UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

PRIME HEALTHCARE SERVICES -
ST. MICHAEL'S, LLC D/B/A
SAINT MICHAEL'S MEDICAL CENTER

Employer

Case 22-RC-392696

and

JNESO - DISTRICT COUNCIL 1,
IUOE, AFL-CIO

Petitioner

DECISION AND ORDER

JNESO - District Council 1, IUOE, AFL-CIO ("the Petitioner") filed the instant Petition, under Section 9(c) of the National Labor Relations Act, as amended ("the Act") on August 12, 2026, seeking to represent a unit of two professional full-time radiation therapists employed by Prime Healthcare Services - Saint Michael's, LLC d/b/a Saint Michael's Medical Center ("the Employer") at its acute care hospital located at 111 Central Avenue, Newark, New Jersey ("Newark facility"), the only facility involved herein.[1] The Petitioner seeks an *Armour-Globe* self-determination election for these employees to decide on representation and inclusion in a preexisting nonconforming unit of professional and technical employees currently represented by the Petitioner.[2]

A hearing was held in this matter on August 31, 2026, before a hearing officer of the National Labor Relations Board ("the Board"). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.[3]

The Employer and the Petitioner appeared at the hearing, and the Employer filed a timely pre-hearing statement of position and entered into a stipulation which has been duly considered. Board Exhibit 2.

For reasons discussed specifically below, based on the record, the Board's Health Care Rule, and relevant Board law, I am dismissing the petition in this matter.[4]

All parties had the opportunity to present testimony, offer evidence and argue their respective positions through oral argument on the record. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.

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[1] The Employer's Newark facility is located at 111 Central Avenue, Newark, NJ 07102.
[2] *Globe Machine and Stamping Co*., 3 NLRB 294 (1937) and *Armour and Company*, 40 NLRB 1333 (1942).
[3] Based on the entire record in this proceeding, I find that the hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
[4] 29 CFR § 103.30 (1989).

I. ISSUES AND POSITIONS OF THE PARTIES

The issues presented for decision are: 1) whether under the Board's Health Care Rule, is it appropriate for two stand-alone professional employees to be included in a preexisting nonconforming bargaining unit comprised of professional registered nurses and nurse anesthetists, and technical employees; and 2) whether the radiation therapists in the petitioned for unit share a sufficient community of interest with employees in the Petitioner's preexisting bargaining unit such that an *Armour-Globe* self-determination election may be directed.

The Employer contends that the petitioned-for unit is inappropriate because, although the two radiation therapists in issue are distinct themselves, they do not share a community of interest with the Petitioner's existing unit and therefore an *Armour-Globe* election would be inappropriate. The Employer also asserts that deeming the two radiation therapists appropriate as a separate bargaining unit would result in the proliferation of units which the Board's Health Care Rule seeks to prohibit. Moreover, the Employer argues that if the petitioned-for unit is deemed appropriate, the proliferation problem would further be compounded and aggravated by future petitions for other small unrepresented units. Conversely, the Petitioner contends that radiation therapists share a community of interest with classifications set forth in the preexisting bargaining unit and an election would be appropriate.

II. RECORD EVIDENCE

A. Background

The Employer is a Delaware limited liability corporation which operates an acute care hospital providing health care and related services. Board Exhibit 2. The Employer's parent company is in Ontario, California, and it operates the Newark facility at issue. *Id*.

B. History of Preexisting Nonconforming Unit of Employees Represented by Petitioner

On May 21, 1980, in Case 22-RC-8166, Region 22 of the National Labor Relations Board ("Region 22") issued a certification of representative which declared the Jersey Nurses Economic Security Organization of the New Jersey State Nurses Association union as the exclusive bargaining unit of all full time and regular part-time registered professional nurses and graduate nurses including clinicians, utilization review nurses, employee health nurses, nurse anesthetists, and infection control nurses employed by the Employer and its Newark facility. Petitioner Exhibit 9.

On June 9, 1994, in Case 22-RC-10960, the Petitioner sought certification as the exclusive bargaining representative of a unit of full-time and regular part-time residual technical employees. Petitioner Exhibit 10. The sought-after unit included x-ray technicians, cardiac catheterization lab technicians, respiratory therapy technicians, and CT scan technicians employed by the Employer. *Id*.

On July 10, 1996, the Employer voluntarily recognized the Petitioner's petitioned-for unit in 22-RC-10960. *Id*. The voluntary recognition agreement also provided for the exclusion of job classifications

in the agreed-upon unit which included all business office clerical employees, service and maintenance employees, registered nurses, physicians, and other professional employees. *Id.* Additionally, based on the Employer's voluntary recognition, Petitioner agreed to withdraw its petition in 22-RC-10960. *Id*.

Subsequently, the parties negotiated an initial contract that was in effect from December 1, 1997, through March 31, 2001. Petitioner Exhibit 11. However, the exhibit in evidence is silent on the composition of the recognized bargaining unit in that agreement.

On January 14, 2020, in Case 22-RC-254043, the Petitioner and the Employer entered into a stipulated election agreement for an *Armour-Globe* election to determine whether all full-time and regular part-time polysomnographic technicians and technologists employed at the Employer's Newark facility wished to be included in the existing bargaining unit represented by the Petitioner.[5] The stipulated election agreement also explicitly set forth job classifications excluded from voting in the election which included other professional employees.[6]

On January 21, 2020, an election was held, a tally of ballots was issued, and the polysomnographic technicians voted for inclusion into the Petitioner's preexisting nonconforming unit. Petitioner Exhibit 14. Subsequently, on February 5, 2020, Region 22 issued a Certification of Results of Election which recognized that all full-time and regular part-time polysomnographic technicians and technologists employed at the Employer's Newark facility would be included in the existing unit of employees represented by the Petitioner. *Id*.

At present date, the Petitioner and the Employer are parties to a collective bargaining agreement effective from May 5, 2025, through May 4, 2028. Petitioner Exhibit 4. As set forth in Article 1 of the agreement, the Petitioner currently represents a unit of all full-time and regular part-time and per diem registered professional nurses and nurse anesthetists and all full-time, regular part-time and per diem technical employees in the following departments only: X-ray, Cardiac Cath, Respiratory Therapy, CT scan, MRI, Polysomnographic (Sleep Lab), and Special Procedures, including Mammography departments. *Id*. The agreement also excludes several classifications including all other professional employees. *Id*.

The current nonconforming unit represented by the Petitioner is comprised of approximately 336 employees, which includes 261 registered nurses, 57 technical employees, and 18 respiratory therapists. Board Exhibit 2. In number 12 of the Board's Exhibit 2, which is a stipulation agreed upon by both the Petitioner and Employer, the 18 respiratory therapists within the Petitioner's preexisting unit were defined as professional employees. However, on the record at the hearing, contrary to the parties' stipulation, counsel for the Petitioner noted that there are two different classifications of respiratory therapists, registered and certified, one classified as professional employees and the other as technical employees.

[5] 22-RC-254043 Stipulated Election Agreement.
[6] *Id*.

Subsequently, during an off the record conversation, the parties agreed to revise number 12 of Board Exhibit 2 and amended it to read "the Petitioner currently represents an existing non-conforming bargaining unit as stated in Article 1 of the Union's Exhibit 4."

C. Additional Bargaining Units at Employer's Newark Facility Represented by Other Unions

On June 1, 2015, in Case 22-RC-152085, Region 22 conducted an *Armour-Globe* election where all full-time, regular part-time, and per diem material handlers in the Shipping and Receiving Department at the Employer's Newark facility voted on whether they wished to be included in the existing service and maintenance unit represented by District 1199J, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO ("1199J"). Petitioner Exhibit 12. On June 1, 2015, a tally of ballots was issued and the material handlers voted for inclusion into 1199J's preexisting represented unit.[7] Subsequently, on June 11, 2015, Region 22 issued a Certification of Results of Election.[8]

Additionally, 1199J and the Employer are currently parties to another collective bargaining agreement effective by its terms from May 1, 2026 through April 30, 2030. Petitioner Exhibit 5. As set forth in Article 1 of that agreement, 1199J represents professional employees including registered dieticians, licensed practical nurses, non-registered staff technologists, phlebotomists[9], registered staff technologists, nuclear medicine technicians, nuclear medicine technologists, ultrasound technologists, social workers, and service employees. Petitioner Exhibit 5.

D. Community of Interest Evidence

The Union's current petition seeks to add an additional subset of professional employees - the radiation therapists employed at the Employer's Newark facility - to an existing nonconforming bargaining unit comprised of non-professional technical employees and professional registered nurses and nurse anesthetists.

Accordingly, at hearing the Petitioner presented evidence seeking to meet its burden under *Armour-Globe* of establishing a sufficient community of interest between the radiation therapists and the existing unit. For this reason, the bulk of the evidence presented at the hearing consisted of testimony and documentary evidence on this point. In furtherance of its community of interest evidence, at hearing the Petitioner presented one radiation therapist, Christian Galdamez ("Galdamez") as its witness.

a. Compensation and Benefits

Per Galdamez's offer letter, his starting rate was on is $58.50 per hour with benefits including paid time off, 401k, medical, dental and vision for both employee and dependents. Additionally,

[7] 22-RC-152085 Tally of Ballots.
[8] Certification of Election.
[9] Phlebotomists must have a certification for phlebotomy.

Galdamez testified that he is a salaried, exempt employee who receives a set amount of pay regardless of the number of hours he works.

Similarly, unit members in the Petitioner's already existing unit are entitled to benefits through the Employer which includes a 401(k) plan, medical, dental and vision insurance options for both employees and their families.

With regards to wages, as set forth in the collective bargaining agreement for the preexisting nonconforming unit, they are varied. For example, for professional employees, non-per-diem registered nurse hourly salaries in 2026 range from $42.87 to $59.19 per hour and non-per-diem nurse anesthetists hourly pay ranges from $98.16 to $110.62 per hour. While technical employees such as certified respiratory therapists have hourly pay ranges from $33.73 to $44.65 per hour and registered respiratory therapists have hourly pay ranges from $36.90 to $48.43 per hour.

b. Job Description and Certifications

Per the Employer's official job description as a radiation therapist, the role calls for therapists to administer therapeutic radiation as ordered to facilitate accurate treatment delivered in accordance with state and federal regulations. Employer Exhibit 2. Radiation therapists are required to have a high school diploma or equivalent, certification in radiation therapy through the American Registry of Radiological Technologists (ARRT) and an American Heart Association Basic Life Support card. Petitioner Exhibit 6 and Employer Exhibit 2. Galdamez also received a certification from the State of New Jersey Department of Environmental Protection. Petitioner Exhibit 6.

During the hearing, Ronald Thomas, Director of Radiology for the Employer, testified that radiation therapists, x-ray technologists, MRI technicians, CAT scan technicians, and unit members who perform mammograms, are also required to maintain a certification with the American Registry of Radiologic Technologists. While multiple job classifications within the hospital are required to hold a certification American Registry of Radiologic Technologists, certifications are specific and tailored to each role. For example, American Registry of Radiologic Technologists offers credentials in radiation therapy, mammography, and radiography.

Additionally, unit members including respiratory therapists, radiology technicians, and all other various technicians maintain the same Basic Life Support certification or card as the radiation therapists.

c. Work Location

The radiation therapists work in the Radiation Oncology department officially known as the SMNJ Radiation Therapy (76400) within the Cancer Center at the Employer's Newark facility which is located next to the Emergency Room. Employer Exhibit 2. Within the Cancer Center, in addition to Radiation Oncology, are also the Chemotherapy and Hematology departments. Employees of the Cancer Center have access to the parking and the cafeteria that all of Employer's employees use. However, the

Radiation Department within the Cancer Center has its own area with tables and a refrigerator which is intended for the exclusive use of those employees.

d. Management and Other Employees Within Cancer Center

The Cancer Center has two managers – Heemwatre "Jess" Govindo Jones ("Govindo") and Brittany Bonsu ("Bonsu"). As Operation Manager of the Cancer Center and Radiation Oncology department, Govindo supervises the two full-time radiation therapists at issue, one per-diem radiation therapist, a department secretary, four medical assistants assigned to the oncologists in the Cancer Center, and one part-time department secretary for the Blood Research Institute, all of whom are non-unionized. Bonsu oversees the registered nurses in the Cancer Center and will only supervise radiation therapists when covering for Govindo.

All Cancer Center employees attend a monthly meeting where employees are reminded of the Employer's rules. Within the department, the only cross training between radiation therapists and all other hospital employees is known as DCIS training which is a class which teaches employees how to defend themselves during incidents with a patient or a visitor.

e. Employee Training

Radiation therapists participate in competency training to ensure they are providing premium delivery of services and proper patient care. The record is silent as to whether any other hospital employees also participated in the same training. However, like radiation therapists, registered nurses as well as respiratory therapists, radiology technicians, and all other various technicians at the hospital are also required to have the American Heart Association in Basic Life Support.

f. Work Equipment

As part of their job responsibilities, radiation therapists use specific equipment to perform their job duties which include a Varian TrueBeam and a CAT scan machine that is only used in the Radiation Oncology department. Additionally, radiation therapists along with manager Govindo, the IT department, and the Cancer Center doctors and secretary are the only employees within the hospital to have access to ARIA, a computer system used only in the Radiation Oncology department.

g. Interaction With Other Employees

In the Employer's job description for radiation therapists, the position is intended to work closely with the radiation oncologist and certified medical physicist. Employer Exhibit 2. However, the job description is silent on interaction between radiation therapists and any other job classifications including registered nurses. Moreover, while radiation therapists may work in the same department, there is no clinical interaction nor collaboration between the two job titles beyond coordination for routine patient transfers such as contacting a registered nurse once a patient is done with radiation. Additionally,

Galdamez testified that in the case of an emergency, he assumes that a nurse would come in, yet that has not occurred during his employment.

Similarly, radiation therapists do not interact with nor fill in for medical assistants, radiology technicians in the Department of Radiology, or technicians in the Non-Invasive Cardiology department. Furthermore, neither radiology technicians nor non-invasive cardiology technicians have the qualifications to fill in for radiation therapists. Additionally, radiology technicians work with the diagnosis of a patient whereas radiation therapists handle therapy for the patient.

h. Radiology and Non-Invasive Cardiology Departments

The Employer's Radiology department and Non-Invasive Cardiology departments are overseen by Ronald Thomas. The Employer's Department of Radiology, also known as SMNJ Radiology Diagnostic (76300), is located on the fifth floor of the hospital and performs diagnostic radiology. Employer Exhibit 2.

Within Radiology, Thomas oversees around 60 employees which include the modalities of X-ray, CAT scan, ultrasound, nuclear medicine, MRI, and mammography. The X-ray technicians, MRI technicians, CAT scan technicians, and mammogram technicians are all unionized and represented by the Petitioner. Ultrasound and nuclear technicians are represented by 1199J. Thomas testified that while the Radiology department deals with the "diagnosis of what's going on with a person," Radiation (meaning Radiation Oncology) "deals with the therapy." Furthermore, Thomas testified that while the Radiology and Non-Invasive Cardiology department may share patients with Radiation Oncology in the ordinary course of business, Radiology department staff is not involved with the Cancer Center.

As set forth in the job description for a radiology technician, officially known as Radiology Tech II Union, the required job qualifications are a license and fluoroscopy permit as required by the State, appropriate national certifications in two modalities, American Heart Association Basic Life Support card, and one year of acute clinical radiography preferred. Employer Exhibit 4. While true CAT scan technicians use CAT scan machines, the machine is used in a different manner from the Radiation Oncology department.

III. ANALYSIS

In analyzing the restrictions imposed by the Board's Health Care Rule and specifically, the totality of evidence of a community of interest between the radiation therapists and the job classifications in the preexisting nonconforming unit, and the current language in the parties collective bargaining agreement, namely the recognition clause and subsequent exclusions, the Petitioner is precluded from pursuing an *Armour Globe* election among the radiation therapists for the following reasons.[10]

[10] The facts and issues presented in this matter are similar to those raised in Case 21-RC-335061, *City of Hope National Medical Center*.

A. Board's Health Care Rule

The Board's Health Care Rule was designed to limit the splintering of bargaining units in an acute care facility. The Board's Health Care Rule, 29 CFR § 103.30 (1989) (Rule), identifies the following eight bargaining units which are appropriate for acute care hospitals: (1) all registered nurses, (2) all physicians, (3) all professionals except for registered nurses and physicians, (4) all technical employees, (5) all skilled maintenance employees, (6) all business office clerical employees, (7) all guards, and (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. Reported at 284 NLRB 1515, et seq.

In addition to the Rule, countless Board decisions have also addressed the importance and limitations of the Health Care Rule. For example, in *Crittenton Hospital*, the Board highlighted that Section 103.30(a) of the Rule, which sets forth appropriate bargaining units in the health care industry, postulates that, "[e]xcept in extraordinary circumstances and in circumstances in which there are existing non-conforming units," the eight units and only those units, will be found appropriate for acute care hospitals (emphasis added). 328 NLRB 879, 880 (1999). Furthermore, CFR Section 103.30(c) provides that where there are existing nonconforming units in acute care hospitals, and a petition for additional units is filed pursuant to Section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board "shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in [103.30(a)]." *Id.*

While extant Board Law may seem to allow the addition of the two radiation therapists at issue into the existing nonconforming professional and technical unit, a decision to do so could possibly result in the inappropriate absorption of the unrepresented radiation therapists into Petitioner's preexisting unit. Specifically, doing so would then pose the problem that other residual professional employees, other than the two full-time radiation therapists, employed by the Employer would remain unrepresented and thus, could possibly lead to countless piecemeal representation efforts or a never-ending expansion of a non-conforming bargaining unit that is already inconsistent with the carefully prescribed guidelines set forth in the Board's Health Care Rule.[11]

B. The Health Care Rule and *Armour-Globe*

Since the Rule's adoption in 1989, the Board has long established that its Health Care Rule addresses only the potential initial organizing of units in acute-care facilities rather than the situation which exists before me, namely, where an acute-care facility is partially organized and nonconforming

[11] It is undisputed that prior to the instant petition, the parties have already played a role in the creation of non-conforming bargaining units through both voluntary recognition as well as the election and certification process in 2020 in Case 22-RC-254043 which absorbed polysomnographic technicians and technologists employed at Employer's Newark facility in the existing bargaining unit represented by the Petitioner.

units are already in existence.[12] The Board expressly left such situations to be resolved through the Agency's adjudication processes.

For example, in *St. Vincent Charity Medical Center*, the Board expounded that an "*Armour-Globe* self-determination election does not run afoul of the Health Care Rule as these elections undeniably avoid any proliferation of bargaining units, because they do not result in the creation of [an] election in a separate, additional unit." 357 NLRB 854, 855 (2011), citing the Rule at 284 NLRB at 1570-1571. Rather, "an *Armour-Globe* election permits employees sharing a community of interest with an already represented unit of employees to vote whether they wish to be added to the existing unit." *Id.* Therefore, a self-determination election "further[s] the petitioned-for employees' interest in obtaining representation while avoiding any undue proliferation of units," which is the paramount concern of the Health Care Rule. *Id.* at 856.

Thus, the Board held that it may therefore direct a self-determination election to add employees to a preexisting unit employed by an acute care hospital even if the unit does not include all remaining unrepresented employees that fall within one of the eight units set forth in Sec. 103.30(a). *Id*. See also *Rush University Medical Center v. NLRB*, 833 F.3d 202, 204-208 (D.C. Cir. 2016) (explaining that Sec. 103.30(c) of the Board's Health Care Rule applies by its terms only to a petition for additional units, and that an *Armour-Globe* self-determination election, by its nature, does not involve the creation of any "additional units" but rather "the inclusion of additional unrepresented employees in an already-existing unit").

The Board's decision in *St. Vincent* also makes clear, however, that in determining whether the employees in a petitioned-for voting group share a community of interest with employees in the preexisting unit, the Board may rely on the Board's appropriate unit/community of interest determinations set forth in the Health Care Rule, even if the unit does not strictly conform to any of the designated units set forth in Sec. 103.30(a). *Id*. at 854-855.[13]

Although the Board's Decision and subsequent Order in *St. Vincent* does not automatically prohibit a self-determination election of professional radiation therapists into a preexisting non-conforming unit, it nevertheless assigns the Petitioner the burden to establish a sufficient community of interest between the radiation therapists and its already represented, non-conforming unit.

[12] Under the Health Care Rule, units that are either underinclusive, that is, fail to include all the employees in one of the eight types of classification in an acute-care facility, or over-inclusive, including employees outside of the classification, are thereby non-conforming. See, e.g., *St. Vincent*, 357 NLRB at 855.

[13] Relying on the Board's finding in the Health Care Rule-that nonprofessionals at an acute care hospital had a presumptive community of interest with all other nonprofessionals-in concluding that the phlebotomists in the voting group shared a community of interest with, at a minimum, the other nonprofessional employees in the existing unit represented by the petitioner, notwithstanding that the voting group did not include all of the remaining unrepresented employees).

C. Community of Interest Factors

The Board's *Armour-Globe* doctrine is the appropriate standard to be used in evaluating whether the addition of additional employees to a pre-existing bargaining unit is appropriate. As set forth in that doctrine, an incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election 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." *Warner-Lambert Co*., 298 NLRB 993, 995 (1990) (citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972)). See also *Rush Univ. Med. Ctr. v. NLRB,* 833 F.3d 202, 209 (D.C. Cir. 2016); *NLRB v. Raytheon Co.,* 918 F.2d 249, 251 (1st Cir. 1990).

When determining whether employees share a community of interest, the Board considers the following factors: whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry 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. *United Operations, Inc*., 338 NLRB 123, 123 (2002).

Moreover, the petitioned-for voting group need not share a community of interest with every classification in the existing unit or even a majority of the unit but 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). The following discussion will concentrate on the record evidence presented for the radiation therapists as well as other positions included in the preexisting non-conforming unit at issue.

Similarly, and most recently in *Wheatland Electric Cooperative, Inc*., in its review of a Decision and Direction of Election which the Board reversed, the Board found that the Regional Director cited and relied upon cases in which the Board analyzed whether certain classifications *must* be included in a petitioned-for unit, for the reasons that their exclusion would be arbitrary due to their strong community of interest with the petitioned-for employees. 375 NLRB No. 16 (July 29, 2026) See, e.g., *Casino Aztar*, 349 NLRB 603, 607 (2007). Moreover, the board discouraged giving too much weight to relatively minor differences between petitioned for job classifications and the existing unit employees. *Id*. citing *Walt Disney*, 373 NLRB No. 99, slip op. at 9.

a. Separate Department

In any unit determination, the question must be asked as to whether the proposed unit conforms to an administrative function or grouping of an employer's operation. *Gustave Fischer, Inc*., 256 NLRB 1069 fn. 5 (1981). The record evidence is clear that the two full-time radiation therapists work in the Radiation Oncology department within the Employer's Cancer Center. The only job classification in the preexisting bargaining unit that also works within the Cancer Center are registered nurses. Here, while the radiation therapists do work within both the same department and facility as registered nurses, the

radiation therapists, with the exception of when the manager of the Cancer Center is on leave, do not report to the same managers and supervisors nor do they perform the same duties and work as the registered nurses.

Moreover, the remainder of the bargaining unit comprised of all full-time, regular part-time and per diem technical employees in only Employer's X-ray, Cardiac Cath, Respiratory Therapy, CT scan, MRI, Polysomnographic (Sleep Lab), and Special Procedures, including Mammography departments, are all employed in completely separate and distinct departments from the radiation therapists.

While radiation therapists do work in the same department as registered nurses who are members of the bargaining unit, nurses are a wholly separate category of professional employees under the Health Care Rule and I do not find the evidence sufficient to support a community of interest finding under this factor.

b. Distinct Skills, Training and Job Functions

In determining whether employees share a community of interest, the Board has examined evidence such as whether disputed employees have similar requirements to obtain employment; have similar job descriptions or licensure requirements; participate in the same employer training programs; and/or use similar equipment to support a finding of similarity of skills. *Casino Aztar,* 349 NLRB 603 (2007); *J.C. Penney Company, Inc.,* 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *The Phoenician*, 308 NLRB 826 (1992).

In the instant matter, radiation therapists are required to have a high school diploma or equivalent, certification in radiation therapy through the American Registry of Radiologic Technologists and an American Heart Association Basic Life Support card. While of course, registered nurses require their own distinct certifications, the only other employees who also maintain a fluoroscopy certification are radiology technicians. However, in the job description of radiology technicians, there is no mention of any certification requirement under the American Registry of Radiologic Technologists.

Moreover, there is similarity in the certifications that are held by radiation therapists and other unit members. For example, radiation therapists, x-ray technologists, MRI technicians, CAT scan technicians, and unit members who perform mammograms, are all required to maintain a certification with the American Registry of Radiologic Technologists. However, those required certifications through the American Registry of Radiologic Technologists are specifically tailored to each job role and radiation therapists receive a different certification than already represented employees.

Similarly, radiation therapists along with respiratory therapists, radiology technicians, and all other various technicians in the Petitioner's nonconforming bargaining unit all maintain the same Basic Life Support certification or card as the radiation therapists.

As for training, radiation therapists along with all other hospital employees are required to complete DCIS training which teaches hospital employees to defend themselves during an incident with either a patient or visitor.

Radiation therapists are also required to attend a monthly meeting along with represented registered nurses where employees are reminded of the Employer's rules which they all must abide by.

Finally, with regards to job functions, radiation therapists administer therapeutic radiation to facilitate accurate treatment for patients within the Cancer Center. Radiation therapists use specific equipment to perform their job duties which include a Varian True Beam and a CAT scan machine that is only used in the Radiation Oncology department. Additionally, the Radiation Oncology department is the only department in the hospital that uses the ARIA computer system.

The only other relevant record evidence presented about job functions of other employees, namely radiology technicians, supports the finding that those employees perform completely different work. As evidenced through the testimony of Ronald Thomas, Director of Employer's Radiology and Non-Invasive Cardiology departments, Radiology department employees deal with the diagnostic aspect of patient care while the Radiation Oncology department handles the therapeutic treatment of patients. Moreover, while both Radiology and Radiation Oncology use CAT scan machines, the machines are used for entirely different purposes.

While radiation therapists maintain a distinct and important role, the overlap of required job certifications and training with current professional and nonprofessional bargaining unit members may be sufficient to tip the scale in favor of the finding of a shared community interest.

c. Functional Integration

Another factor the Board looks at in a community of interest analysis is whether 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).

Functional integration is present where employees "must work together and depend on one another to accomplish their tasks." See *MV Transportation, Inc.*, 373 NLRB No. 8, slip op. at 7 fn. 24 (2023) (citing *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 7 fn. 16 (2022)).

In *Wheatland Electric,* the Board having disagreed with the Regional Director's definition of functional integration opined that while employees may be engaged in different job duties, a finding of functional integration based on a record must show that the respective positions must "depend on one another to accomplish their tasks." 375 NLRB No. 16 (July 29, 2026) citing *Public Service Co.*, 365 NLRB at 1017 fn. 4 ("As the Board has previously stated, a work-order system in which the "petitioned-for employees' work is typically preceded by work orders generated by unit employees and [then]

followed . . . by work performed by unit employees" reflects that there is "substantial functional integration.")

However, in the instant case, radiation therapists alone are responsible for the radiation-based therapy administered to patients in the Cancer Center. Radiation therapists engage in minimal coordination with registered nurses with regards to patient transfers to and from radiation therapy. Moreover, the record is silent on any examples of interaction between radiation therapists and any of the technical members of the Petitioner's preexisting unit. Thus, I do not find the evidence presented supports the finding of a shared community of interest under the functional integration factor.

d. Frequent Contact and Interchange

Interchangeability, or temporary transfers or work assignments between two different groups of employees is another factor that can be examined in a community of interest analysis. 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). Thus, 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 Resources Associates*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)). Moreover, the close proximity of a petitioned-for group to the existing bargaining unit is also a salient factor. *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB 689, 690 (2005) (finding community of interest where employees could walk from one contiguous building to another).

Here, the radiation therapists do not have frequent contact or interchange with other employees in the preexisting unit. As noted above, while radiation therapists work in the Cancer Center with registered nurses who are part of the bargaining unit, the therapists are not equipped to perform nursing work and vice versa. While true the radiation therapists and nurses work in the same location, the record shows that these two distinct job classifications even have separate break areas within the Cancer Center. Radiation therapists' contact with registered nurses is limited in scope and involves the handing off of patients when their therapy is complete or hypothetically, if the radiation therapist had the need for a nurse in the case of a patient emergency.

Furthermore, the record established that radiation therapists also do not interact with nor do they fill in for radiology technicians. Additionally, radiology technicians lack the qualifications to fill in for radiation therapists. Furthermore, neither radiology technicians nor non-invasive cardiology technicians have the qualifications to fill in for radiation therapists. Thus, the Petitioner has failed to establish that the petitioned for unit engages in any frequent contact or interchange with any other currently represented employees.

e. Common Supervisors

In examining whether there is common supervision of groups of employees, the Board looks at factors such as 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 guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB at 402; *NCR Corporation*, 236 NLRB 215 (1978). A finding of common supervision among different job classifications or groups of employees would weigh in favor of placing the employees in dispute into a unit with other employees, in this case, the preexisting non-conforming unit.

Here, the record shows that radiation therapists are supervised by Govindo except for when she is away. Conversely, registered nurses are overseen by Bonsu and radiology technicians by Ronald Thomas. Even if there was a showing that radiation therapists shared a supervisor with other employees in the preexisting unit, groups that are commonly supervised do not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, 338 NLRB 123, 125 (2002). For these reasons, there cannot be a finding that radiation therapists share common supervision with other unit members.

f. Terms and Conditions of Employment

An examination of similar terms and conditions of employment pertains to factors such as whether employees receive similar wages and are paid in a similar fashion (for example, salary or 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 described in an employee handbook. See, e.g., *United Rentals, Inc.,* 341 NLRB 540, 541-542 (2004).

Absent providing the entire collective bargaining agreement between the Petitioner and Employer, Petitioner failed to specifically address the similarity of the terms and conditions of employment between the radiation therapists and other employees who are in the currently bargaining unit represented by the Petitioner. Even if the record was sufficient on this point, the fact that employees share common wage ranges 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 frequently interchange, and work in a physically separate area. *Bradley Steel, Inc*., 342 NLRB 215 (2004); *Overnite Transportation*, 322 NLRB 347 (1996). Thus, it cannot be said that the radiation therapists share common terms and conditions of employment with members of the bargaining unit.

While true there are some shared factors of community of interest between radiation therapists and other employees within Petitioner's preexisting nonconforming unit, perhaps, assuming arguendo even enough to support a finding sufficient enough to deem the inclusion of the radiation therapists, that in itself is not enough for me to find it appropriate to order an election. Rather, the Petitioner still must also overcome the inquiry as to whether two full-time professional radiation therapists who, under the

Health Care Rule would be classified as all other professional employees, should be included in a unit of technical employees and professional registered nurses and nurse anesthetists.

D. The Health Care Rules and the Parties' Current Collective Bargaining Agreement Make Inclusion of Radiation Therapists into a Preexisting Nonconforming Unit inappropriate

The radiation therapists at the Employer's Newark facility are representative of an identifiable and distinct voting group. When a petitioner seeks a self-determination election, the first consideration is whether the voting group is an identifiable and distinct segment of the workforce. *Warner-Lambert*, 298 NLRB at 995. Whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit, the analysis where a petitioner seeks to represent employees in a standalone unit. *St. Vincent*, 357 NLRB at 855. The main inquiry of the identifiable and distinct analysis is whether the voting group sought would unduly fragment the workforce. *Capital Cities Broadcasting*, 194 NLRB 1063, 1064 (1972). In this instance, the two radiation therapists at issue both work within the Cancer Center, report to the same management staff, and perform the exact same work duties. Therefore, there can be no question that the radiation therapists constitute an identifiable and distinct voting group within the Board's definition.

However, the most important question that exists before me is whether this identifiable and distinct group of professional radiation therapists can be included in a nonconforming unit of professional registered nurses and technical employees.

As previously set forth, the Board's Health Care Rule, 29 CFR § 103.30 (1989) (Rule), identifies the following eight bargaining units which are appropriate for acute care hospitals: (1) all registered nurses, (2) all physicians, (3) all professionals except for registered nurses and physicians, (4) all technical employees, (5) all skilled maintenance employees, (6) all business office clerical employees, (7) all guards, and (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. Reported at 284 NLRB 1515, et seq.

Currently, the Petitioner represents a nonconforming unit of "all full-time and regular part-time and per diem registered professional nurses and nurse anesthetists and all full-time, regular part-time and per diem technical employees in the following departments only: X-ray, Cardiac Cath, Respiratory Therapy, CT Scan, MRI, Polysomnographic (Sleep Lab), and Special Procedures, including Mammography departments." At the hearing, the Petitioner, without any supporting evidence except different wage rate charts in the contract, attempted to bifurcate certified and registered respiratory therapists as nonprofessional and professional employees respectively. However, Petitioner's on the record argument is contrary to the very contract it agreed upon which clearly defines registered nurses and nurse anesthetists as the only professional employees in the unit in question. Equally important, the collective bargaining agreement specifically excludes "all other professionals" from the preexisting unit which seemingly was intended to include radiation therapists.

Thus, I find it problematic and inappropriate to issue an election order which would permit radiation therapists, who are professional employees, to vote for inclusion into an already existing unit of professional registered nurses, nurse anesthetists and technical employees. In fact, doing so would further compound the confusion of the current nonconforming unit by adding yet another nonconforming group, all other professionals, which the parties already agreed to exclude in their collective bargaining agreement.

Because the record identifies other unrepresented employees in the Health Care Rule's "all other professional employees" category, the Rule precludes directing an election limited to the petitioned-for radiation therapists. However, a unit encompassing all unrepresented employees in that category may be appropriate, consistent with the Rule's purpose of avoiding the proliferation of units.

IV. CONCLUSION

The Board's Health Care Rule generally recognizes eight appropriate bargaining units for acute care hospitals, including a unit of "all other professional employees." A nonconforming unit is one that is neither one of the eight listed units nor a combination of those units. 29 CFR §103.30(a), (f)(5). Where a hospital has existing nonconforming units and a petition seeks an additional unit, the Board "shall find appropriate only units which comport, insofar as practicable," with the Rule's designated units. 29 CFR §103.30(c).

The Rule does not categorically bar adding employees to an existing nonconforming unit, but the requested addition must be appropriate under the *Armour-Globe* framework. Based on the analysis above, including the community-of-interest evidence and the requirements of the Health Care Rule, I find that the Petitioner has not established that the radiation therapists may appropriately be added to the existing nonconforming unit through an *Armour-Globe* election.

Nor would a separate unit limited to the radiation therapists be appropriate, because the record identifies other unrepresented employees within the same professional category. A unit encompassing all unrepresented employees in that category may be appropriate, consistent with the Rule's purpose of avoiding piecemeal, fragmented bargaining units throughout the Employer's Newark facility.

It is hereby ordered, based on the analysis set forth above, that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.71(a) 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.

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 does 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 November 18, 2026** 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 November 18, 2026.**

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: November 4, 2026



Eric R. Schechter, Regional Director
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