UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND D/B/A UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

Employer

and **Case 32-RC-367029**

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 29

Petitioner

ORDER DISMISSING PETITION

Children's Hospital & Research Cener of Oakland d/b/a UCSF Benioff Children's Hospital Oakland[1] (the Employer), is a hospital providing emergency and in-patient services to at its facility located in Oakland, California. In about 1985, the Employer voluntarily recognized the Office and Professional Employees International Union (OPEIU) Local 29 (the Petitioner) for the proposed unit at issue here. (Bd. Exh. 2).[2] On June 5, 2025, the Office and Professional Employees International Union (OPEIU) Local 29 (the Petitioner) filed a representation petition under Section 9(c) of the National Labor Relations Act (the Act) seeking confirmation of its status as the majority representative[3] in a proposed unit of approximately 50 full and regular part time employees employed by the Employer under the control and supervision of the Pathologists who direct the activities of the Clinical Laboratory, and employees classified as Histotechnologists, Pathology Technicians, Histology Technicians, Cytology Technologists, Clinical Laboratory Scientists,

[1] The Board has previously asserted jurisdiction over Children's Hospital & Research Center of Oakland D/B/A Children's Hospital of Oakland, including in 364 NLRB 1677 (2016).

[2] Citations to the Transcript are denoted by "Tr.", followed by the corresponding page and line numbers. Board Exhibits are denoted as "Bd. Exh." Petitioner Exhibits are denoted "U. Exh." Employer Exhibits are denoted "Er. Exh."

[3] As the Employer has voluntarily recognized Petitioner as the representative of the proposed Unit since about 1985, the Petitioner now seeks a *General Box* election (*General Box Co.*, 82 NLRB 678 (1949) to confirm its status as the majority representative in the proposed unit. (Bd. Exh. 1(a)).

Senior Clinical Laboratory Scientists, and Supervisory Clinical Laboratory Scientists, employed by the Employer at its Oakland and Walnut Creek locations.

A hearing officer of the National Labor Relations Board (the Board) conducted a hearing in this matter by videoconference on June 20, 2025, and June 23, 2025. As explained below, based on the record and relevant Board law, I find that the Petition is untimely and not appropriate for an election because the current complement of employees is not substantial and representative in relation to that projected for the reasonably foreseeable future.

I. FACTS

A. Background

The Employer is a hospital operating in Oakland, California. (Bd. Exh. 2). In 2013, the Employer and University of California, San Francisco (UCSF), reached agreement on integrating their operations. (U. Exh. 1(a)). UCSF is a public university. Pursuant to this Integration Agreement, in January 2025, the Employer began making preparations to integrate the Employer's workforce with UCSF. (Tr. 27: 9-17). The integration process involved about 2,800 of the Employer's employees, some of whom are represented by the Petitioner Union in the Unit at issue here. (Tr. 27: 25; Er. Exh. 9). The integration between UCSF and the Employer was expected to be completed by July 6, 2025. (Tr. 57: 12-13). Since at least March 17, 2025, the Union has been engaged in effects bargaining with the Employer about the so-called "integration." (U. Exh. 3; Tr. 161: 22-25; 162: 1-2; 163: 1-4).

B. The Disputed Unit

The integration process changed and/or was expected to change the Employer's operations with respect to the proposed Unit. Some aspects of the integration had already occurred at the time of the June 20 and June 23, 2025, hearing in this matter, while other aspects had not yet occurred, as the process was set to be largely concluded on or after July 6, 2025. (Tr. 27: 9-15).

First, the record evidence shows that the integration would require the Unit employees to undergo a process similar to a new hire: receiving and signing an onboarding letter, electing new providers for health and welfare benefits, enrolling in the pension/retirement fund,[4] and acknowledging new workplace policies. (Er. Exhs. 3, 5, 6; Tr. 37: 15-25; Tr. 28: 1-3: tr. 47: 20-25; Tr. 48: 1-7, 22-25; Tr. 56: 10-25). Some of those policies include new vaccination requirements, new badging requirements, a new dress code, and taking an oath to the United States and California Constitutions. (Tr. 73: 7-23; Tr. 76: 3-6; Er. Exh. 4). The Employer offered several informational sessions to the Unit employees to understand how the integration would impact all of these benefit areas. (Tr. 115: 4-24). The Unit's benefits – current at the time of the June 2025

[4] The record contains some evidence that pension eligibility and entitlements for the proposed Unit will change after July 6, 2025. (Tr. 48: 20-25; Tr. 49: 1-2; Tr. 50: 7-13; Tr. 113: 13-25; Tr. 114: 1-7).

hearing in this matter -- would be phased out on and after July 6, 2025. (Tr. 108: 12-17; Tr. 109: 3-6).

Second, the record evidence shows that the Unit members would be subject to a new payroll system, timekeeping system, and a new HR system. (Tr. 52: 22-25; Tr. 53: 1-12; Tr. 57: 1-4; Er. Exh. 11). The record keeping systems for the Unit – current at the time of the June hearing in this matter -- would be phased out on and after July 6, 2025. (Tr. 52: 22-25; Tr. 53: 1-5).

Third, the record establishes that the hiring, firing, disciplining, and scheduling of Unit employees would be different after July 6, 2025, controlled by new department leaders – a set of different individuals than had previously controlled these aspects of the employment relationship at the time of the June hearing dates. (Tr. 57: 12-17; Tr. 58: 2-16).

Fourth, the record shows that Unit members who did not wish to "integrate" could accept the Employer's severance package. (Tr. 36: 12-21). At the time of the hearing, at least two Unit members had accepted the severance offer.[5] (Tr. 41: 24-25; Tr. 42: 1-3; Er. Exh. 3). The record does not contain evidence as to the final tally of Unit members accepting the severance offer and leaving the Unit. The Employer's severance offer appears to have expired on May 30, 2025. (Er. Exh. 3, p. BCH000127). However, the record contains no evidence as to whether that deadline was extended.

Finally, the record evidence shows that the Unit employees will have new job titles and job classifications, pay ranges, pay structures, and the collective-bargaining agreement and policies that determine the Unit's terms and conditions of employment will also change after the integration process is completed. (Tr. 53: 1-12; Tr. 80: 13-23; Tr. 83: 8-24). Specifically, regarding the Unit's job titles and classifications, the record shows that the Employer "mapped" the existing employees' job duties with the equivalent duties of UCSF employees.[6] (Tr. 55: 2-4; U. Exh. 3). The Employer and the UCSF compensation team compared the Unit's jobs with the equivalent positions in the UC system. This is the "mapping" process that allowed the Employer to determine where, in the UC's system of job classifications, the Unit members would fall; where the Unit positions fit into the UC's job classifications determined where there were any applicable collective-bargaining agreements that would govern the Unit's benefits and other terms and conditions of work. (Tr. 54: 1-14). This would result, after July 6, in certain Unit employees being "mapped" into the UPTE HX Union healthcare contract.[7] (Tr. 55: 2-4; Tr. 81: 2-5). The UPTE

[5] The Employer's witness Vice President and Assistant Vice Chancellor of Talent Management and Human Resources for UCSF Jeffrey Chiu testified that "it is an approximation but somewhere around two employees. But that is an approximation based on the last time I looked at… the list." (Tr. 42: 1-3).

[6] The record shows that the Unit employees' job duties and responsibilities will not change after the integration process on July 6, 2025. (Tr. 94: 1-3).

[7] At hearing, the Employer's witness Director of Compensation Joseph Hurt testified that the HX unit was the "professionals and clinical unit." (Tr. 81: 2-3). According to the UCSF-UPTE collective-bargaining agreement, the UPTE HX bargaining unit is defined, inter alia, as follows:

HX is an existing unit of employees at UCSF – the record contains no clear evidence as to how many employees are in the that unit. (Tr. 55: 4-25; Tr. 81: 23-25). In this regard, the record evidence shows there could be 40, or 1,124, or as many as 3,000 UPTE HX unit members UC systemwide, and the Unit would be integrated into that unit. (Tr. 55-4-25; Bd. Exh. 1(f)). While the majority of the Unit employees will likely transition to the UPTE HX unit, some portion of these employees will be moved into non-represented positions. (Tr. 81: 2-8). The record is unclear as to how many proposed Unit employees are or will be reclassified as unrepresented – it could be just a couple, or a few, or some number less than 10. (Tr. 81: 6-8). For those Unit employees moving into the UPTE unit, the Employer's plan is for them to be governed by the terms and conditions of the collective-bargaining agreement between that union and UCSF. (Tr. 86: 10-22; Er. Exh. 10). Notably, that UPTE contract has already expired, and as such, the new terms under which the Unit is expected to be governed were not fully known at the time of the hearing. (Tr. 86: 10-22; Er. Exh. 10). In addition, the UPTE unit is more broadly defined than the Petitioner's proposed Unit, including the inclusion of pharmacists and physical therapists. (Tr. 93: 8-16).

While the record contains no discussion of the substance of the current litigation before the Public Employment Relations Board, the Employer's evidence shows that it is currently engaged in active litigation with a union at the Employer's Oakland facility before that agency. (Er. Exh. 12).

II. BOARD LAW

The Board will dismiss a petition as untimely if the requested unit is "expanding in size and/or changing in its basic character to such an extent that the present complement of employees is not substantial and representative in relation to that projected for the reasonably foreseeable future." *K-P Hydraulics Co. v. United Electrical,* 219 NLRB 138, 138 (1975). Where a representation petition seeks a bargaining unit that may expand in the foreseeable future, the Board will generally find that if approximately 30 percent of the eventual employee complement is employed and 50 percent of the eventual job classifications are filled, then the employee complement is substantial and representative and an election is appropriate. *Custom Delivers, Inc.*, 315 NLRB 1018, 1019 at fn. 8 (1994). However, where – at the time of the hearing – the proposed unit constitutes less than 30 percent of the forthcoming employee complement, and where less than 50 percent of the eventual job classifications are filled, then the Board will dismiss the petition as untimely. *K-P Hydraulics Co*., supra at 138 (petition dismissed where work force constituted 28 percent of eventual employee complement where the employer anticipated adding additional shifts, and less than 50 percent of job classifications were filled).

In *K-P Hydraulics*, at the time of the hearing, the employer employed 40 full-time and eight temporary employees, but within the same year the employer was expected to bring the

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> (A)ll employees, excluding employees defined by HEERA as managerial, supervisory and/or confidential and all student employees whose employment is contingent upon their status as students, in the Health Care Professionals (HX) bargaining unit.
> (Er. Exh. 10, p. BCH000341).

employee complement up to 140 employees. *Id*. Further, at the time of hearing, the employer in *K.P. Hydraulics* had 13 job classifications, but expected to eliminate four of these, and then add 20 new classifications, within the year. *Id*. The Board held that these anticipated changes showed the employer's expansion was expected to change the basic character of the unit such that the existing employee complement was not substantial and representative in relation to that projected for the reasonably foreseeable future. *Id*. As such, the Board dismissed the petition as untimely. *Id*.

III. ANALYSIS

In the instant case, the record evidence established that as of the hearing on June 20 and June 23, 2025, the proposed Unit was undergoing significant changes. For example, in early 2025, the Employer made a severance offer to the entire proposed Unit prior to the hearing – at least two Unit members had accepted the offer, but the record contains no evidence as to the final, total number of Unit members who opted to leave the proposed Unit. Likewise, the record contains no evidence as to whether Unit employees could still accept the severance offer. In addition, at the time of hearing, the Employer had designated at least two members of the proposed Unit as supervisory – or at least unrepresented – employees. (U. Exh. 3). Even that number – Unit employees reclassified as non-Unit -- appeared subject to change. (See Er. Exh. 10, page BCH000343). Further, the supervisory/unrepresented designation of certain Unit members goes to another aspect of the proposed Unit's instability: the change in job classifications. In this regard, while the evidence shows that the parties *expected* the Unit's job duties to largely remain the same after July 6, 2025, the evidence at hearing showed that Unit members were already given new job classifications and job titles. (Tr. 53: 5-6; Tr. 93: 21-25; U. Exh. 3). The record contains insufficient evidence to accurately compare the new job classifications to the Unit's previous job classifications to establish with any certainty the parameters of the Unit's new designations and/or any changes to the Unit's place within the larger organizational structure of the Employer. (Er. Exhs. 9, 10). These factors show that the size of the Unit, and the character of the Unit was yet undefined as of the date of the hearing and was certain to change further still on or after July 6, 2025.

In addition, as of the date of the hearing, the terms by which the Unit would be governed post-integration (post July 6) were unsettled. In this regard, as of the dates of hearing, the Employer was engaged in successor contract bargaining with UPTE, which governs the classifications that the Employer "mapped" onto the proposed Unit employees. Moreover, the benefits – including pension/retirement and health insurance – of the proposed Unit were expected to change after July 6, 2025. Likewise, the proposed Unit's sick leave, annual leave, payroll, etc., were expected to change to a new system of administration after July 6, 2025. Finally, the hiring, firing, disciplining, scheduling – core terms of the proposed Unit's working conditions – are in flux, with new department leadership largely taking over these functions after July 6, 2025. Such changes hold the potential, post-July 6, to "fundamentally alter the nature of the bargaining unit." *NLRB v. Off. Depot, Inc.*, 28 F. App'x 579, 582 (7th Cir. 2002). Indeed, these changes to the proposed Unit alter the character of the Unit to such an extent that, as constituted on the dates of hearing, the complement of employees is not substantial and representative relative to the

complement on and after July 6, 2025. See *K-P Hydraulics Co. v. United Electrical,* 219 NLRB 138, 138 (1975). I cannot, therefore, make a determination on the proposed Unit based on the evidence presented at the June hearing because this proposed Unit may or may not exist in the same shape and form today, *post*-July 6.

I further note that the size of this proposed Unit is uncertain. In determining when to allow a representation election, the Board has refused to allow an election before a substantial and representative complement of employees has been hired. *Some Industries, Inc*., 204 NLRB 1142, 1143, 83 LRRM 1481 (1973) (17% of projected employees hired in less than 50% of job classifications); *Noranda Aluminum, Inc.*, 186 NLRB 217 (1970) (eight of 365 employees hired); *K.P. Hydraulics Co*., 219 NLRB 138 (1975) (34% of work force hired in under half of number of classifications). Based on the record evidence, it is entirely possible that the proposed Unit, as of today, has expanded from the 50 employees identified in the RC Petition, to nearly 3,000. Because the record lacked clear evidence as to whether the size of the Unit was steady, increasing by 40, 1,124, or 3,000 unit employees, I cannot find that the size of the proposed Unit is stable – and I cannot find with any certainty that the proposed Unit represents a substantial and representative complement of the employees in the foreseeable future.

For these reasons, I find that the petition is untimely, and I am dismissing the petition.[8]

IV. CONCLUSION

It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

[8] In dismissing the petition, I note that there is no dispute that UCSF is a public entity. (Er. Exh. 10). Nevertheless, the question of the Board's continued jurisdiction in this matter need not be resolved through the instant petition, as I find the narrow issue presented here is governed by the Board's decision set forth in *K-P Hydraulics Co. v. United Electrical,* 219 NLRB 138, 138 (1975). This is particularly so where there are multiple related Unfair Labor Practices pending that raise the question of jurisdiction, allowing for a fulsome investigation of the issue.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on September 10, 2025** unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on September 10, 2025.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the

opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

DATED at Oakland, California on the 26th day of August 2025.

Christy J. Kwon
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