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Essentia Health and Minnesota Nurses Association.
Case 18–RC–330714

July 15, 2026

**ORDER GRANTING REVIEW AND NOTICE AND
INVITATION TO FILE BRIEFS**

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

Essentia Health (the Employer) operates hospitals and healthcare clinics in Minnesota, North Dakota, and Wisconsin. On November 27, 2023, Minnesota Nurses Association (the Petitioner) filed a petition seeking to represent a unit of nurse practitioners, physician assistants, certified nurse midwives, and clinical nurse specialists (collectively referred to as “Advanced Practice Providers” or “APPs”) employed in the Employer’s East Market division. The petitioned-for unit includes approximately 400 petitioned-for employees across nine acute-care hospitals¹ and roughly 51 non-acute clinics.

The Employer contends that the petitioned-for unit is not appropriate on two grounds. First, the Employer argues that, because the petitioned-for unit covers nine acute-care hospitals, the petitioned-for unit is underinclusive and the only appropriate unit must include “all professional employees” (and not just the APPs) at the petitioned-for locations, consistent with the Board’s Health Care Rule.² And second, the Employer argues that a unit containing all of the Employer’s locations in the East Market division is too broad; instead, the Employer asserts, the unit must be subdivided to reflect the 13 geographic regions (or submarkets) that combine to form the East Market division. Put simply, the first argument concerns the *composition* of the petitioned-for unit (i.e., the classifications that must be included in the unit), and the second argument concerns the *scope* of the petitioned-for unit (i.e., the locations that must be included in the petitioned-for unit).

On June 11, 2023, the Regional Director issued her Decision and Direction of Election, concluding that the peti-

tioned-for unit is appropriate. With respect to the Employer’s unit composition argument, the Regional Director found that the Health Care Rule does not apply in this case, and accordingly applied the test set forth in *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022) (*American Steel*), to determine whether the petitioned-for unit was appropriate. With respect to the Employer’s unit scope argument, the Regional Director applied the Board’s multifacility test, as articulated in cases such as *Exemplar*, 363 NLRB 1500 (2016), and *Stormont-Vail Healthcare*, 340 NLRB 1205 (2003), to conclude that the petitioned-for locations share a community of interest. Thus, the Regional Director found that the petitioned-for unit was appropriate, both in terms of its composition and its scope.

The Employer timely filed a request for review with the Board, and the Petitioner filed a brief in opposition. The Employer’s request for review of the Regional Director’s Decision and Direction of Election is granted as it raises substantial issues warranting review, especially with respect to the Regional Director’s conclusion that the Board’s Health Care Rule does not apply in this case. To aid in the consideration of this issue, the Board invites the filing of briefs in order to afford the parties and interested amici the opportunity to address the following questions:

1. Does the Board’s Health Care Rule govern unit composition in cases where a petitioned-for multi-facility unit includes both acute-care hospitals and non-acute-care facilities?
2. If not, what unit composition standard should apply? Should the Board apply the standard articulated in *American Steel*, or some other standard?³

In soliciting briefs on these questions, we emphasize that the Health Care Rule, as a rule of unit composition, does not concern whether certain *locations* may or must be included in a petitioned-for unit. Accordingly, the Health Care Rule does not govern whether acute-care hospitals may be included in the same unit as nonacute-care facilities; rather, the Board would apply its traditional multi-facility precedent (as articulated in cases such as *Exemplar*) to ascertain whether the acute-care and nonacute-care facilities share a community of

¹ The parties stipulated that these nine facilities constitute acute-care hospitals for purposes of the Board’s Health Care Rule.

² The Health Care Rule, which is codified at Sec. 103.30 of the Board’s Rules and Regulations, provides that “[e]xcept in extraordinary circumstances and in circumstances in which there are existing nonconforming units,” the eight units enumerated in the rule will constitute the only appropriate units in acute-care hospitals.

³ The Employer’s request for review does not argue that the Board’s decision in *American Steel* was wrongly decided, or that the Regional Director erred in concluding that the petitioned-for unit is appropriate

under that standard. Therefore, our grant of review in this case does not extend to whether *American Steel* should be overruled. Rather, we are granting review on the more limited question of whether the Health Care Rule, the *American Steel* standard, or some other standard should apply to a particular subset of cases: specifically, those cases where the petitioned-for unit includes both acute-care hospitals and non-acute facilities.

Chairman Murphy and Member Mayer note that they did not participate in *American Steel* and express no opinion on whether it was correctly decided.

interest.⁴ Our grant of review here concerns a substantively different issue: what *classifications* must be included in a hybrid unit where some of the facilities fall under the Health Care Rule and others do not.

Briefs not exceeding 20 pages in length may be filed with the Board in Washington, DC on or before July 29, 2026. The parties (but not amici) may file responsive briefs on or before August 12, 2026, which shall not exceed 30 pages in length. No other responsive briefs will be accepted. The parties and amici shall file briefs electronically at <http://mynlrb.nlr.gov/efile> and are reminded to serve all case participants. Motions for extensions of time in which to file briefs will not be granted absent compelling circumstances. A list of case participants may be found at <http://www.nlr.gov/case/18-RC-330714> under the heading “Participants.” If assistance is needed in E-filing on the Board’s website at <http://mynlrb.nlr.gov/efile>, please contact the Office of the Executive Secretary at 202-273-1940 or Executive Secretary Roxanne Rothschild at 202-273-2917.

Dated, Washington, D.C. July 15, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting in part.

I would deny review. Under Section 102.67(d) of the Board’s Rules and Regulations, requests for review of a Regional Director’s action are granted “only where compelling reasons exist.” The Employer has not shown compelling reasons in this case to grant review of the Regional Director’s Decision and Direction of Election.

In the representation election, employees voted overwhelmingly to be represented by the Union, and the Regional Director issued a Certification of Representative. In the absence of compelling reasons for review, there is no need to use this case as a vehicle for examining the contours of the Board’s Health Care Rule, thereby prolonging indefinitely any employee uncertainty about their bargaining representative.⁵

Dated, Washington, D.C. July 15, 2026

David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

⁴ For similar reasons, the Regional Director did not err in applying the Board’s multifacility precedent to the question of whether the petitioned-for unit may include all of the Employer’s locations in the East Market division.

⁵ In light of my colleagues’ decision to grant review, I join them in soliciting briefing from the parties and interested amici on the unit composition issue that the Board will consider on review.