

**Virtua Health, Inc. and JNESO-District Council 1,
International Union of Operating Engineers,
AFL-CIO, Petitioner.** Case 4-RC-20692

May 11, 2005

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The issue presented in this case is whether a system-wide unit of the Employer's paramedics is appropriate. As explained below, we find, contrary to the Regional Director, that a unit limited to paramedics is not appropriate. Therefore, we reverse the Regional Director's decision and dismiss the petition.

On January 21, 2004, the Regional Director for Region 4 issued a Decision and Direction of Election (pertinent portions of which are attached as an appendix) in which she found that the petitioned-for unit of approximately 150 paramedics employed by the Employer at various locations throughout its southern New Jersey territory, excluding the Employer's other technical employees, is appropriate for bargaining. The Regional Director found that the Board's Healthcare Rulemaking (Appropriate Bargaining Units in the Healthcare Industry), 29 CFR § 103.30, 54 Fed. Reg. 16336-16348 (1989),¹ which requires that all technicals be included in one unit, absent extraordinary circumstances, was inapplicable in determining whether a unit limited to the Employer's paramedics was appropriate. The Regional Director found that the Rulemaking, which is limited to acute-care hospitals, does not apply to the Employer's health care system. The Regional Director further found that the "extraordinary circumstances" provision of the Rulemaking removed the Employer from the Rulemaking's coverage. The Regional Director, applying the test for determining units in nonacute health care facilities set forth in *Park Manor Care Center*, 305 NLRB 872 (1991), limited the unit found appropriate to the Employer's paramedics, excluding the remaining 950 technicals employed by the Employer.²

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that the Board's Rulemaking applied, and that, even under the test in *Park Manor*, supra, the only appropriate unit must include all the Employer's technicals. On Feb-

ruary 18, 2004, the Board granted the Employer's request for review.

We have carefully considered the entire record, including the briefs on review and the amicus brief in support of the Petitioner. Contrary to the Regional Director, we find, for the reasons set forth below, that a unit limited to paramedics is not appropriate. Accordingly, we reverse the Regional Director's decision and dismiss the petition.

I. BACKGROUND

The Employer operates a comprehensive regional medical system. The system includes: four acute-care hospitals in Marlton, Voorhees, Berlin, and Mt. Holly, New Jersey; a nonacute care hospital in Camden; a Mobile Intensive Care Unit (MICU), including the paramedic division at issue here, the Medical Command (Medcom), and an aero-medical unit called South Star; a free-standing surgery facility at the Voorhees Hospital campus; an ambulatory services center in Mt. Holly; a cardiac performance center on the Marlton Hospital campus; a family health center and a center for health and fitness near the Voorhees Hospital campus; a women's center in the family health center building; and a home health services unit. All of the Employer's 150 paramedics work in the MICU, which is part of the ambulatory services department. In addition to MICU, that department includes the Camden Hospital, the home health services unit, the cardiac performance center, the surgical center, and the center for occupational health. The corporate director for emergency medical services in the MICU oversees the paramedics, the South Star aero-medical unit, and several other programs. There is a medical director for the MICU, as well as two assistant directors and several supervisors. One human resources manager is responsible for the ambulatory services group, including the MICU, as well as the Berlin Hospital.

The paramedic division is divided between Burlington and Camden Counties. Each county has several platoons of between 10 and 15 employees, each with a supervisor. The platoons are positioned in various locations throughout both counties. One of the six Camden locations is at the Camden Hospital. All remaining locations in both counties (five locations in Burlington County) are at fire and emergency squad stations. These locations range from between 1 and 10-15 miles from the nearest Employer hospital. Paramedics regularly rotate through the different locations in their respective county. Paramedics also rotate between the two counties and may permanently transfer between counties. Of the 11 locations, 9 operate 24 hours a day, 7 days a week (24/7), and two operate 18 hours a day. Most of the paramedics work 12-hour shifts; one group works a 6-hour shift.

¹ See 284 NLRB 1515 (1987), et seq.

² The Petitioner initially contended that the paramedics were professional employees. The Regional Director agreed with the Employer that the paramedics are technical employees. No party requested review of this finding.

Paramedics are dispatched to the scene by 911 operators. Paramedics respond to emergencies in MICU vehicles that contain most of the equipment, medications, and supplies that emergency room personnel use when treating patients. At the emergency scene, paramedics assess the patient and provide advanced life support services similar to that provided patients in emergency rooms. Paramedics perform functions handled by other of the Employer's technical employees, including starting IVs, drawing blood, administering CPR, EKGs, and medication, and utilizing telemetry. Paramedics follow standing orders in providing treatment and, in most instances, contact Medcom, the Employer's communications center located within the emergency room at the Voorhees Hospital. Medcom is staffed 24/7 by a registered nurse (RN) and an emergency medical technician (EMT). The emergency room physician, usually through the RN, verifies treatment by the paramedics. In some instances, the physician gives direct orders to the paramedic. Almost half of patients seen by the MICU paramedics go to a hospital, and 42 percent of those go to an Employer facility. The paramedics do not transport the patients. Ambulance services or other emergency transporters, not part of the Employer, provide the transportation. Paramedics accompany patients to the emergency room, often providing care in the ambulance transporting the patient. At the emergency room, the paramedics interact with the medical staff, including other technical employees, in transitioning the patient.

The South Star (aero-medical) unit operates 24/7 and is located at a hangar on the Voorhees Hospital campus. There are 11–12 employees assigned to South Star including flight paramedics and flight nurses. Four of these employees are RNs who are also certified as, and sometimes work as, flight paramedics. Each South Star flight is staffed by a flight paramedic and a flight nurse, who provide advanced life support services at the site of an accident, during transport (including between hospitals), and as the patient is transferred from the helicopter to the next health care provider. South Star paramedics and RNs are in contact with Medcom. South Star RNs as well as South Star paramedic/RNs are currently represented in a systemwide³ RN unit by the Petitioner.

Paramedics have been assigned to work in the Employer's emergency rooms on occasion when placed on modified duty. Six paramedics have been so assigned in the past year, and some paramedics also volunteered to help out in the Employer's emergency rooms during the doctors' strike. In these instances, the paramedics work

alongside other emergency room personnel under the direction of the nurse manager or charge nurse. Paramedics in Burlington occasionally help out in the Mt. Holly emergency room after they bring a patient in from an emergency call. Approximately five emergency technicians or communicators have transferred to paramedic positions, and five paramedics have transferred to other positions with the Employer, including community education, community health, RN, and safety and security.

All of the Employer's nonrepresented employees, including the paramedics, are subject to the same human resources policies, receive the same employee handbook, and are eligible for the same benefits. Paramedics are on the same wage scale as the Employer's other employees. Jobs are posted employerwide, and employees retain their seniority when transferring in the Employer's system. Paramedics are subject to the same probationary period as other nonrepresented employees, are annually evaluated like other employees, and are eligible for the same merit increases and receive the same across-the-board increases as other employees. Paramedics participate with other employees in the training program and at times provide training to employees.

II. DISCUSSION

The Petitioner sought to represent a systemwide unit of paramedics. The Employer contended that the unit must include all of the Employer's technical employees either under the requirements of the Board's Healthcare Rulemaking or under the standards set forth in *Park Manor*, supra, for bargaining units in nonacute care hospitals. The Regional Director found that the Rulemaking did not apply to the Employer's healthcare system and that under *Park Manor* the petitioned-for unit of paramedics is appropriate.

Under the Board's Rulemaking, all technicals in a single acute-care hospital, must, absent extraordinary circumstances, be included in one unit. A unit of paramedics who constitute only a portion of the employer's technical employees at an acute-care hospital would be inappropriate. The Employer contends that the Rulemaking applies not only to single acute-care hospital facilities, but also to systems of health care facilities such as the Employer's which include acute-care hospitals, as well as other types of health care services. Assuming that the Rulemaking is applicable to the Employer, the paramedic unit sought by the Petitioner, excluding all other technicals, would be inappropriate, absent extraordinary circumstances. The Petitioner argues, and the Regional Director found, that the Rulemaking is not applicable here. We find that it is unnecessary to reach this issue because we conclude that, even under the broader stan-

³ Mt. Holly Hospital, which merged with the West Jersey system in 1996 to form the Employer, had a preexisting RN bargaining unit.

dard set forth in *Park Manor*, a unit limited to the Employer's paramedics is inappropriate.

In *Park Manor*, the Board applied the "empirical" or "pragmatic" community-of-interest test in determining unit appropriateness in nonacute care health care facilities. Under that test, the Board considers traditional community-of-interest factors, as well as the factors considered relevant by the Board in the Rulemaking, and prior cases involving either the type of facility in dispute or the type of unit sought.

Here, the paramedics, who are technical employees, provide the type of advanced patient care performed by the Employer's staff, including other technical employees, in the Employer's emergency rooms. The paramedics' duties include starting IVs, drawing blood, administering CPR, EKGs, and medication, and utilizing telemetry. Other technical employees perform these functions as well. Like other technical employees, the paramedics are required to have specialized education and/or training. The paramedics interact with other technical employees on a regular basis when they accompany about 10,000 patients to the Employer's hospitals each year. The paramedics occasionally interchange with other technicals when they provide extra help in the Employer's emergency rooms.

Further, there is evidence of temporary and permanent transfers between the paramedics and the Employer's other technical employees. For example, five paramedics were temporarily assigned to perform light duty in various hospital emergency rooms. Although one paramedic testified that paramedics do not perform direct patient care when on light duty, there is no indication that paramedics do not perform other technical functions. Further, several technical employees (three emergency room technicians, a base communicator/EMT, and a communicator) transferred permanently to paramedic positions.

The stations where the paramedics are located are close to the Employer's hospitals where other technicals are located. One station is attached to an Employer's hospital and the others are between 1 and 10–15 miles away from the hospitals. This geographic proximity supports a finding that a unit limited to paramedics is not appropriate. See *Stormont-Vail, Healthcare, Inc.*, 340 NLRB 1205 (2003) (nurses located at helicopter ambulance service 70 miles from hospital complex, included in unit with hospital RNs).

The factors relied upon in the Rulemaking also support a single technical unit. The Board, considering particularly the skill backgrounds of technical employees, placed the various types of technicals together, even though they worked in different areas, with no showing

of common supervision or interchange. Further, the Board considered that technical units, encompassing a wide range of classifications, met Congressional concerns to avoid proliferation of bargaining units in health care institutions.

As to prior precedent, the Board has not issued any cases concerning the type of unit sought here—paramedics excluding all other technicals. We find, contrary to the Regional Director, that *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), enf. denied sub nom. *Southwest Community Health Services v. NLRB*, 726 F.2d 611 (10th Cir. 1984), is not a comparable situation. In that case, the Board refused to reconsider its denial of review of the Regional Director's finding that a separate unit of ambulance service employees, including paramedics, EMTs, drivers, and dispatchers, was appropriate. The Regional Director had found that the ambulance service provided a service separate and apart from operations traditionally associated with services provided by a hospital or health care institution. Here, the Employer does not operate an ambulance service, but rather provides advanced life support of the type provided by medical staff in emergency rooms. See, by contrast, *North Memorial Medical Center*, 224 NLRB 218 (1976), where, in a pre-Rule case, the Board found that separation of an EMT unit from the acute care hospital's employees was not warranted.

Conclusion

For all of the foregoing reasons, we find that a unit limited to paramedics is not an appropriate unit for bargaining. The Petitioner has indicated that it is unwilling to represent paramedics in a broader unit including all technical employees. Accordingly, we reverse the Regional Director's decision and dismiss the petition.

ORDER

The Regional Director's Decision and Direction of Election is reversed and the petition is dismissed.

MEMBER LIEBMAN, dissenting.

I would adopt the Regional Director's well-reasoned and comprehensive decision finding that a systemwide unit of the Employer's paramedics is appropriate.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Virtua Health, Inc. (Virtua), operates a health care system in southern New Jersey consisting of five hospitals and several other health care facilities. The Petitioner, JNESO District Council 1, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 150 Paramedics employed by the Employer.

The parties disagree as to whether the petitioned-for unit is appropriate. The Employer contends that its health care system constitutes an “acute-care hospital” within the meaning of the Board’s Final Rule on collective-bargaining units in the health care industry,² 29 CFR Section 103.30 (the Rule), and the petitioned-for unit is inappropriate because it does not conform to the Rule. In this regard, the Employer contends that the Paramedics are technical employees and that the only appropriate unit is a system-wide unit of approximately 1100 technical employees. The Petitioner asserts that the Employer’s health care system is not an “acute care hospital” within the meaning of the Rule and that there are “extraordinary circumstances” which would render the Rule inapplicable. Based on the Board’s analytical framework for determining units in non-acute health care facilities, the Petitioner contends that the petitioned-for unit of Paramedics is appropriate. Finally, the Petitioner contends that Paramedics are professional employees, not technical employees.³ A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties, and as discussed below I have concluded that there are extraordinary circumstances that remove the Employer from the Rule’s coverage. Based on an application of the factors for determining units in nonacute health care facilities set forth in *Park Manor Care Center, Inc.*, 305 NLRB 872 (1991), I have further determined that the petitioned-for unit is appropriate. I have also concluded that the paramedics are technical employees. In this decision, I will first provide an overview of the Employer’s operations. Then, I will review the factors that must be evaluated in determining whether the Rule applies. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

The Employer is a not-for-profit corporation that operates four acute-care hospitals, in Marlton, Voorhees, Berlin, and Mt. Holly, New Jersey⁴ and a nonacute-care hospital in Camden,⁵ which offers limited emergency room and family health services. The Voorhees and Mt. Holly facilities are full-service acute-care hospitals, and the Berlin and Marlton hospitals provide adult and pediatric acute care but do not offer maternal or child health services. The Employer also operates: a Mobile Intensive Care Unit (MICU), which includes, among other things, a paramedic division and an aero-medical unit called South Star; the Summit Surgical Center, which is a free-

standing surgery facility at the Voorhees hospital campus; an Ambulatory Services Center in Mt. Holly; a Cardiac Performance Center on the Marlton hospital campus; the Tatum Brown Family Health Center near the Voorhees hospital campus; the William G. Rohrer Center for Health and Fitness near the Voorhees hospital campus; the Center for Women in the Tatum Brown Family Health Center building; and a Home Health Services Unit. The Employer was formed in 1998 by a merger of the former West Jersey Health System, which included the Marlton, Voorhees, Berlin, and Camden hospitals, and the former Memorial Hospital Burlington County in Mt. Holly.

Richard Miller is the Employer’s president and chief executive officer (CEO), Ed Dunn is the vice president and chief human relations Officer, and Ninfa Saunders is the Vice President and chief operating officer (COO). Each of the four acute-care hospitals also has a COO. The system employs approximately 7200 employees.

All of the approximately 150 paramedics employed by the Employer work in the MICU, which is part of the Employer’s Ambulatory Services department. Other than the MICU, the Ambulatory Services department includes the Camden hospital, the Home Health Services unit, the Cardiac Performance Center, the Summit Surgical Center, and the Center for Occupational Health. The ambulatory services department’s offices are located in Mt. Laurel.

Maureen Miller is the vice president for Ambulatory Services and has overall responsibility for all of its divisions. Miller reports to Ninfa Saunders, and Saunders reports to Richard Miller. Thomas Starr, the corporate director for emergency medical services in the MICU, reports to Maureen Miller. Starr oversees the MICU, including the paramedics, South Star, and several other programs. Dr. Joseph Hummell is the medical director for the MICU. There are also two assistant directors and several supervisors in the MICU. Rhonda Jordan, who works in human relations and reports to Ed Dunn, has responsibility for ambulatory services department employees, including Paramedics.

The paramedic division is broken down into two smaller divisions, one for Burlington County and one for Camden County.⁶ Each county has several platoons of between 10 and 15 employees, which in turn are divided into units of two employees. Each platoon has a supervisor. The platoons work in different locations called “Medics” in Camden County and “Care Units” in Burlington County. There are six medics and five care units.

The Medics are located primarily in fire and first aid stations throughout Camden County. Medic 1 is located at the Voorhees Fire District—Kirkwood Station in Voorhees, 3 miles from the Voorhees hospital. Medic 2 is located at the Winslow Township Fire District—Waterford Station in Waterford Township, about 7 miles from the Berlin Hospital. Medic 3 is located at the Camden hospital adjacent to the emergency

² The Rule is set forth at 54 Fed Reg. 16336 et seq., 284 NLRB 1580 (1989). The proposed rules and related commentary are set forth at 284 NLRB 1515 et seq.

³ The parties stipulated that if the Rule applies, a system-wide unit of the Employer’s technical or professional employees is appropriate. The Petitioner would not participate in an election in a unit other than the petitioned-for unit.

⁴ All locations mentioned in this decision are in New Jersey unless otherwise indicated.

⁵ The Employer’s hospitals have undergone several name changes, and the record does not clearly indicate their current names. Accordingly, this decision will refer to them as the Marlton hospital, Voorhees hospital, Berlin hospital, Mt. Holly hospital, and Camden hospital.

⁶ I take administrative notice that Burlington County covers about 827 square miles and has a population of about 424,000. It is the largest county in the state. Camden County has about 510,000 people and covers 222 square miles. The distance from Columbus in Burlington County to Haddonfield in Camden County is about 30 miles.

room, which is accessible through a separate entrance.⁷ Medic 4 is located at the Haddonfield Fire Company No. 1, about 7 miles from the Voorhees hospital and 6 to 7 miles from the Camden hospital. Medic 5, which operates in 18-hour shifts, is located at the Pennsauken First Aid Squad, about 7 miles from the Camden hospital. Medic 6 is located at the Erial Fire Company, about 8 to 10 miles from the Voorhees hospital and 7 to 8 miles from the Berlin hospital.

In Burlington County, the care units similarly are located at fire stations and emergency squads. Care unit 1 is based in the America Emergency Squad in Mt. Holly, about 1 mile from the Mt. Holly hospital. Care unit 2 is based in the Delran Fire Company, about 8 miles from the Mt. Holly hospital. Care unit 3 is based in the Medford Emergency Squad, about 6 to 7 miles from the Mt. Holly hospital. Care unit 4 is based in the Mansfield Township EMS Building in Columbus, about 10 to 15 miles from the Mt. Holly hospital. Care unit 5 is based in the Mt. Laurel Fire Department, about 5 to 6 miles from both the Voorhees and Marlton hospitals.

In both the Camden County and Burlington County divisions, the paramedics rotate through all the deployment sites every 5 weeks, with rotation occurring every third shift. Thus, each paramedic works two shifts at each Medic or Care Center throughout the rotation. Employees can also rotate from Camden County to Burlington County for periods ranging from a day to a month or permanently transfer from one to the other.⁸

The majority of paramedics work the same 12-hour shifts as hospital employees, either from 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. Part-time employees work from 7 p.m. to 1 a.m. and rotate only between medics 5 and 6, which are 18-hour-per-day operations.

South Star is an aero-medical unit within the MICU that operates 24 hours a day, 7 days a week. The South Star hangar is located on the Voorhees campus in a separate building about 100 feet from the hospital. South Star responds to serious accidents and transports acutely ill patients to Virtua hospitals and non-Virtua hospitals in New York, New Jersey, and Delaware. South Star also transports patients from non-Virtua hospitals to Virtua hospitals and from hospital to hospital within the Virtua system. The helicopter is staffed by a flight paramedic and a flight nurse,⁹ who provide advanced life support and patient transport. There are 11 to 12 employees assigned to South Star, and 3 of these employees and the chief flight nurse are certified as both registered nurses (RNs) and paramedics.¹⁰ Two state troopers who are employed by the State of New Jersey pilot the helicopter. There is a "ready room" and a locker area at the hangar, with computers and offices where the staff waits between assignments.

⁷ The Employer plans to move the Camden Medic to a firehouse.

⁸ The record did not disclose how frequently intercounty rotations or transfers occur.

⁹ The flight nurses are part of a systemwide RN unit represented by a different labor organization.

¹⁰ The record does not disclose how many South Star employees are paramedics as opposed to RNs or whether these employees rotate to other paramedic locations. The dual-certified employees are in the RN unit.

II. FACTORS RELEVANT TO EVALUATING THE APPROPRIATE UNIT

The Board's Health Care Rule

Prompted by longstanding disputes over hospital bargaining unit determinations, the Board engaged in notice and comment rulemaking from 1987 to 1989 in an attempt to formulate a general determination of appropriate bargaining units in the health care industry. See generally 52 Fed.Reg. 25142 et seq., 284 NLRB at 1516 (1987); 53 Fed.Reg. 33900 et seq., 284 NLRB at 1528 (1988); 54 Fed.Reg. 16336, et seq., 284 NLRB at 1580 (1989). In doing so, the Board sought to avoid proliferation of health care bargaining units and to limit the possible units to a reasonable, finite number of congenial groups that each displayed a community of interests within themselves and a disparity of interests from other groups. See 52 Fed.Reg. 25146, 284 NLRB at 1522; 53 Fed.Reg. 33905, 284 NLRB at 1536.¹¹ The Board's expressed intent was to create a reasonable number of units that would realistically reflect natural groupings of employees in health care facilities. They sought units that would not be so large that organizing and representing them would be exceedingly difficult, but large enough to avoid unnecessary, repetitious rounds of bargaining, along with frequent strikes, wage whipsawing, and jurisdictional disputes. 53 Fed.Reg. 33905, 284 NLRB at 1536. In May 1989, that process culminated in the Board's issuance of the Rule. The Rule, which was approved by the Supreme Court in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991), provides that, except in "extraordinary circumstances" or where there are existing nonconforming units, the following units are appropriate in an acute-care hospital: (1) all registered nurses; (2) all physicians; (3) all professionals except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; and (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. The Board stated that where extraordinary circumstances exist, the unit will be determined through adjudication.

In the Rule, the Board defined an "acute-care hospital" as either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50 percent of all patients are admitted to units where the average length of patient stay is less than 30 days. The definition includes hospitals operating as acute-care facilities even if those hospitals offer additional services such as long-term care, outpatient care, psychiatric care, or rehabilitative care, but excludes facilities that are primarily nursing homes, psychiatric hospitals, or rehabilitation hospitals. 29 CFR § 103.30(f)(2). The Rule does not by its terms indicate whether an "acute-care hospital" is limited to a single health care facility or whether it could encompass a system that includes more than one health care facility.

¹¹ While the Board did not apply the community-of-interest or disparity-of-interest standards, it recognized that it was considering uniqueness of function, training, education and licensing, wages, hours and working conditions, supervision, employee interaction, and factors relating to collective bargaining in adopting the Rule.

The Board intended that the “extraordinary circumstances” exception would be limited to truly extraordinary situations and be construed narrowly so it could not be used as an excuse for unnecessary litigation or delay. See 52 Fed.Reg. 25145, 284 NLRB at 1521; 53 Fed.Reg. 33904, 33932, 284 NLRB at 1533, 1573; 54 Fed.Reg. 16344–16345, 284 NLRB at 1593. Accordingly, the party urging extraordinary circumstances bears a heavy burden to demonstrate that its arguments are substantially different from those that the Board considered in the rulemaking proceedings—for example, that there are such unusual and unforeseen deviations from the range of circumstances already considered that it would be unjust or an abuse of discretion for the Board to apply the Rule. See *Boston Medical Center Corp.*, 330 NLRB 152, 167 fn. 35 (1999);¹² *Dominican Santa Cruz Hospital*, 307 NLRB 506, 507 (1992);¹³ *St. Margaret Memorial Hospital*, 303 NLRB 923 (1991), enf. 991 F.2d 1146 (3d Cir. 1993);¹⁴ 53 Fed.Reg. 33933, 284 NLRB at 1574; 54 Fed.Reg. 16345, 284 NLRB at 1593. The Board indicated that in order to satisfy due process concerns, the Board would allow for litigation where the circumstances warrant, while at the same time precluding litigation where the arguments are merely repetitive of matters already considered. 54 Fed.Reg. 16345, 284 NLRB at 1593. The Board specifically stated that the following circumstances normally do not justify an exception to the Rule: diversity of the industry; increased functional integration of work contacts among employees; impact of nationwide hospital chains; recent changes within traditional employee groupings and professions; effects of various governmental and private cost-containment measures; and single institutions occupying more than one contiguous building.

Unit Determinations in Nonacute Health Care Facilities

For nonacute health care facilities, the Board stated that it would determine appropriate units by adjudication. 29 CFR § 103.30(g). The Board has ruled that the proper test for determining the appropriateness of bargaining units in nonacute care health care institutions is the “pragmatic or empirical community-of-interest” test set forth in *Park Manor Care Center, Inc.*, 305 NLRB 872 (1991). See *CGE Caresystems, Inc.* 328 NLRB 748 (1999). Under that test, the Board considers traditional community-of-interest factors, as well as those factors considered relevant by the Board during the rulemaking proceedings, evidence presented during the rulemaking proceedings, and prior cases involving either the type of unit sought or the type of health care facility in dispute.

In making unit determinations by adjudication, including in the health care industry, the Board usually affords great weight to the petitioning union’s desires. It is well established that

¹² In that case, the Board rejected an argument that a finding that interns and residents were employees constituted extraordinary circumstances warranting their exclusion from a unit of other physicians.

¹³ In that case, the Board found no extraordinary circumstances where two unions sought different bargaining units and where RNs were not the only professional employees in their department.

¹⁴ In that case, the Board rejected an argument that extraordinary circumstances existed where skilled maintenance employees had a particularly strong community of interest with other nonprofessional employees.

there may be more than one appropriate bargaining unit within the confines of a single employing entity and that the Board is free to select any of those appropriate units. See, e.g., *American Hospital Assn. v. NLRB*, 499 U.S. 606, 610 (1991). In accord with that principle, the Board’s policy generally is to accept a petitioned-for unit as long as it is one of the many possible appropriate units. There is nothing in the statute that requires that the unit sought be the only unit, the ultimate unit, or the most appropriate unit. The Act requires only that the unit be appropriate. *Overnite Transportation Co.*, 322 NLRB 723 (1996).

In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, contact and interchange among employees, fringe benefits, bargaining history, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

Professional and Technical Employee Status

Section 2(12) of the Act defines a professional employee as: (a) any employee engaged in work: (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 2(12) was meant to apply to small and narrow classes of employees. *Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12)(a) before they qualify as professional employees within this definition. *Greenhorne & O’Mara, Inc.*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993). While employee background is examined for the purpose of deciding whether the work of the group satisfies the “knowledge of an advanced type” requirement of Section 2(12)(a), it is not the individual’s qualifications but the character of the work required that is determinative of professional status. *Express News Corp.*, supra at 628; *Western Electric Co.*, 126 NLRB 1346, 1348–1349 (1960). Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study at specialized schools. *Aeronca, Inc.*, 221 NLRB 326,

327 (1975). Salary is not determinative of professional status. *E. W. Scripps Co.*, 94 NLRB 227, 240 (1951). Examples of employee classifications that the Board has found to be professional employees in the health care field are RNs, *Centralia Convalescent Center*, 295 NLRB 42 (1989), medical technologists; *Group Health Assn.*, 317 NLRB 238 (1995), pharmacists; *Mt. Airy Psychiatric Center*, 253 NLRB 1003, 1005 (1981); and chemists, *Barnert Memorial Hospital Center*, 217 NLRB 775, 783 (1975).

The Board has traditionally held that employees whose jobs involve the use of independent judgment and specialized training in major occupational health care groups are technical employees. 53 Fed.Reg. 33918, 284 NLRB at 1553. These have included psychiatric technicians, *Southern Maryland Hospital*, 274 NLRB 1470, 1475 (1975), enfd. in pertinent part 801 F.2d 666 (4th Cir. 1986); respiratory therapy technicians, *St. Elizabeth's Hospital of Boston*, 220 NLRB 325, 327 (1975); X-ray technicians, *Pontiac Osteopathic Hospital*, 227 NLRB 1702, 1707 (1977); LPNs, *Trinity Memorial Hospital of Cudahy*, 219 NLRB 215, 216 (1975); and operating room/surgical technicians, *William W. Backus Hospital*, 220 NLRB 414, 418 (1975). The following classifications have generally been found not to be technical employees: dark room technicians, *Barnert Memorial Hospital Center*, supra; EEG technicians, *Pontiac Osteopathic Hospital*, supra, and EKG technicians, *Southern Maryland Hospital*, supra. The Board has recognized that most technical employees tend to work in laboratories rather than patient care areas and that cross-training of technicals occurs primarily with other technicals. *Park Manor Care Center*, 305 NLRB 872, 876 (1991). The Board has not yet made a finding based on record evidence as to whether Paramedics are professional or technical employees.¹⁵

III. FACTS

A. Paramedics' Duties and Responsibilities

Paramedics provide prehospital advanced life support services to patients and transport them to hospitals.¹⁶ They go to patients' homes or accident locations, provide care at the scene, and then accompany patients to hospital emergency rooms, often providing care in the ambulance. Paramedics do not drive

¹⁵ In *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992), no party disputed the Regional Director's finding that a related classification, emergency medical technicians (EMTs) were technical employees, and the Board therefore assumed they were technicals. In *North Memorial Medical Center*, 224 NLRB 218 (1976), the Board noted that it did not determine in that proceeding whether EMTs were to be included in a unit of technical employees. In other cases, paramedics were included in units that specifically included technical employees and/or excluded professional employees, although there was no issue as to their unit placement. *American Medical Response, Inc.*, 335 NLRB 1176 (2001); *Freedom A-1*, 326 NLRB No. 120 (1998) (not reported in Board volumes); *De Queen General Hospital*, 264 NLRB 480 (1982), enfd. 744 F.2d 612 (8th Cir. 1984).

¹⁶ The paramedic job description states, "Paramedics provide advanced life support in the emergency setting under the direction and supervision of a Medical Command Physician to the community and surrounding areas. Has accountability for the Advanced Life Support needs of the pre-hospital patient, including assessment, and use of verbal and/or written protocols of the medical director."

ambulances but drive vehicles called "rigs," which are owned by the Employer's MICU. Their other equipment is similar to equipment used by nurses in emergency rooms but is more rugged and versatile. For example, the infusion pump is encased in a heavy metal box instead of plastic, the defibrillator also serves as a blood pressure monitor, and the carbon dioxide monitor can also perform electrocardiogram (EKG) tests.

The Employer's paramedics respond to about 48,000 calls a year. Of these, about 23,000 (48 percent) require transportation of a patient to a hospital, and the others involve situations in which a patient does not require hospitalization, refuses care, or is deceased at the scene. About 10,000 patients (42 percent) are taken to a Virtua facility, while the remaining 13,000 (58 percent) are taken to one of 10 different non-Virtua hospitals in the area. Thus, only about 21 percent (10,000 out of 48,000) of the calls result in transport to a Virtua facility.

Emergency calls are initiated through the relevant county "911" communications center, where the dispatcher determines if paramedics are necessary.¹⁷ If they are needed, the dispatcher sends the closest unit to the scene. Paramedic units respond to calls along with community rescue teams, first aid squads, and fire and police units. Upon arrival at the scene, paramedics assess the patient, test vital signs, take blood pressure, and listen to the lungs. They then obtain important information,¹⁸ determine if any "standing orders" apply, and initiate treatment.¹⁹ Standing orders are established procedures for specifically identified emergency situations. Paramedics use their skill and expertise to determine whether advanced airway management, intravenous therapy, oxygen administration, defibrillation, or medication is appropriate.

In most situations, paramedics are also required to call Medical Command (Medcom), which is a communications center situated in the emergency room at the Voorhees hospital. Medcom is staffed 24 hours a day, 7 days a week by one nurse and one emergency medical technician (EMT) communicator. The communicator either relays information gathered from the paramedic to a physician, or the physician speaks to the paramedic directly.²⁰ Paramedics are not required to call Medcom when a patient suffers from stomach pain, nausea, or flu-like symptoms, but they must always call when a patient complains of chest pain or shortness of breath. Paramedics call Medcom about 9 times out of every 10 times that patients are treated.

Paramedics honor patients' requests as to which hospital to take them, unless the patient has life-threatening injuries. In such cases, the paramedic takes the patient to the nearest hospital. The patient is taken to the ambulance by the paramedics and then transported to the hospital by the rescue squad. One

¹⁷ The Camden County Communications Center is based in Lindenvold, and the Burlington County Communications Center is in West Hampton.

¹⁸ This information includes the patient's medical history, allergies, current medications, and symptoms.

¹⁹ Paramedics are licensed to administer a variety of medications and therapeutic agents under standing orders. N.J.A.C. 8:41-8.1.

²⁰ Under New Jersey State law, the MICU must be affiliated with a general acute-care hospital or emergency room facility and receive certification from the New Jersey Department of Health. The MICU is required to dispense care under the supervision of a physician.

of the paramedics accompanies the patient in the ambulance and continues to monitor the patient while the other drives the MICU vehicle to the hospital. If the patient has severe injuries, both paramedics monitor the patient in the ambulance and an EMT or police officer drives the paramedic vehicle.

Upon arrival at the hospital, the paramedic is generally greeted by a multiskilled technician (MST), emergency room technician (ER Tech), or clerical employee, who gathers information from the paramedic to register the patient. The paramedic then relates all vital signs, test results, and prior treatment to a nurse or physician. Paramedics typically spend between 5 and 15 minutes transitioning a patient, depending on the complexity of the case, but there have been instances in which transitions have taken 25 to 30 minutes due to resuscitation efforts.²¹ Paramedics may also stay at the facility for an additional 10 to 15 minutes after the patient transfer to clean their equipment and complete paperwork.²² On infrequent occasions, when delivering patients to the Voorhees hospital, paramedics will also begin preparing charts in Medcom or wait there for their partners. Paramedics have the same level of contact with emergency room staff whether at Virtua hospitals or non-Virtua hospitals.

B. Skills and Training

All of the Employer's paramedics are graduates of a recognized Paramedic training program, certified by the New Jersey Commissioner of Health and Human Services, and they also have current certifications in Cardiopulmonary Resuscitation (CPR) and American Heart Association Advanced Cardiac Life Support (ACLS). Flight paramedics additionally have New Jersey Air Medical Crew Member Flight Paramedic certifications.²³ As a result of their training, paramedics are permitted to perform certain highly specialized tasks such as intubation, infusion into bone, chest decompressions, reinflation of lungs, and accessing dialysis shunts. Paramedics must be recertified and complete 48 hours of continuing education every 2 years. The Employer provides training in life support and CPR to its paramedics and other hospital employees such as emergency room staff, surgical staff, and intensive care unit (ICU) staff. Paramedics are also trained in chemical release and biohazards, terrorism response, emergency vehicle operations, and mass casualty incidents. Like all other hospital employees, paramedics receive training in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) either on-line or in person.

C. Contact, Transfers, and Interchange With Other Virtua Employees

As noted above, when paramedics deliver patients to Virtua hospitals, they usually interact with emergency room staff for between 5 and 15 minutes. They spend the remainder of their

workday at their deployment stations, in the field, or delivering patients to non-Virtua hospitals.²⁴

Although New Jersey law prohibits paramedics from performing duties in a hospital other than transferring patients,²⁵ there have been about six occasions within the past year when paramedics have been assigned to work in emergency rooms at the Employer's acute-care hospitals.²⁶ In most of these situations, the employee involved had requested light or modified duty due to an injury.²⁷

In addition, in 2002, when some physicians in New Jersey temporarily closed their offices to protest medical malpractice insurance costs and directed patients to hospital emergency rooms for treatment, some paramedics voluntarily worked in the emergency rooms to accommodate the increase in patients.²⁸ When assigned to the emergency room, paramedics are technically able to perform any duties that they perform in the field, such as starting intravenous treatments, dispensing medications, obtaining patient histories, administering physical examinations, and taking vital signs, but there is no evidence as to how much of this work they actually performed.

The Employer's job posting program is a comprehensive listing of all job openings throughout the Virtua system. It is posted in Virtua facilities and the Employer's Intranet website, the "Virtua Vine," and is updated twice per week. There is a single seniority system for the Employer's employees so that if employees transfer in or out of a paramedic position, they retain their seniority and aggregate all of their employment time for purposes of determining pension eligibility. Paramedics are eligible to bid on nonparamedic or non-MICU jobs throughout the Virtua system and maintain their seniority. The record, however, reveals only five employee transfers from paramedic positions to other positions and five employee transfers from

²⁴ There was conflicting evidence as to whether the paramedics eat at hospital cafeterias when they deliver patients to hospitals.

²⁵ N.J.S.A. 26:2K-18.

²⁶ Melanie Leighton and Michael Ramich worked in the emergency room at the Voorhees hospital for an unknown period, and Joe McConomy and Jackie Robinson worked in the Mt. Holly emergency room for unknown periods. Additionally, Bruce Beatty worked in the Mt. Holly emergency room and in the Home Health Services office for a total of 6 weeks, and Teresa Barry worked in an unknown emergency room on and off for a period of about 8 months.

²⁷ While Thomas Starr testified that the paramedics at Care 1 in Burlington County have a history of filling in at the Mt. Holly emergency room, he did not provide any specific examples.

²⁸ The record does not indicate how many paramedics did so or for how long. According to Teresa Barry, this was the only time in her 18 years as a Paramedic that she worked in the emergency room. She drew blood and performed an EKG during that time.

²¹ The record does not indicate how frequently these longer transitions occur but suggests that they are rare.

²² Paramedics complete paperwork called ambulance squad run sheets, which are made part of the patients' records, and gather information from patients regarding billing.

²³ According to Vice President for Labor Relations Linda Wilson, there is very little difference in the training received by flight paramedics and other paramedics.

other positions to paramedic positions.²⁹ Three of the five employees who became paramedics had been ER Techs.³⁰

Paramedics are not the only Virtua employees who spend the vast majority of their time working outside of the Employer's health care facilities. There are also between 50 and 100 employees in Mt. Laurel who work in a warehouse performing purchasing functions and an unknown number of transportation employees who move goods and supplies from one facility to another and spend most of day in their vehicles. These employees are considered part of the Corporate Business Services Department, and they report to the vice president for support services. Home Health Services nurses also work away from the hospitals.

D. Labor Relations Policies and Work Rules

There is a single human resources policies and procedures manual covering employees at all of Virtua's facilities.³¹ All of the Employer's employees are paid on a biweekly basis on the same payroll schedule and are evaluated annually at the same time for pay increases. Paramedics are paid on the same wage scale as other Virtua employees.³² All employees are subject to a 3-month probation period unless they are covered by a collective-bargaining agreement that provides otherwise.

Paramedics participate in the same 1-day new employee orientation program as other employees and complete the same employment applications. Paramedics also participate in ACLS training, sometimes with other employees, and they may teach this course to other employees. The Employer distributes service recognition awards to all employees based on Virtua seniority. All Virtua employees, including paramedics, participate in employee surveys, open employee meetings, an annual safety day, employee picnics, the star awards, and employee of the month programs.

All unrepresented Virtua employees receive the same health insurance, dental insurance, life insurance, long-term disability insurance, state disability insurance, supplemental life insurance, prescription benefits, tax shelter annuities, 401(k) benefits, and pension benefits. They are all eligible to utilize Virtua's employee assistance program, credit union, fitness center, and child care centers. All employees may participate in the Employer's leave of absence program, jury duty program, tuition assistance program, and Virtua University, which offers personal, organizational, and clinical training programs. The Employer's information services division also offers computer

educational programs, such as Powerpoint, Word, and Excel, to all Virtua employees.

All MICU employees, including paramedics, are eligible for overtime work. They record their time either telephonically via a recording system or by swiping their ID badges if they are in a Virtua facility. Hospital employees other than paramedics can rotate their schedules in order to attend continuing education courses. Nurses may work flexible hours or have other employees cover for them on a regular basis to accommodate their personal needs. Paramedics are not permitted to alter their scheduled hours.

E. Bargaining History

There is no bargaining history for the paramedics. The Petitioner has represented a unit of RNs employed by Virtua at its Voorhees, Berlin, Marlton, and Camden hospitals, as well as at South Star, the Cardiac Performance Center, the Summit Surgery Center, the Ambulatory Center, the Tatum Brown Family Health Center, and Home Health Services facilities since May 1997.³³ Another labor organization represents the nurses who are employed at the Mt. Holly hospital.³⁴

IV. ANALYSIS

The Paramedics' Status as Technical or Professional Employees

The Employer contends that paramedics are technical employees and, pursuant to the Rule, cannot be part of any unit that does not include all of its technical employees. Although the Petitioner contends that a unit limited to paramedics is appropriate, the Petitioner maintains that the paramedics are professional employees rather than technicals.

Based on the statutory requirements set forth above, I find that paramedics are not professional employees as defined in Section 2(12) of the Act. While paramedics must be highly skilled and are often critical to patient care, the position does not require a college degree or significant advanced training in any specialized field of the type characteristic of professional employees. There has been no showing that their work is predominantly intellectual in character or requires the use of judgment that is based on advanced intellectual instruction.³⁵ *Community Health Services*, 259 NLRB 362 (1981); *Express-News Corp.*, 223 NLRB 627 (1976). Therefore, they do not meet the Board's test for professional status.

²⁹ Thomas Starr's wife, Pat Starr, transferred from a paramedic position to an RN position, Scott Hanson transferred from a paramedic position to a Community Education position, Jamie Pitner transferred from a paramedic position to a Community Health position, Michele Leff transferred from a paramedic position to an RN position, and Phyllis Worrell transferred from a paramedic position to a Safety and Security position but continues to work as a paramedic on a per diem basis. The record does not indicate when these transfers occurred.

³⁰ Communicator Donald Roth, ER Tech George Devakis, ER Tech/MST Rhonda Craig, Base Communicator/EMT Pat Desantis, and ER Tech Kim Aurbough all became paramedics.

³¹ The record is unclear as to whether the MICU also has its own policy manual.

³² They are generally compensated at wage levels 9 and 11, but the record does not indicate the dollar amount of their wage rates.

³³ The record does not indicate whether that certification was the result of a Stipulated Election Agreement or a Decision and Direction of Election. At that time, West Jersey Health System owned those facilities.

³⁴ The record does not indicate the identity of this labor organization.

The Employer declined to stipulate that the paramedics were not covered by other collective-bargaining agreements or that there is no contract bar issue on the grounds that its RNs were represented by JNESO and had an agreement that covers flight nurses at South Star.

³⁵ In *Samaritan Health Services*, 238 NLRB 629 (1978), the Board found a "radiologic paramedic" to be a professional employee. That employee performed his work in a hospital radiology department, had extensive academic and clinical training, and was required to perform highly specialized radiographic procedures. His duties and responsibilities were not comparable to those of the paramedics in this case.

Rather, I find that the paramedics are technical employees. They are required to be certified as paramedics and recertified every 2 years, and they exercise independent judgment while in the field as to which treatments to administer and whether to apply a standing order or to call Medcom. Their level of skill and training is comparable to the levels of skill and training of classifications found to be technical in other cases. Accordingly, if the Rule were to apply, paramedics would be included in a unit of technical employees rather than professional employees. *St. Elizabeth's Hospital of Boston*, supra; *William W. Backus Hospital*, supra.

The Applicability of the Rule

The Board has not yet determined whether the Rule applies to hospital systems in the same way that it applies to individual hospitals. While the Board recognized during rulemaking proceedings that there are variations in the size and scope of acute-care hospitals, there is no indication that the Board contemplated that each bargaining unit would span multiple health care facilities of varying types.

The Rule itself refers to “acute-care hospital” in the singular, and the Board’s accompanying comments generally refer to hospitals as individual facilities. In discussing the problems associated with unit proliferation, a major impetus for the Rule, the Board stated that “[L]ogically, the potential for a number of units does not mean that every hospital will be faced with this number of organizing campaigns. Indeed, a successful organizing effort of one unit in a hospital does not appear to have had a ripple effect on further organization.” The Board further stated that, “[o]ne study showed there is generally no correlation between the number of units in a hospital and the frequency of strikes” See 53 Fed.Reg. 33908–33909, 284 NLRB at 1540.³⁶ (Emphasis added to all quotations.) Thus, in enacting the Rule, it appears that the Board based its unit determinations on an assumption that there would be as many as eight units in each individual hospital. As noted above, the Board emphasized during the rulemaking proceedings that while it desired to avoid proliferation of units and its concomitant problems, the Board also intended to create groupings that would not be so large and diverse as to render organization and representation of them to be exceedingly difficult. 53 Fed.Reg. 33905, 284 NLRB at 1536. If the 150 paramedics were included in a unit of all 1100 technical employees at all of Virtua’s facilities, this unit would be extremely difficult to organize and represent.

Since promulgating the Rule, the Board has not had many occasions to discuss whether it applies to multifacility health care systems, but in *Child’s Hospital, Inc.*, 307 NLRB 90 (1992), the Board provided some guidance on this issue. In that case, the employer operated an acute-care hospital, a nursing home, and a service provider for both of the health care facilities, in a single building. The petitioner contended that the Rule applied and sought a unit limited to RNs who worked at

³⁶ Additionally, see 53 Fed.Reg. 33912, 284 NLRB at 1545, where the Board stated, “RN’s work in close and continuous contact with one another within the same hospital.” See also 53 Fed.Reg. 33918, 284 NLRB at 1554, where the Board stated, “Technical employees are distinguished by the support role they play within the hospital.”

both health care facilities, while the employer contended that the Rule did not apply and that the unit should include the RNs in a unit with all other professional employees at these facilities. The Board decided that “extraordinary circumstances” existed which rendered the Rule inapplicable, and identified these circumstances as the physical joinder of the nursing home and the hospital, the substantial nature of both operations, and the fact that the same service provider handled the needs of both operations. Significantly, the Board stated that, “[t]o attempt to fit this hybrid facility within a rule that is designed to cover the more typical free-standing acute-care hospital may, possibly, lead to an anomalous or impractical result, depending on the RNs’ relationship to other professionals and nonprofessionals in the facility, and the extent to which such relationship differs from, or is similar to, that found in the normal, acute care hospital setting.” Upon finding that the Rule did not apply, the Board indicated that the appropriate bargaining unit should be determined based on the test set forth in *Park Manor Care Center*, 305 NLRB 872, 874–875 (1991), and remanded the case to the Regional Director for that purpose.³⁷ The Board thus indicated that the Rule does not automatically apply to health care systems that extend beyond a single facility acute-care hospital.³⁸

In the instant case, the Employer’s health care system is also a “hybrid,” unlike the typical free-standing hospital to which the Rule was designed to apply.³⁹ Thus, the Virtua system

³⁷ Following the remand, the Regional Director found that no extraordinary circumstances existed based on the hybrid nature of the facility, among other reasons, because the Board expressly included within the coverage of the Rule those acute care hospitals that provide nonacute care services. The Board adopted the Regional Director’s findings without discussion but it is not clear whether the “extraordinary circumstances” discussion was raised in a request for review. *Child’s Hospital*, 310 NLRB 560 (1993).

³⁸ The Employer contends that the Rule applies to the entire Virtua system because there are acute care hospitals within that system. This argument was recently raised in *Stormont-Vail Healthcare, Inc.*, 340 NLRB 1205 (2003). In that case, the employer operated an integrated health care system consisting of a hospital complex comprised of four connected inpatient acute care hospital buildings and several other facilities, as well as numerous facilities away from the hospital complex including an inpatient acute care psychiatric department and several clinics and community nursing centers, among other facilities. Although the petitioner sought a multifacility unit of RNs that was smaller than systemwide, the employer argued, among other things, that because its system included acute care hospitals, the Rule required a system-wide unit. The Regional Director included in the unit RNs working on the main hospital campus but excluded RNs at the psychiatric facility and the outlying clinics and community nursing centers. In so finding, the Regional Director determined that the Rule did not apply because the hospital complex was “much more extensive and inclusive than a single acute care hospital” and the vast majority of patients served by the employer were outpatients rather than in-patients in acute care facilities. While the Board disagreed with the Regional Director’s conclusions on community-of-interest grounds and ordered the inclusion of RNs at the psychiatric facility and outlying clinics and community nursing centers, it did not disturb the Regional Director’s reasoning as to the applicability of the Rule.

³⁹ In this regard, see “The Future of NLRB Rulemaking: Analyzing the Mixed Signals Sent by the Implementation of the Health Care Bar-

includes four acute-care hospitals, one nonacute care hospital, and several other facilities that are not hospitals. As in *Childs*, supra, some of the facilities that are not hospitals are physically attached to hospitals or are located on the same campuses. In this case, however, the circumstances are even further removed from the single facility acute-care hospitals discussed in the Rule because the multiple Virtua facilities cover a wide geographic area, and many of these facilities, including the Camden hospital, are not acute-care hospitals and by themselves would be exempt from the application of the Rule. These circumstances are significantly different than circumstances considered by the Board when promulgating the Rule, and application of the Rule could consequently cause an impractical or anomalous result.

Moreover, application of the Rule would be particularly anomalous with respect to the paramedics because they have only a limited connection to any of the Employer's acute-care hospitals. Very few of the paramedics are based at Virtua acute-care facilities; they are almost always stationed at firehouses and rescue squads several miles away. At any given time, only 10 to 15 of the 150 paramedics are based at a Virtua facility, and paramedics are far more likely to transport patients to facilities other than acute-care Virtua hospitals. Overall, paramedics spend a relatively insignificant portion of their working hours at the Employer's acute-care hospitals.

While the Board intended narrowly to limit the "extraordinary circumstances" exception, this exception should not be viewed as entirely meaningless.⁴⁰ The Board listed several specific types of circumstances considered during the rulemaking proceedings that would not constitute extraordinary circumstances, but none of the circumstances set forth by the Board are present in this case. In this regard, there is no contention that extraordinary circumstances exist based on: the diversity of the industry; increased functional integration of work contacts among employees; recent changes within traditional employee groupings and professions; or the effects of various governmental and private cost-containment measures. Additionally, the Employer is not merely a "single institution occupying more than one contiguous building," but is a wide-ranging system that includes both acute-care and nonacute care facilities spread over two counties. Finally, while the Employer is a multifacility system, there is no contention that the Employer is a "nation-wide hospital chain." There is no indication that the Board considered multifacility systems like Virtua when limiting the extraordinary circumstances exception. In fact, the Board indicated in its comments that a party had requested that the Rule make it clear that multisite units are not an exception, but the

gaining Unit Rule and By the Proposed Beck Union Dues Regulation," 8 Admin L.J. Am.U. 125, 138 (1994).

⁴⁰ In fact, in *American Hospital Assn. v. NLRB*, supra, in upholding the Rule the Supreme Court referred to the extraordinary circumstances exception on several occasions. In responding to the petitioner's argument that the Rule is arbitrary, the Court emphasized that if the Board were presented with a case in which application of the Rule would be arbitrary, it would conclude that extraordinary circumstances justified a departure from the Rule. See *American Hospital Assn. v. NLRB*, supra at 618-619.

Board declined to do so. See 54 Fed.Reg. 16344, 284 NLRB at 1592.

In support of the Employer's contention that the Virtua system in its entirety constitutes an acute-care hospital under the Rule, the Employer cites *West Jersey Health System*, 293 NLRB 749, 751-752 (1989), a case involving the health care system that merged with the Burlington hospital to create the Employer. In that case, the Board found that various petitioned-for single hospital units were inappropriate because the presumption of single-facility appropriateness had been overcome and only multifacility units of West Jersey's four acute-care hospitals were appropriate.

West Jersey does not control the instant case, however, for several reasons. Most significantly, the applicability of the Rule was not at issue. *West Jersey* did not involve a determination of whether a classification of employees was required to be included in a more comprehensive unit but only dealt with the issue of whether a single-facility unit was appropriate. In the instant case, the parties stipulated to a systemwide unit, and the issue is whether paramedics must be included with all of the Employer's technical employees in the same unit. Additionally, as a result of the subsequent merger with the Burlington hospital the Virtua health care system is larger and covers a wider range than the West Jersey Health System. Whereas West Jersey Health Care System consisted of 4 acute-care hospitals in Camden County, Virtua has 10 facilities of various types spanning both Camden and Burlington Counties.⁴¹ Moreover, the case arose in 1982, and West Jersey had a different corporate structure than Virtua. Thus, the Employer's reliance on the Board's decision in *West Jersey* is misplaced.⁴²

⁴¹ Thus, although the issue was not raised in this case, a single location unit may not be inappropriate, as it was in *West Jersey*.

⁴² In *West Jersey*, the Board based its finding in great part on the extensive transfers of employees between the facilities and the fact that the system's departmental directors handled the day-to-day supervision. There is no similar evidence as to the Employer's practices concerning the paramedics.

The Employer also cites *West Jersey Health System*, 324 NLRB No. 90 (1997), enfd. 162 F. 3d 1153 (3d Cir. 1998), an unpublished decision involving West Jersey's refusal to bargain in a system-wide RN unit, because the Board referred to West Jersey as a "not-for-profit acute health care system." However, there is no indication that by making such a reference, the Board held that the Rule must apply to the entire system.

The Employer also argues that two letters issued by the Regional Director for Region 22 (Newark) dismissing petitions are determinative of this matter. In, *Robert Wood Johnson Hospital*, Case 22-RC-10348 (November 15, 1990), the Regional Director dismissed a petition for a unit of 73 emergency medical services (EMS) employees, including Paramedics, employed by a single hospital. In finding the unit inappropriate, the Regional Director relied upon the fact that the EMS employees frequently worked in conjunction with other hospital employees and performed medical functions closely integrated with those performed at the hospital. That case is clearly distinguishable because the employer was a single hospital, not a system, and all of the unit employees were connected to that hospital. In the instant case, in contrast, the employees in the petitioned-for unit are not connected to any specific hospital but bring patients to various Virtua and non-Virtua hospitals.

Based on the “extraordinary circumstances” present in this case, I find that the Rule does not apply to the Employer’s health care system. Accordingly, the appropriateness of the petitioned-for unit shall be determined, based on the record, using the “pragmatic or empirical community-of-interest” test set forth in *Park Manor Care Center*, 305 NLRB 872 (1991).

Application of the Park Manor Criteria

In *Park Manor*, the Board delineated principles to guide unit determinations in nonacute care facilities. See *South Hills Health System Home Health Agency*, 330 NLRB 653, 656 (2000); *McLean Hospital Corp.*, 309 NLRB 564 (1992); *Child’s Hospital*, supra. In determining whether a petitioned-for unit is appropriate, the criteria set forth in *Park Manor* require an examination of: (1) community-of-interest factors, (2) evidence presented and factors deemed relevant by the Board in its rulemaking proceedings, and (3) prior precedent.

Community of Interest

In the instant case, the relevant factors for determining whether the Employer’s paramedics have a community-of-interest factors with other technical employees include employee contact and interchange, transfers, supervision, terms and conditions of employment, employee skills and training, functional integration, and bargaining history.

There is very little contact or interchange between the paramedics and other Virtua technical employees. Thus, of the 11 sites at which paramedics are stationed, only one is currently situated at a Virtua hospital, so paramedics have no contact with other Virtua employees at the place where they report to work and spend their time waiting to be called to duty. When responding to calls, paramedics only see each other and members of local rescue squads or police and fire departments, although they are usually in telephone contact with a Medcom representative. Paramedics generally spend only a few minutes in the emergency room when delivering a patient, so they have

very limited contact with emergency room personnel. Moreover, they transport the majority of patients to non-Virtua hospitals and, therefore, have more contact with non-Virtua emergency room employees than with Virtua employees. As some of this contact is with physicians and RNs, their interaction with the Employer’s technical employees is limited even further. Paramedics have only rarely been assigned to work in the emergency room, and they are limited by State law as to the tasks they can perform there. Thus, paramedics interact with other Virtua employees infrequently and indeed have far more contact with firefighters, EMTs, and rescue squad employees than with Virtua technical employees.

There have been few permanent transfers between paramedics and employees in other positions within the Virtua system. In a system of 7200 employees, only 5 paramedics transferred to other positions, and only 5 employees transferred to paramedic positions.⁴³ Thus, although Virtua posts opportunities for transfer on a systemwide basis, paramedics have not significantly participated in these transfers, presumably because of the specialized nature of their positions.

The Employer has a uniform pay scale and pay policies for all employees, including paramedics, and provides all employees with the same fringe benefits and awards programs. All Virtua employees are covered by the same handbook and must abide by the same rules and regulations. Paramedics also have the same orientation program and many of the same training opportunities as other Virtua employees. The only significant difference in the Employer’s rules is that paramedics are not permitted to switch hours with other employees but must conform to their scheduled hours.

Paramedics must acquire skills and obtain training and certification in various specialized areas. They receive paramedic training, as well as training in CPR, biohazards, life support, and several other areas of expertise necessary to provide care for patients in emergency or life-threatening situations. Emergency room personnel also need to acquire some of these skills. Paramedics need to be recertified every 2 years by taking 48 hours of training. Like all other employees, they are trained in HIPAA.

There is some functional integration between the paramedics and some hospital employees. Thus, similar to hospital emergency room and intensive care employees, the paramedics’ duties are directly related to patient care. Some of the patients treated and transported by the paramedics later fall under the care of other Virtua employees, including some technicals. Many of the patients, however, are not brought to hospitals at all and others are transported to non-Virtua hospitals, which limits the extent of integration.

On a day-to-day basis, the paramedics are supervised at the platoon level; each supervisor is responsible for 10 to 15 employees. At higher levels, supervisors and corporate officials are responsible for other employees in addition to paramedics.⁴⁴ The fact that there are supervisors several levels up the chain of

Northwest Covenant Health Care System, Case 22–RC–11066 (1996), presents a closer factual parallel. In that case, the Regional Director administratively dismissed a petition seeking to represent a unit of 70 EMS Technicians, Paramedics, Dispatchers, and Wheelchair Car Drivers employed by a health care system consisting of four acute-care hospitals and other satellite facilities. The petitioned-for employees were stationed at the employer’s acute-care hospitals, a satellite facility, and an acute-care hospital unrelated to the Employer, and employees transported patients both to the employer’s acute-care hospital and other acute-care hospitals. In dismissing the petition and finding that the unit employees were required to be included in an overall unit of technical employees, the Regional Director determined that the employees’ duties were directly related to patient care and were akin to those performed at the employer’s intensive care unit or emergency room. The Petitioner requested review of the Regional Director’s administrative dismissal, and the Board denied the request. *Northwest Covenant* may be distinguishable because the relevant health care system was not as large or wide-ranging as the Virtua System, most of the Paramedics were based at the employer’s facilities, and it is not clear how frequently the Paramedics transported patients to facilities outside the system. In any case, the Board has held that Regional Director’s Decisions do not have precedential value, *S.H. Kress & Co.*, 212 NLRB 132 fn. 1 (1974), and administrative dismissal letters would similarly not control later cases.

⁴³ Not all of the employees who transferred from paramedic positions remained in technical classifications.

⁴⁴ The record does not indicate whether other employees in the MICU or the ambulatory services division are technical employees.

command that handle other employees in addition to paramedics, however, is not very significant. *McLean Hospital Corp.*, supra, 309 NLRB at 574; *Omni International Hotel*, 283 NLRB 475 (1987).

There is no bargaining history for paramedics. RNs are represented on a systemwide basis, except for the Mt. Holly hospital nurses, who are separately represented.

Rulemaking Comments

During the rulemaking proceedings, the Board found that technical units in acute-care hospitals include various classifications such as medical laboratory, respiratory therapy, radiography, and emergency medicine employees, and LPNs. A review of these proceedings, however, indicates that the Board did not discuss evidence concerning the unit placement of paramedics or any similar classifications.⁴⁵

Case Precedent

As to prior precedent, the Board has not issued any cases concerning whether paramedics should be included in a technical unit or any other unit. In the most comparable situation, *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), revd. 726 F. 2d 611 (10th Cir. 1984),⁴⁶ which was decided before the promulgation of the Rule, the Board found that a unit of ambulance service employees had a separate community of interest because: the ambulance services were distinct from traditional hospital services; the purposes and functions of the ambulance service were not directly related to the common health care purposes for which any hospital exists; ambulance crew members had the same relationship and work contact with emergency room personnel in other hospitals; and ambulance employees had more contact with hospital personnel from other area hospitals.

⁴⁵ The Board referred to EMTs once during those proceedings, noting that on rare occasion, they participate in multicompetency programs. The Board further stated, however, that these programs have little relevance to units in acute-care hospitals because graduates are generally employed elsewhere. 53 Fed.Reg. 33907–33908, 284 NLRB at 1539.

⁴⁶ In reversing the Board's decision that the ambulance service employees could constitute a separate appropriate unit, the court applied the disparity-of-interest standard, not the community-of-interest standard.

Analysis

I find that under the criteria set forth in *Park Manor*, Paramedics have a separate community of interest apart from Virtua's 1100 other technical employees and constitute a separate appropriate unit. Most significantly, they report to work almost entirely at non-Virtua sites and spend the vast majority of their time away from Virtua hospitals. Even when they bring patients to Virtua hospitals, they only spend brief amounts of time there and have limited contact with a few emergency room employees. They are separately supervised from other employees on a day-to-day basis, and they very seldom transfer to or from other jobs in the Virtua system. Paramedics have some separate skills and cannot work flexible hours like other Virtua employees. Moreover, the Petitioner's unit preference is a relevant factor, and the Petitioner has requested a separate unit of Paramedics. The fact that paramedics are involved in patient care duties that are somewhat integrated with the duties of hospital employees, and that they are subject to the same labor relations policies and receive the same benefits does not compel a different result. Accordingly, the petitioned-for unit of paramedics is appropriate.⁴⁷

⁴⁷ *North Memorial Medical Center*, supra, cited by the Employer, is distinguishable. That case involved an employer that operated a single facility acute-care hospital and an ambulance service employing EMTs at three locations, one at the hospital and two at remote locations. The EMTs were dispatched by the hospital and not by "911" services. Despite a bargaining history that was controlled under state law, separate supervision, different working hours, and separate wage rate classifications, the Board, applying a community-of-interest test, found that the petitioned-for unit of EMTs was inappropriate because the EMTs performed medical functions closely integrated with other hospital employees. That case, however, involved far fewer locations, no interchange with employees outside the hospital, and in-house dispatching. The EMTs in *North Memorial Medical Center* were closely tied to the hospital while the paramedics do not have a strong connection to any of the Employer's acute-care hospitals.