DVA Renal Healthcare, Inc. d/b/a Davita Vallejo *and* SEIU, UNITED Healthcare Workers—West.
Case 20–RC–346835

July 22, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

The Employer's Request for Review of the Regional Director's Decision and Direction of Elections and the Employer's Request for Review of the Regional Director's Decision Overruling Employer's Objections and Certification of Representative are denied as they raise no substantial issues warranting review.[1]

In denying review of the Regional Director's Decision and Direction of Elections, we do not rely on the Regional Director's finding that employees at different clinics have different skills, functions, and working conditions simply because some clinics offer home dialysis services while other clinics do not. We further find, contrary to the Regional Director, that the factor of interchange is neutral.[2] We nevertheless agree with Regional Director that the Employer has failed to rebut the single-facility presumption here, for the other reasons set forth in her decision. In this regard, we emphasize that a single-facility unit in the healthcare industry is presumptively appropriate, and that a party seeking to rebut that presumption bears a heavy burden: it must "demonstrate integration so substantial as to negate the separate identity of the single facility." See *Mercy Sacramento Hospital*, 344 NLRB 790, 790 (2005). The Employer has not met that burden in the present dispute.

We also find that the Regional Director was not obligated to analyze whether the petitioned-for unit is readily identifiable and shares an internal community of interest under *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022). As *American Steel* explains, the framework articulated in that case pertains to whether certain *classifications* must be included in the petitioned-for unit, an inquiry which is "substantively different than whether a petitioned-for unit must contain employees at additional *locations*." Id., slip op. at 3 fn. 17 (emphasis added). Here, the Employer's Statement of Position asserted that the petitioned-for unit was inappropriate because the unit did not encompass all of the clinics in the Employer's ORCA Region 1. It follows, therefore, that the Employer's description of the smallest appropriate unit contained *all* of the petitioned-for classifications in the original petition at *all* of the Employer's Region 1 clinics, including some comparable classifications that did not exist at the Vallejo facility.[3] Significantly, the Employer's proposed unit description did not seek to exclude any of the petitioned-for classifications (as clarified by the Petitioner at the hearing) from the smallest appropriate unit. At the preelection hearing, the Employer's counsel did not identify any petitioned-for classifications that the Employer contended must be excluded from the unit,[4] or articulate any developed argument as to why the petitioned-for unit is not readily identifiable and/or does not share an internal community of interest, except to summarily assert

[1] For the reasons stated in *Satellite Healthcare (Santa Rosa)*, 374 NLRB No. 25 (2026), we reject the Employer's argument that the Regional Director lacked authority to process the Employer's objections and issue a certification in this case in the absence of a Board quorum.

[2] Contrary to the Employer's assertions, Emp. Exh. 18 clearly states that Vallejo employees worked "66" shifts at non-Vallejo clinics in the year preceding the hearing, not "661" shifts, as the Employer's counsel stated at the hearing, and these 66 outside shifts account for approximately 2.55 percent of total shifts at the Vallejo clinic, not 26 percent. Many (albeit not all) of the clinics listed in Emp. Exh. 18 have a similar discrepancy between the number of outside shifts listed on the blue bar and the percentage of total shifts listed on the gray bar, and, in our view, this renders Emp. Exh. 18 fundamentally unreliable. We further observe that although Emp. Exh. 19 indicates that Vallejo employees worked roughly 26 percent of their listed hours at other clinics, the relevant percentage is much lower for most of the clinics in ORCA Region 1. Moreover, Emp. Exh. 20 indicates that the number of employees the Vallejo clinic "borrows" from other clinics fluctuates greatly from week to week, averaging around the relatively low percentage of 17 percent. Finally, we agree with the Regional Director that, outside of emergency situations, the Employer usually seeks to fill in staffing vacancies at other clinics with volunteers, and this constitutes less persuasive evidence of interchange. See *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999).

Member Mayer notes that Emp. Exh. 19 demonstrates that the level of interchange in this case is substantial (Vallejo employees worked 26 percent of their hours at other facilities and employees "borrowed" from other facilities worked about 17 percent of the shifts at Vallejo). He finds it unnecessary to pass on whether that factor favors a multi-facility unit because even if it did, he agrees with his colleagues that the Employer has failed to rebut the single facility presumption when all the factors are weighed.

[3] Member Prouty clarifies that the Employer's description of the smallest appropriate unit contained classifications that the Petitioner seeks to represent at the Vallejo clinic (as clarified by the Petitioner at the hearing), along with comparable classifications that do not exist at the Vallejo clinic but are found at other clinics in ORCA Region 1, at *all* of the Employer's ORCA Region 1 clinics.

[4] Member Prouty notes that, in fact, at the end of the hearing, the Employer's counsel stated that "the Employer had clarified the correct classifications in its statement of position and that those would be the—the classifications that—that would—you know, that it would take the position that those are the appropriate ones in any unit that's—that's directed." As discussed above, the classifications that the Employer identified in its Statement of Position included all of the classifications that the Petitioner seeks to represent at the Vallejo clinic.

that the Petitioner bears the burden of proving these elements. Furthermore, the Employer's opening and closing statements focused exclusively on the argument that employees at additional facilities must be added to the petitioned-for unit. Thus, the Employer did not clearly argue, until its post-hearing brief, that the administrative classifications that the Petitioner seeks to represent at the Vallejo clinic do not share a community of interest with the medical classifications that the Petitioner seeks to represent there.

American Steel makes clear that "[w]hile each element is a fundamental component of the unit determination, the decisionmaker (usually the Regional Director, in the first instance) is not required to litigate or address every single element in every single case: if no party disputes a particular element, it need not be analyzed." 372 NLRB No. 23, slip op. at 3. We find that the Employer's failure to articulate any meaningful arguments with respect to the readily identifiable and/or internal community of interest elements, either in its Statement of Position or at the preelection hearing, constitutes a failure to timely dispute those elements. The Board's duty is to expeditiously resolve representation cases: it cannot fulfill that duty if Regional Directors must reopen the record to solicit additional evidence on community-of-interest arguments that were not clearly raised and fully litigated at the preelection hearing.

We further find that this case is distinguishable from *Allen Health Care Services*, 332 NLRB 1308 (2000), where the employer refused to take a position on whether the petitioned-for unit was appropriate, and the Regional Director therefore needed to solicit record evidence to determine the appropriate unit. See id. at 1308–1309 (explaining that "absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit"). In this case, the Employer *did* take a specific position on the appropriate unit, as articulated in its Statement of Position and by the Employer's counsel at the hearing. Specifically, the Employer contended that the unit was inappropriate because it needed to include employees at all of the clinics in ORCA Region 1, and it did not identify any petitioned-for classifications that should be excluded from the petitioned-for unit on community-of-interest grounds, either in its Statement of Position or at the preelection hearing. *Allen Health Care* does not require Regional Directors to solicit evidence on unit determination issues that the parties do not actively raise in their Statement of Position and litigate at the preelection hearing, unless the issue was precluded from being litigated under Section 102.66(d) of the Board's Rules and Regulations. See *Ikea Distribution Services*, 370 NLRB No. 109, slip op. at 1 (2021).[5]

We also observe that, contrary to the statements of the Regional Director and the parties at the hearing, *Allen Health Care* does not place an evidentiary burden on the petitioning union to prove that the petitioned-for unit is appropriate; it merely confirms that the Regional Director must be able to rely on "some" record evidence when making a unit determination. See 332 NLRB at 1309 (observing that "the Board cannot direct an election *without any record evidence* on which a finding of unit appropriateness can be grounded") (emphasis added). Here, both parties introduced substantial evidence on the sole issue that was placed in dispute by the Employer's Statement of Position—the scope of the petitioned-for unit—at the preelection hearing, and the Regional Director made a unit determination based on that evidence. This was sufficient to satisfy *Allen Health Care*.[6]

Dated, Washington, D.C. July 22, 2026

James R. Murphy, Chairman

[5] "Consistent with [*Allen Health Care*], the [sufficiently distinct] analysis is satisfied where parties had an opportunity to litigate the inclusion of excluded employees but did not do so. In those circumstances, a regional director is not required to address the [sufficiently distinct] analysis in his or her decision. We find, however, that somewhat different considerations apply where, as here, a party has been *precluded* from litigating the issue due to untimely service of its statement of position." Ibid. (emphasis in original).

[6] In denying review of the Regional Director's Decision Overruling Employer's Objections and Certification of Representative, we do not rely on the Regional Director's speculation and commentary concerning whether the Petitioner's videotaping of employees at the Employer's North Hollywood clinic constituted objectionable conduct with respect to the election at that clinic. We agree with the Regional Director, however, that the Employer's offer of proof has failed to proffer facts that, if credited at the hearing, would establish a prima facie case of objectionable conduct at the Vallejo clinic.

Contrary to his colleagues, Member Mayer would grant review in part because, in his view, this election objection raises substantial and material issues best resolved by a hearing. Under the circumstances alleged by the Employer in its objection and offer of proof, it would be reasonable for employees to conclude that the Union had videorecorded employees engaged in an antiunion rally at a separate facility without providing them a valid explanation and then posted that video to a group chat that included unit employees, prompting disparaging comments about the rallygoers in the chat. Whether employees reasonably and correctly attributed the posted video to the Union, and if so, whether the resulting circumstances reasonably tended to chill protected activity at the Vallejo clinic or otherwise interfered with employee free choice there are matters best resolved by a hearing.

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David M. Prouty, Member

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD