers. (Emp. Exh. 3.)

The PSV technicians are divided into three teams, and within each team, they are assigned to certain equipment in line with their respective specialties. (Emp. Exh. 4.) Dominick Rider, the director for strategic technology enablement for biomed technicians at Providence St. Vincent, supervises these technicians. Ken Shiroma works as a sterilizer II technician. He works on Team 3, servicing sterilizers and dialysis equipment. Anna Classen works on Team 2 servicing ventilators, OmniBeds, blenders, capnographs, and wall suction devices. Peter McNamara works on Team 1 servicing anesthesia machines, ESU’s CellSavers, and heart-lung units. Shiroma would need additional training to fill in for Classen or McNamara in their respective specialties.

If a CHR technician calls out sick, their work is generally covered by another CHR technician. On rare occasions, the CHR and PSV technicians will fill in for each other. Recently, all of the CHR team was busy, so a PSV technician performed a safety check on equipment at a retail customer located at the hospital. A few years ago, McNamara helped out CHR technicians and The Dalles and CMC when CHR was very short-staffed.

Some of the PSV technicians perform maintenance on equipment in CHR territory. For example, one technician services the breast biopsy machine at Newberg Hospital, Willamette Falls Hospital and one other place. Another technician services injectors at various clinics, and another services ventilators in CHR territory. A vehicle is assigned to the PSV technician team, but not to individual technicians.

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7 When he was offered his job, he could choose either a job with the biomed department or CHR, and he chose CHR.
8 Likewise, Providence St. Vincent has a separate cost center.
The job profiles for Shiroma and Ondrusek show they are both labeled as regional shared services, their locations are both Providence St. Vincent Medical Center, and their supervisors are both Dir Service Delivery CTS. (Pet. Exh. 1.) Ondrusek’s department and accounting unit are labeled CE Cooperative Health, referring to CHR. Shiroma’s department and accounting unit are labeled CE Biomedical SVCS PSVMC, referring to Providence St. Vincent.

Ondrusek gets his equipment from Providence St. Vincent, from both the CHR shop and the from the separate shop designated for the PSV technicians. The Providence St. Vincent technicians regularly borrow equipment from the CHR shop and vice-versa.9

The facilities engineers do not service the biomedical equipment at Providence St. Vincent. They have separate licensing requirements and skillsets from the biomedical technicians.

B. Legal Framework and Analysis

1. The Board’s Health Care Rule

The Board’s Health Care Rule, 29 CFR § 103.30(a), provides for eight identifiable bargaining units in acute care hospitals, one of which is “skilled maintenance employees.” 29 CFR § 103.30(a)(5). Section 103.30(c) provides:

Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to sec. 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

The Petitioner argues that, under the Health Care Rule and Board law interpreting it, the Union has no option but to join the contested biomedical engineers with the represented facilities engineers because the existing unit of facilities engineers is non-conforming. (Pet. Br. 4.)

The Board does not interpret the Health Care Rule to apply to Armour-Globe elections. St. Vincent Charity Medical Center, 357 NLRB 854, 855 (2011) (Explaining that the Health Care Rule was promulgated “to avoid undue proliferation of bargaining units,” and that “[a]n Armour-Globe self-determination election . . . undeniably avoids any proliferation of units, much less

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9 Steel testified that the sharing of equipment was rarer, but Ondrusek, who actually performs the work and has hands-on knowledge, provided testimony that it was a regular occurrence. His testimony was also more unequivocal and certain, and I therefore credit Ondrusek’s testimony on this point.
undue proliferation, because it does not result in the creation of an election in a separate, additional unit.”) See also Kaiser Foundation Hospital, 312 NLRB 933, 934 (1993) (“By its terms, Section 103.30(c) applies only to petitions for ‘additional units,’ that is, petitions to represent a new unit of previously unrepresented employees, which would be an addition to the existing units at a facility.”) See also Rush University Medical Center v. NLRB, 883 F.3d 202 (7th Cir. 2016) enforcing 362 NLRB 218 (2015). Because Armour–Globe elections fall outside the scope of Section 103.30(c), and because this case involves an Armour–Globe election, the Petitioner’s argument fails.

2. Community of Interest

When considering petitions for Armour–Globe elections, “the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment.” St. Vincent, supra; See also Warner–Lambert Co., 298 NLRB 993, 995 (1990). Detective Intelligence Service, 177 NLRB 69 (1969), enfld. 448 F.2d 1022 (9th Cir. 1971). The burden of proof lies with the party asserting the challenged voter is ineligible to vote. Sweetener Supply Corp., 349 NLRB 1122 (2007).

The stipulated election agreement provides:

The following voting group is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act as part of the bargaining unit already represented by the Petitioner:

All full-time and regular part-time tech bio med 1 & 2, tech bio med sr., tech imaging svc 1 & 2, tech svc 2, tech instrumentation, and tech sterilizer equipment 1 & 2 employed by the Employer at its acute care hospital located in Portland, Oregon; but excluding guards and supervisors as defined in the Act, and all other employees.

10 The Employer, applying Caesars Tahoe, 337 NLRB 1096, 1097 (2002), argues that before turning to a community of interests analysis, I must first determine if the objective intent of the stipulated election agreement is clear. I could find no caselaw applying this prong of Caesar’s Tahoe to an Armour-Globe election with a group permitted to vote subject to challenge. In any event, intent is not clear, as the stipulated election agreement does not unambiguously exclude the contested voters. Indeed, the agreement explicitly permits the CHR technicians to vote and states, “their eligibility has not been resolved.” (Bd. Exh. 2.) Because of this provision regarding the CHR contested voters, the Employer’s argument that St. Vincent Hosp. LLC, 344 NLRB 586 (2005), compels a different result is unavailing. There was no similar provision in that case presenting the ambiguity that exists here.
As such, pursuant to the election agreement, the PSV technicians are considered as an appropriate part of the unit previously comprised of only the facilities engineers. In other words, they are part of the “stipulated unit.”  

In determining whether a unit of employees is appropriate, the Board considers the following factors:

- Whether the employees are organized into a separate department;
- Have distinct skills and training;
- Have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications;
- Are functionally integrated with the Employer’s other employees;
- Have frequent contact with other employees;
- Interchange with other employees;
- Have distinct terms and conditions of employment;
- And are separately supervised.

*United Operations*, 338 NLRB 123 (2002); See also *PCC Structuralis, Inc.*, 365 NLRB No. 160 (2017), overturning *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), and restoring *United Operations* criteria.

Addressing the first factor, whether the employees are organized into a separate department, this factor also relates to whether they are separately supervised. These factors weigh in favor of the Employer. The CHR technicians are part of a different entity than the PSV technicians and they predominately perform work at different facilities throughout northwest Oregon and southwest Washington. Their funding comes from separate cost centers, and they are supervised by different chains-of-command. The work the CHR technicians perform for retail customers is by contract between each retail entity and CHR. The CHR technicians’ department and accounting unit are labeled CE Cooperative Health, referring to CHR. The PSV technicians’ department and accounting unit are labeled CE Biomedical SVCS PSVMC, referring to Providence St. Vincent.

Turning to whether the CHR technicians and the PSV technicians have distinct skills and training and whether they have distinct job functions and perform distinct work, I find these factors weigh in favor of the Petitioners. The evidence shows that both groups service medical devices and equipment. Within each group of technicians, certain employees are trained on and specialize

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11 The Employer argues that the community of interest comparison should be between the CHR technicians and the facilities engineers. No doubt, these two groups in isolation lack community of interest. Because the stipulation agreement includes the PSV technicians, I find the appropriate analysis is between the two voting groups.
servicing certain types of equipment. But, collectively, the nature of the equipment the technicians work on is not materially different whether it is at Providence St. Vincent or other locations.

As to whether the two groups are functionally integrated with the Employer’s other employees and have frequent contact and interchange with other employees, this factor weighs in favor of the Employer. When a CHR technician is unavailable, their work is almost always covered by another CHR technician. Four of the seven contested CHR technicians clock in and out at Providence St. Vincent and have a separate shop located within the hospital, but only Ondrusek services equipment there, and the total time he spent working on Providence St. Vincent equipment was around 40 hours.12 These four referenced CHR technicians borrow equipment from each other’s shops when needed, but the evidence fails to show “frequent contact and interchange” with the PSV technicians.

Finally, as to whether the CHR technicians and the PSV technicians have distinct terms and conditions of employment, this factor also weighs in favor of the Employer. As set forth in the statement of facts, three of the contested CHR technicians are based at other hospitals. Three of the four who are based out of Providence St. Vincent exclusively perform work at other facilities, and, unlike the PSV technicians, they are all provided with cars because of their remote work. Of the other three CHR technicians, only Coffey is not provided with a car because he works exclusively at Providence Willamette Falls Medical Center.

On balance, applying the above factors, I find the Employer has met the burden to establish the CHR technicians lack the requisite community of interest with the stipulated unit.

V. CONCLUSIONS AND RECOMMENDATIONS

For the foregoing reasons, I find the CHR technicians lack sufficient community of interest with the stipulated unit and I sustain the objections. As such, I recommend the challenged ballots should be excluded from the tally of ballots.

12 Ondrusek spent 40 hours on the STERRAD machine. He testified he worked on a couple other machines, but did not quantify the time. See WLVI Inc., 349 NLRB 683, 686 fn. 5 (2007) (Board will find a substantial community of interest where a dual-function employee spends more than 25% of his or her time performing unit work.)
Appeal Procedure:

Pursuant to Section 102.69(c)(1)(iii) of the Board’s Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 19 by June 28, 2022. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174.

Exceptions and any supporting brief must be received by the Regional Director by 4:45 PM on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Date: Washington, D.C. June 14, 2022

[Signature]
Eleanor Laws
Administrative Law Judge