

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MONTEFIORE NYACK HOSPITAL
Employer

Case 02-RC-349294

and

THE NEW YORK STATE NURSES ASSOCIATION
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹ Accordingly, the Employer's Emergency Request for Stay of Election is denied as moot.

¹ On January 23, 2026, we issued an Order that denied the portion of the Employer's Request for Review addressing the Regional Director's scheduling of the preelection hearing. This order denies review in all other respects.

In denying review, we have exercised our discretion to examine the record and have read the transcript and relevant portions of the exhibits in this case. See Sec. 102.67(e) of the Board's Rules and Regulations. We find that the Regional Director's factual findings are reasonable in light of the record evidence. The Employer has not shown that they are clearly erroneous.

The Regional Director correctly applied *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990), in directing a self-determination election to determine whether the Employer's registered nurse care managers (hereinafter RN care managers) wish to join the existing unit. Contrary to the Employer's arguments, *American Steel Construction*, 372 NLRB No. 23 (2022), is inapplicable in this context. *Id.*, slip op. at 1; *Republic Services of Southern Nevada*, 365 NLRB 1410, 1410, fn.1 (2017). Applying *Warner-Lambert*, we agree that the RN care managers are an identifiable, distinct segment of employees. In addition to the reasons set forth in the Regional Director's decision, the RN care managers have different licensure requirements that allow them to complete different state-required discharge forms, and they earn significantly higher annual salaries than the Social Worker care managers. In denying review, we observe, as the Regional Director did, that the petitioned-for voting group and the employees in the existing unit share a community of interest because they fall under the same category for purposes of the Board's Health Care Rule—specifically, they are all registered nurses. See 29 CFR 103.30(a)(1); *St. Vincent Charity Medical Center*, 357 NLRB 854, 854–855 (2011) (relying on the Board's appropriate-unit/community-of-interest determinations in connection with the Health Care Rulemaking in determining whether the employees in a petitioned-for voting group in a self-determination election share a community of interest with employees in a preexisting unit). It is therefore unnecessary to pass on the Regional Director's additional community-of-interest analysis.

In denying review of the Regional Director's determination that the RN care managers are not supervisors within the meaning of Sec. 2(11), we agree that the Employer has not established that the RN care managers assign significant overall duties to care management assistants or bedside RNs. Moreover, they do not use independent judgment for the putative assignment. Each RN care manager is allocated one care management assistant, each patient is designated one bedside RN, and the RN care managers have no role in these decisions. As bedside RNs and care management

JAMES R. MURPHY,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
SCOTT A. MAYER,	MEMBER

Dated, Washington, D.C., July 9, 2026.

assistants have distinct duties, the RN care managers have only one obvious and self-evident choice for the putative assignment of duties to those employees. See, e.g., *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006).

In denying review of the Regional Director’s finding that the RN care managers are not managerial employees, we note that the record indicates the Employer has various policies governing the RN care managers’ work, and the Employer did not provide them or otherwise establish what they dictate. The Employer, who bears the burden of proof here, had to establish what the policies dictate, and to show, through specific examples, that the RN care managers exercise the requisite level of discretion or independent judgment outside of those policies to constitute managerial employees and it failed to do so. See *Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619, 1622 & fns. 14–15 (2016).

The Employer’s argument that it was not given the time to prepare new witnesses after the Regional Director permitted the Petitioner to amend its petition is not properly before the Board, because the Employer did not raise it to the Regional Director. See Sec. 102.67(e) of the Board’s Rules and Regulations (providing that a request for review “may not raise any issue or allege any facts not timely presented to the Regional Director”). Moreover, the alleged error is not a basis for granting review under Sec. 102.67(d)(3), because, due to the Employer’s failure to raise the issue to the Regional Director, the Regional Director made no procedural ruling that can be linked to the error or prejudice that the Employer asserts occurred.

For the reasons stated in *Satellite Healthcare (Santa Rosa)*, 374 NLRB No. 25 (2026), we reject the Employer’s argument that the Regional Director was not permitted to direct, conduct, or certify the results of an election during the absence of a Board quorum. We also agree with the Regional Director’s decision to reject the Employer’s argument that the petition should be dismissed because the Board’s removal protections violate Article II of the Constitution and subjects the Employer to a proceeding before an unconstitutional body. As the Regional Director found, this potential constitutional infirmity is no basis for dismissing the petition, because there is no evidence that the Employer has suffered any harm from the Board’s removal protections. See *Winco Holdings, Inc.*, 374 NLRB No. 37, slip op. at 1 fn. 3 (2026); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148–149 (4th Cir. 2023) (“[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes[.]”).