**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 20**

**ROSEVILLE POINT HEALTH & WELLNESS CENTER**

**EMPLOYER**

**AND** **Case 20-RC-363639**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015**

**PETITIONER**

## DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under Section 9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.

## I. SUMMARY

Roseville Point Health & Wellness Center (the Employer) operates a skilled nursing facility in Roseville, California (Facility). On April 11, 2025, Service Employees International Union, Local 2015 (the Petitioner) filed the instant petition seeking to include the registered nurses (RNs) in the existing bargaining unit of all full-time and regular part-time, and on-call Receptionists, Social Services Assistants and Respiratory Therapists (RTs), Licensed Vocational Nurses (LVNs), Certified Nursing Assistants (CNAs), Restorative Nursing Assistants (RNAs), Housekeepers, Janitors, Laundry, Cooks and Dietary Aides/Kitchen Assistants (the Unit) that the Petitioner represents. The Employer argues that the petitioned-for unit is inappropriate because all of the RNs are Section 2(11) supervisors[1] and because they do not share a community of interest with the existing Unit.[2] For its part, the Petitioner contends that the RNs are not statutory

[1] It appears from the record that RNs are designated on a rotating and ad hoc basis to serve in the role of "RN Supervisor" on the skilled side of the facility on the PM shift. *See* Bd. Ex. 4 at page 2. I shall thus treat the RN Supervisor role and its duties as subsumed by the RN classification.

[2] The Employer did not timely file and serve its Statement of Position and therefore was precluded from litigating the appropriateness of the voting unit. The Employer was permitted to litigate whether the RNs are statutory supervisors.

supervisors and that all the RNs constitute an appropriate voting unit, share a community of interest with the existing Unit, and should be permitted to vote for inclusion in that Unit by way of an *Armour-Globe* election.

A hearing officer of the Board held a hearing in this matter on April 23, 2025. The parties stipulated that all petitioned-for employees are professional employees within the meaning of the Act and that to the extent an election is directed, an *Armour-Globe* and *Sonotone* election is appropriate.[3]

As explained below, based on the record and Board law, I find that the Employer has not met its burden of establishing that the RNs are supervisors within the meaning of the Act, and I find that the RNs share a community of interest with the existing Unit. Accordingly, I find that the petitioned-for voting unit of RNs constitutes an appropriate voting group suitable for a self-determination election to decide whether they wish to be included in the existing Unit, and I shall direct an election among that group.

## II. FACTS

The Employer operates a skilled and subacute nursing facility, with 71 beds on the skilled side and 27 beds in the subacute unit. Subacute patients have more complex medical issues and most require a tracheotomy tube, and/or a gastronomy tube, and some patients are ventilator dependent. The Facility is overseen by an Administrator, and under that position is a Director of Nursing (DON) who oversees the nursing staff in both units. The RNs and LVNs report directly to the DON. Other management positions include the Assistant Director of Nursing (ADON) who also serves in the RN Supervisor role on the AM shift on the skilled side. The Director of Staff Development serves as the supervisor of the CNAs and educates CNAs, orients new hires, and updates the licenses for the Facility's files. In addition, a Scheduler, for both the skilled and subacute sides, assigns staff to patients on a daily basis, and handles the assignment and substitution of staff when employees are unable to work during their scheduled shift.

The California Department of Public Health (CDPH) requires an RN to always be present at the Facility.[4] The Facility operates 24 hours a day.

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[3] The parties also stipulated to the Petitioner's status as a labor organization pursuant to Section 2(5) of the Act, that the Employer is engaged in commerce within the meaning of the Act, and that it is subject to the jurisdiction of the Board. Specifically, they agreed that the commerce facts are as follows:

> The Employer, Roseville Point Health & Wellness Center, a California corporation with a place of business located at 600 Sunrise Avenue, Roseville, California, the sole facility involved herein, is engaged in the business of providing healthcare services. During the past 12 calendar months, a representative period, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of $250,000, and purchased and received goods or services valued in excess of $5,000 directly from points located outside the State of California.

[4] The RN is not required to be a supervisor, DON or ADON.

On the skilled side, there are three shifts with varying levels of staffing depending on the shift and patient census. The ADON fills the RN Supervisor role on the AM shift from 6:30 a.m. to 3:00 p.m., but if they are unavailable, an RN is assigned to that role.[5] There are also three cart nurses, who can be a mix of RNs and LVNs, who give medicine to the patients, chart, and assist other staff in the care of the patients. There are also eight to nine CNAs on the AM shift who do the cleaning and care of the patients, and activities of daily living, such as brushing teeth and feeding. In the AM shift, there are two RNAs (CNAs with special training), who exercise the patients and help with feeding. There is also a treatment nurse, who is an LVN, who does wound care. On the PM shift from 2:30 p.m. to 11:00 p.m., one RN is designated to fill the RN Supervisor role and there are three cart nurses (again, LVNs and/or RNs), one less CNA than on the AM shift, and one RNA who may work a split shift (i.e. part of the shift in the AM and part in the PM). On the Night shift (NOC) from 10:30 p.m. to 7:00 a.m., there are two cart nurses (LVNs and/or RNs), and four CNAs and no one fills the RN Supervisor role.

The subacute unit operates on two 12-hour shifts from 6:00 a.m. to 6:30 p.m. and 6 p.m. to 6:30 a.m. The staffing depends on the census, but if at full capacity, the AM shift has four nurses who can be either RNs or LVNs, and they give patients medications, monitor patients, perform suctioning, assist in respiration therapy and help the CNAs with showering, and moving patients. There are two CNAs, one RNA, and two RTs. In the NOC shift, if at full capacity, there are three nurses, two CNAs, and two RTs. There are no RN Supervisor duties on the subacute side.

The Administrator and the DON work from 9 a.m. to 5:30 p.m., Monday through Friday, and they are reachable by phone 24/7 unless they are sleeping. The ADON works Monday through Friday from 8 a.m. to 5 p.m.

LVNs, RNs, and CNAs can take shifts in either the skilled or subacute side as long as they are trained in subacute. The RNAs are assigned to work both the skilled and subacute side and the RTs work primarily in the subacute unit but sometimes assist on the skilled nursing side. LVNs and RNs are both considered "cart nurses" and are assigned to patients by "cart" which references the rooms in the Facility. An LVN could be assigned to cart 1 on the AM shift and an RN could be assigned that same cart 1 on the PM shift.

The RNs (also when serving as RN Supervisors) make rounds to ensure appropriate care is being provided and meet with nursing personnel to assist and/or improve patient care. Based on the job descriptions of the RNs and RN Supervisor role, the only notable difference is that RN Supervisors are described as "Participat[ing] in disciplinary action and evaluation of nursing

[5] The record reflects that the person in the RN Supervisor role conducts patient admissions, discharges patients, helps with patient change of conditions, troubleshoots with the Scheduler on staffing such as talking to employees to see if they want to fill in for vacancies, and performs other tasks as delegated by the DON, such as pharmacy audits and giving intravenous medications.

personnel." (Board Exhibit 4).[6] However, Edgar Padilla, who served as the Employer's DON, RN Supervisor, and is now an RN in subacute, testified that the RN Supervisor is only authorized to engage in education of employees and issue oral warnings.

All nursing staff (LVNs, RNs and RN Supervisors) and CNAs may change patient assignments of the CNAs to adjust for gender of the CNA to match with the gender of the patient, or if a patient requests a different CNA than assigned, which they are privileged to do under the Patient's Bill of Rights. Because no one fills the RN Supervisor role on the NOC shift in skilled nursing, all of the licensed nurses and CNAs address staffing issues as described above.

The RNs have the same benefits as the other staff, including health and dental, paid vacations, and paid holidays. The RN Supervisors are paid hourly and earn the same hourly wage as a subacute RN. All RNs wear the same uniform as the LVNs, and CNAs. RNs and RN Supervisors are not involved in any hiring. All RNs may be involved in conducting an initial investigation, which may lead to discipline, but do not make disciplinary decisions. All staff are obligated to report abuse or suspected abuse. LVNs and RNs have been trained on how to conduct investigations and submit a report to the DON. If the DON or the Administrator is not available, RNs and LVNs are trained to send another staff member home in the case of suspected abuse, pursuant to state regulations.

In other contexts, LVNs and RNs can conduct interviews of witnesses and draft a statement, however, these statements do not contain recommendations, and management also conducts its own independent investigation. RNs do not make recommendations about discipline. They are not involved in evaluating employees unless the DON asks about another employee's performance. It appears that all employees may have the opportunity to report on the performance of each other.[7] Neither the RNs nor the RN Supervisor have the authority to transfer RNs or LVNs from subacute to skilled or vice versa. However, consistent with the need to match the genders of patients to the genders of CNAs and to accommodate patients' requests related to CNAs, the RNs and LVNs work with the CNAs to satisfy the patients' needs. Performance reviews are conducted by the DON, and though they might receive input from the RNs, rewards are subject to the parties' CBA.

LVNs also make resident rounds to ensure appropriate care is being rendered and to meet with nursing personnel to assist and improve patient care. By their job description,[8] they are also expected to assist in distributing nursing assignments, assist in the supervision and direction of

[6] Despite the existence of a RN Supervisor job description, it does not appear that any one person currently occupies this position full time. Instead, after Padilla vacated that role, the ADON now fills the role on the AM shift and the RNs fill the role on an ad hoc basis on the PM shift.

[7] DON Rynna Torres testified: "So we'll -- I'll ask, how's the -- how's the CNA? You know, and -- or even with the LVNs, like -- like, if there are any issues that they have that they have heard, you know, and that's the reason why as well, that if there are any issues, they also report it to me. Same with the CNAs, because at the end of the day, it's still part of the whole nursing." (Transcript pages 144-145).

[8] Board Exhibit 4.

nursing personnel, and participate in disciplinary action and evaluation of nursing personnel. The reference to "participate in disciplinary action" is the same as that referenced in the RN Supervisor job description.

## III. BOARD LAW

### A. The *Armour-Globe* Standard

A self-determination election, also referred to as an *Armour-Globe* election,[9] is the proper method by which a union may add unrepresented employees to an existing unit if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *St. Vincent Charity Medical Center*, 357 NLRB at 855; citing *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit, *Warner-Lambert Co.*, supra; *St. Vincent Charity Medical Center*, 357 NLRB at 854. Further, a self-determination election may be appropriate regardless of whether the petitioned-for employees may be found to be a separate appropriate unit. *Great Lakes Pipe Line Co*., 92 NLRB 583, 584 (1950).

When deciding whether the voting unit sought for a proposed self-determination election is appropriate, the Board focuses on whether the voting unit constitutes an identifiable, distinct segment and shares a community of interest with existing unit employees. *Warner-Lambert Co.*, supra; *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). The Board evaluates the community of interest between two or more groups of employees by using the test articulated in, e.g., *United Operations*, 338 NLRB 123, 123 (2002). Under that test, the Board is required in each case to determine:

> Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring 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.

In applying this test to self-determination elections and post-election unit-clarification proceedings, the Board has emphasized that the group sought to be added need not share a community of interest with the entire existing unit, or even a majority of the unit. Rather, it need only have a community of interest with at least a minority of the unit. See e.g., *MV Transportation, Inc*., 373 NLRB No.8 (2023), citing *Public Service Co. of Colorado*, 365 NLRB 1017 (2017).

[9] See, G*lobe Machine & Stamping,* 3 NLRB 294 (1937); *Armour and Co*., 40 NLRB 1333 (1942).

**B. Supervisory Status and Section 2(11) Standard**

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

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

The three requirements to establish supervisory status are that (1) the putative supervisor possesses one or more of the above supervisory functions, (2) the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority, and (3) the putative supervisor holds that authority in the interest of the employer. *N.L.R.B. v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–13 (2001) (citing *N.L.R.B. v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Ky. River Cmty. Care*, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018) (citing *Gaines Electric*, 309 NLRB 1077, 1078 (1992)). The supervisor has to at least act or effectively recommend such action "without control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692–693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id*. at 693. To be independent, "the judgment must involve a degree of discretion that rises above the 'routine or clerical.'" *Id*. at 693 (citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)) ("[T]he exercise of some 'supervisory authority' in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status."). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, 348 NLRB at 693. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson, Inc*., 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, 348 NLRB at 687.

The party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Ky. River Cmty. Care*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB at 687. This requires the presentation of "detailed, specific evidence" that is not "in conflict or otherwise inconclusive." *Oakwood Healthcare*, supra at 694; see also *Veolia Transportation Services*, 363 NLRB 1879, 1886 fn. 19 (2016); *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072–1073 (2015). Mere inferences or conclusory statements, without such detailed, specific evidence, are insufficient to establish supervisory authority. *UPS Ground Freight, Inc.*, 365 NLRB 1123 (2017) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006)).

The lack of evidence is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047–48 (2003). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2–3 (2019). When there is conflicting testimony on the issue, the Board reasonably "prioritizes the testimony of those witnesses who occupy the alleged supervisory role at the time of the hearing," who denied having that authority. *Avante at Wilson, Inc.*, supra.

## IV. ANALYSIS

### A. Application of Community of Interest Standards

#### 1. The Employer's Administrative Organization

One consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. I find here that the RNs spend all of their time working alongside employees in the existing bargaining unit in both the skilled and subacute units, indicating that organizationally, the two are integrated. The classifications of RN and LVN share immediate supervision and the same management line. The RNs work side by side with CNAs, RNAs, RTs, and LVNs and in providing patients with care. I find that the Employer's function of providing medical and life care to patients in both skilled and subacute units weighs in favor of finding a community of interest between the RNs and the existing Unit.

#### 2. Whether the RNs Have Distinct Skills and Training

This factor examines whether the disputed employees can be distinguished from one another on the basis of skills and training. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999). Further, the Board has generally considered an employer's requirement that employees in a registered nurse classification have a registered nurse license to be an indicator that registered nurse skills and training are necessary to perform

the job functions. *Charter Hospital*, 313 NLRB 951, 954 (1994); *Ralph K. Davies Medical Center*, 256 NLRB 1113, 1117 (1981).

In order to work as a nurse at the Facility, one must have a nursing license. Though RNs and LVNs are both licensed by the State of California, the licenses are different as reflected by the training and certification requirements of each. Within the Facility, both undergo the same education on certain topics, such as when to send staff home in the case of suspected or actual abuse of a patient, and the reporting requirements of the same. Despite the licensing differences, because they exercise many of the same skills, use many of the same medical instruments, and are similarly trained at the Facility, I conclude that this factor weighs in favor of finding that a community of interest exists between the RNs and the LVNs.

3. **Distinct Terms and Conditions of Employment**

The terms-and-conditions-of-employment factor includes inquiry into whether employees receive similar wage rates and are paid in a similar fashion (for example, hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies, and other terms of employment that might be contained in an employee handbook. However, the fact that employees share common rates of pay and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc*., 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996).

The record evidence shows that the bargaining-unit employees and the RNs are paid hourly, even when the RNs serve as RN Supervisors. However, the record is devoid of evidence regarding the Unit employees' rates of pay,[10] making a comparison of the two impossible. The RNs, LVNs, and CNAs all wear the same work uniforms; share the same work facilities, including caring for patients in the same locations; and receive the same benefits of health and dental, paid vacations and paid holidays. The LVNs and RNs are equally assigned patients depending on the census. RNs and Unit employees share the same work hours and shifts, with the exception of RNAs who split shifts. Similarly, both LVNs, RNs, and CNAs can transfer between the sides of the facility (skilled and subacute) if they are trained for subacute. Based on the record evidence, the RNs share the same or similar terms and conditions of employment with a substantial portion of the Unit employees. I find that this factor favors the finding of a shared community of interest.

4. **Common Supervision**

When examining whether there is common supervision, the Board looks at the identity of employees' supervisor(s) who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing

[10] The only record evidence of pay rate was Padilla's testimony that he was paid the same hourly rate when he moved from RN Supervisor to RN in subacute.

guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB 400, 402 (1991); *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607, fn.11.

Here it is clear that the RNs (including while serving in the role of RN Supervisor) and LVNs are directly supervised by the DON. The DON conducts the evaluations of the nursing staff and rates performance based on input from others.[11] Other bargaining unit employees are directly supervised by others, for example the Director of Staff Development oversees the CNAs. Due to the commonality of the DON as the direct supervisor of RNs and the LVNs, this factor heavily favors finding a shared community of interest.[12]

5. **Degree of Functional Integration**

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

Here, there is a high degree of functional integration among the RNs, LVNs, and CNAs while working together in the Facility. These nurses have contact through shared workspace and work together in the care of patients. Being a relatively small facility with less than 100 beds total, the nursing staff work alongside the CNAs moving in and out of patients' rooms to provide them with medicine, feed them, shower them, and transport them as needed. RNs assist the CNAs in these tasks by transporting patients or positioning patients in the shower. RNs and LVNs are treated as nearly identical positions by reference to them both as "cart nurses." Their job duties overlap almost entirely. Thus, I find that the Petitioner-represented CNAs and LVNs are functionally integrated with the RNs and, accordingly, that this factor weighs in favor of finding that a community of interest exists among the RNs and the existing Unit.

[11] The record evidence is scant on the job duties of the DON and whether that position conducts the hiring or firing of employees or any other statutory supervisory indicia.

[12] As discussed below, RN Supervisors do not have the authority to hire, fire, evaluate or otherwise direct the day-to-day work of employees, so even if they arguably appear in a hierarchy just below the DON and above RNs and LVNs, they are not statutory supervisors.

### 6. **Interchange and Contact Among Employees**

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp*., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp*, supra.

Work-related contact among employees, including whether and to what extent they work beside one another, is yet another consideration. See, e.g., *Casino Aztar*, 349 NLRB at 605-606.

The record contains evidence that the RNs perform many of the same duties as the LVNs in administering medications, monitoring patients, and charting. Indeed, LVNs and RNs are assigned to patients in the same manner by "cart" and may be assigned the same cart but on different shifts. Scheduling is organized in such a way that Unit LVNs and CNAs work the exact same shift times as the RNs, such as the PM or NOC shifts in the skilled unit. Thus, they interact with patients and each other during the entirety of their shifts. In addition, existing Unit employees can transfer between units just as RNs can, that is if they are properly trained to work in subacute. So long as there is always at least one RN at the Facility, the Employer does not appear to distinguish between LVNs and RNs when filling unscheduled vacancies. Although there are only certain functions that the designated RN Supervisor is involved in, such as giving intravenous medications, there is no evidence that the RN position is materially different from the LVN position. In addition, due to the nature of the long-term care of the patients, the CNAs work alongside the RNs. Although the record does not reflect temporary or permanent transfers between the LVN and RN classifications, the shared work assignments and frequent contact among the RNs and LVNs (and to a slightly lesser degree the CNAs) support a finding that a community of interest exists between the RNs and the existing Unit.

Based on the foregoing and the entire record herein, and after carefully weighing the community-of-interest factors cited in *United Operations,* supra, I find that the combination of frequent contact, functional integration, commonality of professional skills and overlapping functions, common supervision, shared terms and conditions of employment, and departmental organization favor a finding that a strong community of interest exists between the RNs and the existing Unit.

## B. RNs Supervisory Status

The Employer argues that the RNs are statutory supervisors because they have the authority to assign, direct, transfer, discipline, evaluate and promote employees. No party argues, and the evidence does not establish that the RNs, including when designated as the RN

Supervisor, possess the authority to hire, suspend, layoff, recall, or discharge employees, or to effectively recommend such actions.

**1. Assignment**

The Board holds that the authority to assign refers to the act of designating an employee to a place (such as a location, department, or wing), assigning an employee to a time (such as a shift or overtime period), or assigning significant overall duties as opposed to discrete tasks. *Oakwood Healthcare*, 348 NLRB at 686, 689. The authority to make an assignment, by itself, does not confer supervisory status. Rather, the alleged supervisor must also use independent judgment when making such assignments. *Id.* at 692-93. Regarding independent judgment in relation to the authority to assign, "the Board has stated that the authority to effect an assignment must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the "routine or clerical." *Croft Metals*, 348 NLRB 717, 721 (2006).

Assignments that are based on well-known employee skills also do not involve independent judgment. *KGW-TV*, 329 NLRB 378, 381-382 (1999). Additionally, basing an assignment on whether the employee is capable of performing the job does not show independent judgment. *Volair Contractors, Inc.*, 341 NLRB at fn. 10; *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1154 (2015) (citing *Croft Metals*, 348 NLRB at 722). Moreover, conclusory testimony about staffing needs is insufficient to establish independent judgment. *Lynwood Manor*, 350 NLRB at 490. Similarly, "balancing of workload" and making decisions "controlled by detailed instructions" do not amount to the exercise of independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB at 693. In *Atlantic City Electric Co. v. NLRB*, 5 F.4th 298 (3d Cir. 2021), the court found that substantial evidence supported the Board's determination that the employer had not established that its system operators could assign employees to places or to times. Regarding places, the court commented that although system operators prioritized resources, which determined the need for work at a given location, they did not assign individual employees to places. *Id.*

The record evidence shows that the Scheduler, not the RNs, possess authority to determine employees' assignments, shifts, and schedules. In only two scenarios can the RNs, along with other Unit employees, adjust the patient assignments of CNAs: namely, due to gender pairing or patient request per the Patient's Bill of Rights. These adjustments to the workload are neither supervisory, nor in the hands of the RNs alone. The reassignment of patients is a department-wide task and is done by rote. In the case of suspected abuse, the RNs, along with LVNs, are trained to send an employee home pursuant to state regulations. Such a decision requires compliance with policy, not independent judgment, and this obligation falls to the nursing staff only if the DON or Administrator is unavailable. All of that said, the record does not contain a single example of an LVN or RN ever sending another employee home.

RNs assist the Scheduler to fill vacancies, but there is no evidence that RNs, including while serving as the RN Supervisor, exercise any authority over the regular shifts or schedules of other employees. The Board's test for supervisory assignment is more than assigning discrete tasks; it is assigning "significant overall duties to another employee." *Peacock Productions of*

*NBC Universal Media, LLC*, 364 NLRB 1523, 1525 (2016). The RNs and RN Supervisors do not assign significant overall duties to other employees. Rather, they work collaboratively with LVNs and CNAs to care for patients, which might merely involve the routine assignment of discrete tasks that do not require the use of independent judgment. Thus, I find that the RNs do not possess authority to assign work within the meaning of Section 2(11) of the Act.

**2. Responsibly Direct**

In *Oakwood Healthcare*, the Board held that "for direction to be 'responsible,' the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." 348 NLRB at 691–692. "Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." *Croft Metals,* 348 NLRB at 721; citing *Oakwood Healthcare*, 348 NLRB at 700.

To establish responsible direction, the Employer must show that the RNs are held accountable for the performance and work of those who deliver patient care, carrying out their recommendations. See *Transdev Services, Inc. v. NLRB*, 991 F.3d 889 (8th Cir. 2021) (court upheld the Board's finding that the employer had not alleged supervisors possessed the authority to responsibly direct employees, observing that the employer had failed to argue or explain how the alleged supervisors were held accountable for the performance of their subordinates, as opposed to their own performance); *Atlantic City Electric Co. v. NLRB*, 5 F.4th at 298 (the court upheld Board's finding that there was no evidence that the system operators were held accountable for the performance of their subordinates or suffered adverse consequences if their subordinates performed poorly). Thus, it is not enough to show that the RNs are accountable for their own mistakes, which here the Employer did not even attempt to demonstrate. *Oakwood Healthcare*, 348 NLRB at 695; see *Energy Mississippi, Inc.*, 357 NLRB at 2154–2155. Additionally, the criteria of responsible direction will not be met without evidence of the "factors weighed or balanced" in directing employees in order to establish the use of independent, nonroutine judgment. See *Croft Metals, Inc.*, 348 NLRB at 722.

The Employer did not furnish any evidence to indicate that RNs exercise authority in the interest of the Employer. Aside from communicating patient care needs to others in the bargaining Unit, a job shared equally by LVNs, there is no evidence that the RNs direct the work of others.[13] Absent any evidence that the Employer holds the RNs accountable for the performance of other employees, responsible direction has not been shown.

[13] The Employer presented evidence that two RNs directed CNAs to not clock out when they went on break. When the DON learned of this instruction, she informed the RNs not to give this type of direction to the CNAs. Though the Employer attempts to characterize this example as the RNs exercising independent judgment, the DON's reprimands to the RNs for giving this instruction demonstrates the opposite.

### 3. Transfer

In *Oakwood Healthcare, Inc.*, 348 NLRB at 690, the Board majority did not affirmatively define "transfer," but it signaled that "transfer" is not "merely a subset of 'assign,'" and rejected the suggestion that it means "to reassign . . . to a different [job] classification." For cases finding supervisory status based on the authority to transfer, see *Detroit College of Business*, 296 NLRB 318, 319–320 (1989) (based on evaluations, putative supervisors effectively recommended transfer); *Wolverine World Wide, Inc.*, 196 NLRB 410, 410 & fn. 4 (1972) (putative supervisors transferred employees "from one job to another, from machine to machine based on production needs and their knowledge of the employees' capabilities to perform the work"). For cases finding that the authority to transfer had not been established, see *Community Education Centers*, 360 NLRB 85, 88 (2014) (purely conclusionary evidence insufficient to show recommendation of transfers); *Chrome Deposit Corp*., 323 NLRB 961, 963 (1997) (putative supervisor only concurred in superior's recommendation to transfer, and single instance was de minimis); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996) (transfers not based solely on LPN recommendations, but instead determined by superior based on her assessment of situation); *Robert Greenspan, D.D.S., P.C.*, 318 NLRB 70 (1995) (transfer recommendations merely "a means of ensuring compatibility among employees who work closely together" and exercised too infrequently); *J.C. Brock Corp.*, 314 NLRB 157, 158–159 (1994) (transfers were merely putative supervisor following superior's instructions).

The Employer did not present any evidence that RNs possess the authority to transfer employees. Employees may transfer from the skilled unit to the subacute unit and vice versa if they are trained, but there is no evidence that the RNs have any involvement whatsoever in either granting or denying another employee's transfer.

### 4. Discipline

To establish the supervisory authority to discipline, asserted disciplinary authority "must lead to personnel action without independent investigation by upper management." *Veolia Transportation Services*, 363 NLRB 902, 908 (2016) (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007), and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), enfd. in pertinent part 317 F.3d 316 (D.C. Cir. 2003)). The authority to issue verbal reprimands, without more, does not establish the authority to discipline. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Washington Nursing Home*, 321 NLRB 366, 371 (1996). "[T]he mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority." *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citing *Heritage Manor Center*, 269 NLRB 408, 413 (1984); see also *Republican Co.*, 361 NLRB 93, 98-100 (2014) (verbal warning did not establish supervisory status where there was no evidence it had effect on warned employee's job status or tenure); *Hausner Hard-Chrome of KY., Inc.*, 326 NLRB 426, 427 (1998) (reprimand not disciplinary without evidence "job affecting discipline" resulted); see also *Allied Aviation Service Co. of New Jersey v. NLRB*, 854 F.3d 55, 65 (D.C. Cir. 2017) ("[h]aving a role as witnesses, or reporters of fact, within in a disciplinary process is legally insufficient to establish the effective exercise of disciplinary authority"). Warnings or counseling forms that bring

substandard employee performance to the employer's attention absent a recommendation for future discipline are merely reportorial and thus are not evidence of supervisory authority. *Veolia Transportation Services, Id*. at 908; *Williamette Industries,* 336 NLRB 743, 744 (2001); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996).

That said, "[a] warning may qualify as disciplinary within the meaning of Section 2(11) if it 'automatically'or 'routinely' leads to job-affecting discipline, by operation of a defined progressive disciplinary system." *Transdev Services, Inc*, 373 NLRB No.122 (2024), citing *The Republican Co.*, 361 NLRB 93, 99 (2014) (citing *Oak Park Nursing Care Center*, 351 NLRB 27, 30 (2007));*Veolia Transportation Services* (*Veolia I*), 363 NLRB 902, 909 (2016) (same). It is the Employer's burden to prove the existence of such a system, as well as the role warnings issued by putative supervisors play within it. *The Republican Co.*, 361 NLRB at 99; *Veolia I*, 363 NLRB at 909. If an ostensibly progressive system is not consistently applied, progressive discipline has not been established. See, e.g., *Ken-Crest Services*, 335 NLRB 777, 777–778 (2001); *The Republican Co.*, supra, at 99 fn. 8; *Veolia Transportation Services* (*Veolia II*), 363 NLRB 1879, 1884–1885 (2016).

RNs are empowered to investigate and write reports related to incidents that occur in the Facility, but they do not make recommendations related to any outcome or whether discipline should issue. Instead, the report is given to a manager who then conducts their own investigation to determine if discipline is appropriate. The act of merely reporting incidents does not constitute authority to discipline. *Passavant Health Center, supra.* Similarly, the investigation into alleged patient abuse, which requires an RN or the LVN or both to send an employee home pending investigation, is automatic and does not require the use of independent judgment. There is no evidence that the investigation by an RN results in discipline. Edgar Padilla testified that in his previous role as a more "permanent" RN Supervisor, he did issue oral warnings, but did not provide any specific examples. Even if he had, the issuance of "educational" warnings do not constitute supervisory authority unless it is shown that the warnings automatically lead to "job-affecting discipline, by operation of a defined progressive disciplinary system." *The Republican Co., supra.* The Employer did not meet its burden of proof in this regard, and thus it has not been shown that RNs exercise the authority to discipline other employees.

**5. Evaluate and Promote**

The authority to evaluate is not a supervisory indicium under Section 2(11). *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 889 (2014); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999). Even so, the Board analyzes the authority to evaluate to determine whether it is an "effective recommendation" of promotion, reward, or discipline. See *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989); see also *Empress Casino Joliet Corp. v. NLRB*, 204 F.3d 719, 723 (7th Cir. 2000). The Board will find supervisory status if the evaluation leads directly to personnel actions, but will not find supervisory status if the evaluation does not, by itself, directly affect other employees' job status. See *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139–1140 (1999); see also *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997) (evaluations must, by themselves, affect job status); *Passavant Health Center*, 284 NLRB 887, 891 (1987) (authority simply to evaluate without more is insufficient to find supervisory status).

At the DON's request, RNs provide their observations of their colleagues that could be used in an evaluation. However, the RNs, even when serving as RN Supervisor, do not recommend a rating, draft the evaluation, or perform any other functions with respect to evaluations. Although evaluations could provide some basis for a reward, such as a gift card, performance evaluations and awards appear to be governed by what one witness described as, "based on the Union whatever (sic) that's length of the experience." [TRA: pages 152-153]. Absent any evidence that the RNs do more than share their observations with management, the RNs have not been shown to possess the authority to evaluate employees or to otherwise effectively recommend them for an award, promotion, demotion, or discipline.

Because none of the primary supervisory indicia set forth in Section 2(11) have been met, I do not address or rely on any evidence involving secondary indicia of supervisory status. In light of the above, the RNs are not statutory supervisors. Because the RNs share a community of interest with the existing unit and are not statutory supervisors, they constitute an appropriate voting unit for the *Armour-Globe* election that I am directing herein.

## CONCLUSION

The RNs share a community of interest with the existing bargaining Unit and the Employer has not met its burden of establishing that the RNs are statutory supervisors. Accordingly, I shall direct a self-determination election among the petitioned-for RNs to determine whether they wish to be represented by the Petitioner as part of the existing Unit.

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

1. The rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated, and I find, that there is no collective-bargaining agreement covering any of the employees included in the appropriate voting unit, and there is no contract bar or other bar to an election.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time, regular part-time, and on-call Registered Nurses; excluding all other employees, managers, guards and supervisors as defined by the Act.

## DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Because the RNs are professional employees, they will receive an *Armour-Globe/Sonotone* ballot to determine whether they wish to be represented by Petitioner and included in the existing unit, which includes non-professional employees. If a majority of valid ballots are cast in favor of representation and inclusion in the existing unit, they will be included in the existing unit of all full-time and regular part-time, and on-call Receptionists, Social Services Assistants and Respiratory Therapists, Licensed Vocational Nurses, Certified Nursing Assistants, Restorative Nursing Assistants, Housekeepers, Janitors, Laundry, Cooks and Dietary Aides/Kitchen Assistants currently represented by the Petitioner. However, if a majority of valid ballots are cast against representation and inclusion, the RNs will remain unrepresented.

### A. Election Details

A manual election will be held on May 14, 2025, from 7:00 a.m. to 8:00 a.m. and 5:00 p.m. to 6:00 pm in the Conference Room at the Employer's Facility located at 600 Sunrise Avenue in Roseville, California.

### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending April 30, 2025, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

### C. Voter List[14]

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 9, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not serve the voter list.**

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

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

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

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

### D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those

[14] During an off-the-record communication, the Petitioner agreed to waive all 10 days to which it is entitled to possess the voter list in advance of the election.

employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 7, 2025

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