

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**PLANNED PARENTHOOD OF ORANGE AND
SAN BERNARDINO COUNTIES, INC.**

Employer

And

Case 21-RC-317961

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 324**

Petitioner

DECISION AND DIRECTION OF ELECTION

On May 12, 2023, United Food and Commercial Workers Local 354 (Petitioner or Union) filed a petition with the National Labor Relations Board (Board) under Section 9(c) of the National Labor Relations Act (Act) seeking to represent a unit of about 33 administrative medical assistants (AMAs) employed by Planned Parenthood of Orange and San Bernardino Counties, Inc. (Employer) at 6 facilities in Orange County, California. The Employer opposes the petition and argues that the proposed unit improperly excludes employees in other job classifications and at other locations.

The parties stipulated that any unit found appropriate should include the following employees:

Included: All full-time, and regular part-time administrative medical assistants, including lead administrative medical assistants and floating administrative medical assistants, employed by the Employer at its facilities currently located at 801 E. Katella Avenue, Anaheim, California 92805; Anaheim Health Center at 303 West Lincoln Avenue, #105, Anaheim, California 92805; Costa Mesa Health Center at 1520 Nutmeg Place, Suite 101, Costa Mesa, California 92626; Mission Viejo Health Center at 26137 La Paz Road, #200, Mission Viejo, California 92691; Orange Health Center at 700 South Tustin Street, Orange CA 92866; Santa Ana Health Center at 1421 East 17th Street, Santa Ana, California 92705, and Westminster Health Center at 14372 Beach Boulevard, Westminster, California 92683.

Excluded: All other employees, professional employees, managerial employees, supervisors, and guards as defined in the Act.

The Employer contends that, in addition to the aforementioned employees, the petitioned-for unit should include AMAs employed at its facilities in San Bernardino County, i.e., San Bernardino Health Center at 1873 South Commercenter Drive West, San Bernardino, CA 92408,

Upland Health Center at 918 West Foothill Boulevard #A, Upland, California 91786, and Victorville Health Center at 15403 Park Avenue East, Victorville, California 92392. In addition, the Employer argues that the petitioned-for unit should include the following job classifications employed at all Orange County and San Bernardino County locations: medical assistants (MAs) (including leads and floats), ultrasound technicians (UTs) (including cross-titled ultrasound tech/medical assistants, and ultrasound tech leads) and medical assistant trainers (MATs).¹ This unit would comprise about 132 employees. If this proposed unit is not found appropriate, the Employer submits that two other units should be considered as alternatives, the first consisting of all AMAs, MAs, and UTs in Orange County, and the second comprising all AMAs in both counties.

A hearing officer of the Board held a videoconference hearing on June 9, 12, and 13, 2023, during which the Union and the Employer had the opportunity to present evidence and state their respective positions on the record. Both parties presented witness testimony and documentary evidence, and they also filed post-hearing briefs.²

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. I have carefully considered the evidence, the arguments presented at the hearing and in the post-hearing briefs, and the relevant legal precedent. For the reasons set forth below, I find that the petitioned-for unit of Orange County AMAs is appropriate for bargaining and hereby direct an election to be held in that unit.

I. FACTS

A. Operations and Management Structure

The Employer offers family-planning, primary-care, mental-health, and abortion services at six facilities in Orange County (OC) and three in San Bernardino County (SBC), in the State of California. In OC, the Employer operates five health centers located in Anaheim, Westminster, Costa Mesa, Santa Ana, and Mission Viejo, and a surgical center in Orange.³ In SBC, the Employer has two health centers, in Upland and Victorville, and a surgical center in San Bernardino. All facilities are outpatient only, including the surgical centers. Patients who call outside of business hours are directed to an after-hours line that refers them to a hospital or

¹ Unless otherwise specified, the term “AMA” covers stationary, float, and lead AMAs, while the term “MA” covers stationary, float, and lead MAs, as well as MATs. The term “UT” includes cross-titled ultrasound tech/medical assistants, and ultrasound tech leads.

² Before the record opened, I granted the Employer’s request for a blanket protective order preventing the release of the record by the court reporting service to any party other than to the Employer and to the Petitioner. In its post-hearing brief, the Employer specified that the transcript in its entirety, Board Exhibit 1(f), all admitted and rejected exhibits, and post-hearing briefs should be covered by the protective order, and non-disclosable under the Freedom of Information Act, 5 U.S.C. § 552 and under the Privacy Act of 1974, 5 U.S.C. § 552a, and the Petitioner confirmed with the Employer that it has no objection to these items being subject to the protective order. Accordingly, in an effort to protect, to the extent possible under the law, sensitive security and privacy information that might be used by outside parties to do harm to individuals or property at the Employer’s facilities due to the actual and potential security threats experienced at the Employer’s facilities, the protective order is granted. Moreover, witnesses and individuals are only referred to by their titles in this decision.

³ Unless otherwise specified, the terms “health center,” “facility,” and “location” include surgical centers.

emergency room if necessary. All locations provide the same services, except that surgical centers also offer specialty services such as vasectomies or in-clinic surgical abortions.

The Employer's headquarters are located in a large administrative building (the Katella building) separate from the health center in Anaheim. The Katella building houses, among other things, the Employer's human resources (HR), payroll, compliance, and scheduling departments for all locations in both counties. The Employer also keeps a smaller administrative building in San Bernardino, which is separate from the surgical center.

At the top of the Employer's managerial pyramid sits the Chief Executive Officer, followed by the Chief Operating Officer and the Vice President of Operations. Then come two Directors of Operations, one for OC and the other for SBC, with their offices in the administrative buildings for their respective counties. The OC Director oversees two Area Directors, each responsible for two health centers. Area Directors spend half of their time in each of the health centers they oversee. The OC Director also oversees a Senior Float Co-Manager, who supervises OC's float MAs, and a Float Co-Manager, who supervises float AMAs. Both Float Co-Managers work in the Katella building. Float employees move from one OC health center to another depending on staffing needs, but they are nominally assigned to their county's administrative building.⁴ The SBC Director oversees one Area Director with two health centers, one in OC (Santa Ana) and the other in SBC (Upland). The remaining SBC health center (Victorville) reports directly to her. There was no Float Co-Manager for SBC at the time of the hearing, so float AMAs in that county reported to the Senior Float Co-Manager.

Every health center is run by a Senior Co-Manager assisted by a Co-Manager. The Senior Co-Manager oversees "stationary" MAs and UTs, who are referred to as such because they are assigned to a particular facility, also called their "homesite." Senior Co-Managers are responsible for reviewing the work performance of MAs and UTs on an annual basis and hold quarterly "one-on-ones" with them to discuss work-related concerns. Co-Managers supervise, meet with, and write performance reviews for stationary AMAs. Each surgical center is run by a surgical Administrator, who oversees and reviews the performance of MAs and UTs, and a Surgical Manager, who does the same for AMAs. Contrary to Senior Co-Managers, who report to Area Directors, Surgical Administrators report directly to their county's Director of Operations.

The Employer uses the same time- and payroll-management software for all employees in both counties. Momentum is the Employer's scheduling software, which allows employees to see their own schedule and that of their colleagues at the same facility. UltiPro contains employees' W-2s, pay stubs, timesheets, performance reviews, work location, and other HR information. EEs at all locations use the same software as part of their job, including: eClinicalWorks, the Employer's electronic medical record system; Medi-Cal, which is used to verify patients' insurance coverage and determine their eligibility to receive healthcare services; PP Connect, the Employer's intranet; and Tiger Connect, an in-house instant-messaging app.

Each facility is divided between the front office, with check-in, checkout, and waiting areas, and a larger back office that contains exam rooms, a lab, the manager's office, and shared

⁴ That is why, in addition to the six OC health centers, the proposed unit includes AMAs employed at the Katella building.

facilities like the breakroom and bathrooms. AMAs have their workstations in the front office; MAs, UTs, and clinicians work in the back office.⁵ All locations have similar operating hours, generally opening between 6 a.m. and 7:30 a.m. and closing between 5 p.m. and 6:30 p.m. All employees clock in and out by scanning their badges at a kiosk in the reception area.

Health-center employees work four 10-hour shifts per week. Managers work opposite schedules, such that one of them is always present at the facility. Each day begins with a short all-staff meeting called the morning huddle. The workday has three staggered shifts that mostly overlap.⁶ Managers create employee schedules three months in advance based on their facility's needs. The completed schedules are sent to the Employer's scheduling team, which works with managers to set aside blocks of time for different types of procedures and publishes the schedule on Momentum. Managers also create the training calendar for new hires. Employees enter advance leave requests in UltiPro and Momentum for approval by their homesite managers. Senior Co-Managers and Co-Managers can approve leave requests by any employee at their facility. If an employee is sick, they contact their homesite manager, who tries to find coverage for them, first among other employees at the same location, then from other in-county facilities, and finally from in-county float personnel. It is very rare for employees, including floats, to cross county lines. Due to state licensing requirements, AMAs cannot fill in for MAs or UTs.

Managers are responsible for making hiring decisions at their own facilities. When the need arises for a new employee, a homesite manager submits a requisition to HR, which reviews the request and, if approved, posts the opening. Applicants are pre-screened by an HR employee, who compiles a list of candidates that satisfy the minimal requirements for the position. That slate is forwarded to the facility manager, who interviews the candidates and decides which one to hire. The manager then communicates their decision to HR, which takes over the onboarding process.

The Employer maintains a progressive disciplinary process that starts with a verbal counseling and culminates in termination of employment. Managers at every facility are responsible for administering discipline to their own employees. In some cases, such as equal employment opportunity (EEO) matters, the HR department will get involved and make disciplinary recommendations, but the ultimate decision rests with the manager. It is unclear whether Co-Managers can initiate discipline for MAs and UTs, and/or whether Senior Co-Managers can do so for AMAs.

AMAs, MAs, and UTs receive the same benefit package regardless of their work location, including: a 401(k) plan; medical, dental, and vision insurance; vacation, sick leave, and paid holidays; Flexible Spending and Health Savings Accounts; legal coverage; and pet insurance. All new employees take part in the same in-person orientation, which covers the Employer's history, policies, and work culture. They are also required to take online trainings in workplace safety and security, compliance, diversity, advocacy efforts, and anti-harassment. All EEs can report EEO concerns to the Employer's compliance department for investigation. They

⁵ The term "clinician" covers all licensed staff, including MDs, nurse practitioners, physicians' assistants, and midwives.

⁶ For example, the Mission Viejo shifts are as follows: opening shift, 6:15 a.m. – 4:45 p.m.; mid shift, 7 a.m. – 5:30 p.m.; closing shift, 7:15 a.m. – 5:45 p.m.

are subject to the same employee handbook and must follow the Employer's WE CARE values (Welcoming, Equitable, Confidential, Accessible, Respectful, and Empathetic). AMAs are on a different wage scale than MAs and UTs, but those wage scales are the same regardless of location. The Employer holds annual staff trainings on different dates for each county.

B. AMA Qualifications, Duties, and Equipment

The Employer's job descriptions for stationary, lead, and float AMAs apply across all facilities. The job description for stationary AMAs states that it is an "[a]dministrative position responsible for all duties and responsibilities assigned to front office staff." (U Exhs. 4, 51.) Applicants must possess a high school diploma or a combination of other education and experience, 1-3 years of continued work experience, and experience as a "[h]ealthcare or general receptionist." (U Exh. 4.) No particular license or certificate is needed. Witnesses testified that the position requires customer-service experience, though not necessarily in a medical or healthcare setting.

Newly hired AMAs undergo 6 weeks of on-the-job training run by lead AMAs at the Mission Viejo facility. During that time, they learn the duties of the three front-office workstations—check-in, insurance processing, and checkout. To complete the training, the new hires must demonstrate their ability to perform a list of tasks including scheduling appointments, entering and validating patient data, checking patients in and out, understanding the state insurance system, filing insurance applications for patients who lack coverage, etc.

AMAs have their workstations in the front office of the health center. The front office is akin to the reception area in other medical settings, and it is identified as such on the Employer's floorplans. Every front office has three different workstations or service windows. When a patient arrives, the AMA at the check-in window greets them, verifies that they have an appointment, and gives them various paperwork—visit sheet, consent and non-disclosure forms—to complete and sign. If the patient does not have health insurance, or if they prefer to keep their visit confidential, the AMA gives them forms to apply for a state-funded program called Family PACT, which is designed specifically to address those needs. The patient returns the visit sheet and consent forms to the first window, where the AMA compares their information to the data on file and makes any necessary updates. If the patient has health insurance, the AMA verifies that it is active for the date of the visit and will cover the services needed by the patient, and whether they are eligible for other services like receiving the Gardasil and flu vaccines. The AMA also offers the patient to join the Employer's primary-care services network. If the patient is not insured, the AMA refers them to the second window, where another AMA processes their application for Family PACT. All patients are also directed to check in at an electronic kiosk, where they answer questions about their sexual history and demographics, such as their race and housing status. When that is done and any insurance applications have been processed, the AMA marks the patient as "ready" in eClinicalWorks. This sends a notification to the MAs in the back office to come retrieve the patient. The AMA may also send a text message via Tiger Connect to alert MAs that a patient is delayed, or that they have to leave by a specific time. If the second-window AMA has completed their paperwork and the first window is backed up, they help with patient check-in. After the patient's visit, an MA or UT directs them to the third window, where another AMA checks them out, gives them any educational information deemed necessary by the clinician, and asks for a donation. If the patient

requires specialty services available only at surgical centers, the AMA does a “warm handoff,” which consists of taking the patient to a counseling room and helping them schedule their appointment.

AMAs are also responsible for making sure that all patient charts include the patient’s name, account number, date of birth, and the date of the appointment, and for keeping the office stocked with up-to-date reading materials about various procedures offered by the facility, such as colonoscopies, placement of intrauterine birth-control devices, etc. An AMA testified that she calls her counterparts at other locations about 50 to 60 times per year, whether to schedule specialty procedures or let them know that one of their patients has come to the wrong site. AMAs will also call to book appointments when a patient cannot wait until their own facility has an opening. However, they only call facilities in their own county, even when looking for the earliest possible appointment.

AMAs working in surgical centers generally perform the same duties as health-center AMAs. However, they have some additional duties specific to the specialty services offered at surgical centers. Thus, AMAs may give patients a script about their expectations for the day, verify that their insurance covers the surgical or birth-control portions of the visit, make sure they have a driver picking them up, and collect that person’s name and phone number. After a procedure, an AMA, MA, or UT will escort the patient to their driver.

Lead AMAs share the duties of other AMAs, except that they are also responsible for training new hires, sharing updates in work processes or materials, and in general serving as a resource for their colleagues. The job requirements for lead AMAs are the same as for other AMAs, except that one year of experience with the Employer is preferred.⁷

Contrary to stationary AMAs, float AMAs change locations depending on staffing needs. The job requirements for float AMAs are the same as for stationary AMAs. Stationary and float AMAs also have the same duties, except that floats receive additional training to cover specialty services offered at surgical centers. Floats are divided into two teams, one for OC and the other for SBC, and rarely work across county lines.

Regardless of their location, AMAs use the same equipment, including computers, printers, faxes, scanners, label makers, and office supplies like pens, paper, scissors, staplers, and laminators. Checkout windows also have credit-card readers to collect payments. AMAs wear scrubs and receive a black lab coat, which they are not required to wear.

Health centers in both counties generally operate in the same way as far as AMAs are concerned, but there are a few differences. For instance, OC facilities have timing requirements for processing nonsurgical patients, whereas SBC locations do not. As a rule, OC patients may not spend more than 15 minutes in the waiting area, and their entire visit should last an hour at most. Patients who wait more than 15 minutes before they are seen are offered “I’m sorry” cards with a Starbucks coupon. OC locations also have a different system for scheduling medical

⁷ The parties agree that lead AMAs are not supervisors under Section 2(11) of the Act.

procedures, with blocs of time set aside for every type of procedure. Lastly, SBC uses a different insurance-verification system.

C. MA Qualifications, Duties, and Equipment

The Employer's job descriptions for stationary, lead, float, and surgical MAs describe those positions as "responsible for all supporting functions in the delivery of reproductive healthcare, primary care and/or surgical services[, including] testing, screening, and assisting patients both pre and post-surgical procedures." (U Exhs. 54-56.) Applicants must possess a high-school diploma or GED, and either a degree from an accredited medical-assistant program or a certificate from an organization approved by the Medical Board of California. Float MAs must also have 1 to 2 years of work experience in a clinical setting and recent experience performing blood draws and injections; this additional experience is only preferred for stationary and surgical MAs.

On average, there are about six MAs in a health center at any given time. Four are assigned to individual clinicians, and the others work in the lab and cover for their colleagues during lunch or breaks. The MAs' role begins when AMAs send notice that a patient is fully checked in. An MA comes to the front office, picks up the patient's chart, calls the patient's name in the waiting area, verifies their last name and date of birth, and escorts them to an examination room in the back office. There, the MA measures the patient's height and weight, takes their vitals, goes over their answers to the sexual history questionnaire, and asks about the purpose of their visit and any symptoms they are having. Thereafter, and depending on the patient's needs, the MA may: take a urine sample and perform a pregnancy test; draw blood and/or collect urine to test for sexually transmitted diseases; inject the patient with a dose of the birth-control drug Depo-Provera; or prepare the patient for examination by a clinician. MAs also assist clinicians during procedures by taking biopsies, running EKGs, or measuring blood levels of oxygen and glucose. They also perform various tasks relating to the provision of abortion services, including helping prepare the patient, providing ultrasound guidance during the procedure, and analyzing materials removed from the patient in the lab. Once the procedure is complete, MAs will transport the patient to the recovery room, clean up bodily fluids, and sterilize used medical equipment.

Lead MAs perform the same basic functions as regular MAs, with additional responsibilities comparable to lead AMAs. Surgical MAs work at the Employer's surgical centers in Orange and San Bernardino. In addition to the duties listed above, they assist clinical personnel with specialty services provided at those sites. Float MAs are divided by county and perform the same duties as stationary and surgical MAs.

MAs use a variety of equipment and clinical instruments to perform their job, including: scales; tourniquets; thermometers and blood-pressure machines; finger sticks and syringes; pregnancy tests; forceps, speculums, and dilators; EKG machines; iodine; biohazard bins; cotton balls, Band-Aids, and various types of disinfectant wipes; personal protective equipment, including lab coats, gloves, and face shields, and autoclave machines when cleaning and sterilizing medical equipment. Their employee badges allow them to log into virtual machines like charting stations, which is not the case for AMAs. MAs are also subject to procedures and protocols specific to the medical field, including those applicable to laboratory work, infection

control, equipment sterilization, and all employer policies that serve to implement applicable laws and regulations. They are required to wear scrubs, a gray lab coat, and close-toed shoes to protect against sharp objects.

MA trainers are based out of the Katella building. They travel to all facilities and train MAs on new procedures and machines. They also help train MAs who are having difficulty acquiring the necessary skills. They typically do not wear scrubs and stay only for a few hours at any given facility. However, they occasionally cover during surgeries when a health center is short-staffed. They use the same equipment as stationary and float MAs, plus office supplies in their administrative functions. MA family-planning trainers and primary-care trainers also work out of the Katella building, but they specialize in training and updating MAs in those specific disciplines. Only MA surgical trainers work on location. They provide training specifically for specialty services performed at surgical centers and assist in developing comprehensive training programs for MAs in all locations.

D. UT Qualifications, Duties, and Equipment

The Employer's job description states that UTs are similar to MAs, except that they are also responsible for "provid[ing] ultrasounds for surgical and non-surgical patients up to 24 weeks gestation." (U Exh. 58.) Applicants must possess a high-school diploma or GED and be certified as MAs and UTs.

UTs have the same duties and use the same equipment as MAs, except that they also perform ultrasounds. The ultrasound machine works by placing a lubricated condom over a probe and inserting the probe into the patient to generate an image on a screen. The UT moves the probe and takes screen shots of the resulting images, which are then labeled and added to the patient's chart. Health centers typically have one UT on location at all times, while surgical centers can have up to three. UTs are subject to the same procedures, protocols, policies, and regulations as MAs, and must follow the same dress code. Lead UTs and UT trainers perform the same duties towards regular UTs as lead MAs and MA trainers do with regular MAs.⁸

E. Interactions Between AMAs, MAs, and UTs

AMAs interact primarily amongst themselves. Within a given health center, AMAs talk to each other every few minutes, whether to discuss patient needs, help each other out, or to schedule breaks. By contrast, AMAs seldom interact with other employees at the same location. A Float AMA testified that she "can go days" without talking to MAs, that she speaks to UTs "a couple times a month," and that she hardly ever interacts with MA Trainers. (Tr. 98-99.) The AMA testified that she speaks to MAs about five times a week. The Area Director testified that AMAs and MAs are in daily contact, but that their exchanges are "pretty minimal" because their work duties are so different. (Tr. 380.) Most interactions occur via Tiger Connect, when AMAs send notice that patients are ready to be seen, and occasionally in person when an MA comes to pick up a patient's chart. Prior to April 2023, AMAs could serve as translators between patients and MAs, UTs, or clinicians who did not speak a common language. However, the Employer discontinued that practice and now requires AMAs to take a test proving their ability to translate

⁸ There is no evidence regarding float UTs.

medical terminology. The Float AMA testified that she has not done any translations since the new rule.

F. Distances and travel times between facilities

In OC, five of the Employer’s facilities—Anaheim, Orange, Westminster, Santa Ana, and Costa Mesa—are grouped together, with Mission Viejo somewhat further afield. The distances between the five clustered facilities range from 2 to 18 miles and travel times from 6 to 30 minutes. The distances between those facilities and Mission Viejo range from 17 to 23 miles and travel times from 25 to 41 minutes. Distances and travel times between OC and SBC locations range from 30 miles and 1 hour and 13 minutes (Anaheim and Upland) to 86 miles and 2 hours and 25 minutes (Costa Mesa and Victorville).

G. Employee Interchange

The AMA testified that in the two years since she was hired at the Santa Ana facility, she has worked at every other OC location, but never in SBC. This is borne out by the Employer’s data. Schedules for the period from January to June 2023 show that over 64 percent of stationary AMAs in OC worked at least one shift at another in-county location. Those schedules also show that a significant number of shifts at OC facilities are performed by AMAs “borrowed” from other in-county locations. The following numbers represent the percentage of shifts performed in each OC facility by AMAs from other in-county locations.⁹

Anaheim: $118/560 = 21.1\%$

Costa Mesa: $84/493 = 17\%$

Mission Viejo: $50/445 = 11.2\%$

Orange: $139/525 = 26.5\%$

Santa Ana: $159/509 = 31.2\%$

Westminster: $40/498 = 8\%$

Overall: $590/3030 = 19.5\%$

By contrast, it is exceedingly rare for stationary AMAs to work outside of their own county. The Area Director, the only Area Director who oversees health centers in both counties, testified that while there have been some “one-off situations” where AMAs traveled across county lines, this is “rare” because of the distances between locations. (Tr. 378-79.) Speaking specifically of the facilities she oversees, the Area Director stated, “ideally we don’t ask our Upland staff to go to Santa Ana and vice versa, because it is a drive.” (Tr. 378.) The Employer’s data for the same 6-month period shows that only 6 of the 3030 OC shifts—or 0.2 percent—were performed by AMAs from SBC, and not one of the 1822 AMA shifts at the three SBC facilities

⁹ This is obtained by dividing the number of borrowed shifts by the total number of shifts at each facility.

was performed by an OC AMA. Of all the shifts performed in the two counties during that period, only 0.1 percent (6/4852) was done by out-of-county AMAs.¹⁰

Like their stationary counterparts, float AMAs seldom work outside of their home county. The Float AMA testified that, in her 3 years as an OC float, she has only worked about a dozen times at SBC facilities, during the Covid pandemic when there were “extreme short staffing” problems.¹¹ (Tr. 109-10.) The Area Director confirmed that the Employer tries to “keep [float AMAs] within their own county.” (Tr. 379.) The Employer’s travel policy requires that all floats—AMAs and MAs—be reimbursed for mileage when they travel outside of their own county, but not otherwise.

Employees can move permanently to any location in either county so long as the desired facility has an opening. This occurs rarely in practice. The record reflects that between October 2019 and April 2023, in all three classifications combined, about five stationary employees permanently changed work locations, and three of them also changed their county of residence.

H. Permanent Transfers

Transfers within job classifications are rare. The Employer’s data shows that between October 2019 and April 2023, about seven AMAs and nine MAs transitioned from stationary to float, or vice versa. Due to state licensing requirements, it is even more uncommon for AMAs to become MAs or UTs. During the same 2019 to 2023 period, four AMAs became MAs, and two MAs became AMAs. Moreover, AMAs who become MAs lose their seniority, and with it the ability to get their preference of work schedule and days off.

II. ANALYSIS

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). “[I]n every unit determination case, the Board’s inquiry will ‘consider only whether the requested unit is an appropriate one even though it may not be the optimum or most appropriate unit for collective bargaining.’” *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 3 (2022) (quoting *Black & Decker Manufacturing Co.*, 147 NLRB 825, 828 (1964)). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019).

In *American Steel*, *supra*, the Board overruled the unit-appropriateness test created by *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), and revised in *The Boeing Co.*, 368 NLRB No. 67 (2019), and reinstated the standard set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013). Under this test, a petitioned-for unit is appropriate for bargaining if it: “(1) shares an internal community of interest; (2) is readily identifiable as a

¹⁰ Information based on the Employer’s data, consisting of approximately 60 pages of monthly schedules for each facility. (ER Exhs. 39-47.)

¹¹ According to the Employer’s scheduling data, the Float AMA did not work at any SBC facility between January and June 2023.

group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct.” *American Steel*, 372 NLRB No. 23, slip op. at 13. If a party contends that the petitioned-for unit should include additional employees, the Board examines “whether there is an ‘overwhelming community-of-interest’ between the petitioned-for and excluded employees, such that there is no rational basis for the exclusion.” *Id.*

I begin by analyzing whether AMAs share the necessary community of interest to form an appropriate bargaining unit. In so doing, I examine the Employer’s claim that MAs and UTs should be included in the unit because they share an overwhelming community of interest with AMAs.

A. Whether AMAs, MAs, and UTs Share a Community of Interest

To determine whether a community of interest exists between employees, the Board examines whether they 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.” *American Steel*, 372 NLRB No. 23, slip op. at 2.

1. Departmental organization

Despite its name, this factor does not focus solely on employees’ positions within an employer’s organizational structure. In addition to administrative delineations, the Board will also consider whether a proposed unit tracks other lines drawn by the employer, such as classification, function, or supervision. See, e.g., *K&N Engineering, Inc.*, 365 NLRB No. 141, slip op. at 3 (2017) (finding petitioned-for unit inappropriate because, inter alia, it was not drawn along departmental, functional, or supervisory lines); *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (same where proposed unit did not track employee classification, department, or function).

The petitioned-for unit in this case is drawn along lines of employee classification, function, and supervision. First, it consists of a single job classification: AMAs. Second, AMAs serve a purely clerical, or administrative, function within the Employer’s operations, contrary to MAs and UTs, whose functions are mostly medical in nature. Finally, the evidence shows that regardless of their location, AMAs are subject to a different supervisory hierarchy than MAs and UTs. Health-center AMAs report to co-managers, surgical-center AMAs to surgical managers, and float AMAs to float co-managers. By contrast, health-center, surgical-center, and float MAs and UTs report to senior co-managers, surgical administrators, and senior float co-managers, respectively. The Employer’s decision to give AMAs a separate chain of command everywhere they work reflects its view that they occupy a distinct position within its organization.

The arguments put forth by the Employer do not attempt to show an overwhelming community of interest between AMAs, MAs, and UTs. They only seek to refute the petitioned-for unit’s appropriateness for bargaining. The Employer’s reliance on *Odwalla* is misplaced. Not only did the proposed unit in that case seek to include employees scattered across three different

departments, but it also excluded employees who performed very similar functions to those who were included. 357 NLRB at 1612-13. The Employer gains no ground arguing that because float AMAs report to county-level supervisors, as opposed to facility managers like stationary AMAs, they are part of a separate departmental subgroup that should also include float MAs. Indeed, even within that subgroup, float AMAs remain separately supervised from float MAs, just like their stationary counterparts.

The petitioned-for unit follows the lines of classification, function, and supervision drawn by the Employer in structuring its workplace operations. Accordingly, I find that this factor supports finding that AMAs share a community of interest. Moreover, I find that it weighs against finding an overwhelming community of interest between AMAs, MAs, and UTs.

2. Skills and training

Employees with similar skills and training are more likely to share a community of interest. Compare *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 6 (2022) (finding unit appropriate where employees had similar skills and job qualifications), with *Casino Aztar*, 349 NLRB 603, 604 (2007) (rejecting proposed unit where included and excluded employees had the same skills and educational requirements). Evidence that disputed employees have similar job descriptions or licensure requirements, or that they participate in the same employer training programs, supports finding a similarity of skills.

The record demonstrates that AMAs have the same skills and training, which are drastically different from those of MAs and UTs. AMA candidates must have finished high school, and new hires must complete a 6-week training where they learn how to check patients in and out, process their paperwork, navigate California's insurance landscape, and perform a variety of other administrative tasks. This training is not offered to MAs or UTs. Float and surgical-center AMAs receive the same training as stationary health-center AMAs, except that they also learn how to admit patients for specialty services in surgical centers. Contrary to the Employer's claim, those tasks involve the same administrative and clerical skills common to all AMAs. Lead AMAs also have the same training as other AMAs, but they have additional responsibilities—updating colleagues on new procedures, serving as a resource, and training new hires—that require different skills. However, there is no evidence that the Employer requires lead AMAs to complete any special training to perform those functions. The fact that lead AMAs use a different skillset part of the time does not negate that they spend most of their day using the same skills as all other AMAs. Moreover, it does not create an overwhelming community of interest between them and lead MAs.

MAs and UTs must graduate from accredited training programs and be certified in their fields, and they are skilled in providing, and assisting in the provision of, medical-care services. There is no evidence that MAs or UTs receive on-the-job training. The only trainings they share with AMAs are those given to all employees upon hiring. Contrary to the Employer's claim, there is little resemblance between lead AMAs and MA trainers. As discussed above, lead AMAs primarily perform administrative and clerical functions common to all AMAs. By contrast, the main function of MA trainers, regardless of their area of specialty, is to train regular MAs. Moreover, lead AMAs are stationary employees who work in health centers, whereas MA trainers are based out of the Katella building and move from one facility to another.

I find that the clear differences in the AMAs' education and skills compared to those of MAs and UTs supports finding that AMAs share a unique community of interest, but not an overwhelming community of interest with MAs and UTs.

3. Job functions, work duties, and equipment

Employees whose job functions are readily distinguishable from others share a community of interest that justifies their integration into a common unit. Evidence that employees perform the same basic function or duties, or that there is a high degree of overlap between those functions or duties, supports finding community of interest between them. *Casino Aztar*, 349 NLRB at 604-05.

The job functions, daily work duties, and equipment used by AMAs differ radically from their MA and UT colleagues. All AMAs—regular, lead, or float—work in the front office and perform clerical functions similar to receptionists in other office settings, except in a medical environment. They check patients in, verify their insurance and help them apply for coverage, if necessary, notify MAs when they are ready to be seen, and check them out. They use regular office equipment and are not required to wear lab coats.

Stationary MAs, float MAs, and UTs work in the back-office and assist clinicians in the delivery of health care. They check patients' vitals, take samples, prepare them for examination, and help during medical procedures. They use a variety of clinical instruments, from thermometers to EKGs—and, for UTs, ultrasound machines—as well equipment designed to handle biological materials. They are required to wear lab coats and close-toed shoes, and to abide by all sorts of regulations and policies relative to the provision of medical care. MA trainers mostly educate other MAs and occasionally cover during clinical procedures. Apart from surgical trainers, they typically do not wear scrubs and spend only a few hours at any location.

In sum, the job functions and day-to-day responsibilities of AMAs are completely different from, and have very little overlap with, those of MAs and UTs. This distinction is further underscored by the fact that MAs and UTs require certification in their fields, whereas AMAs do not. Therefore, I conclude that this factor supports finding that AMAs share a community of interest between themselves, but not with MAs and UTs.

4. Functional integration among employees

A high degree of functional integration between employees supports finding a community of interest. “[F]unctional integration exists only where employees must work together and depend on one another to accomplish their tasks.” *WideOpenWest*, 371 NLRB No. 107, slip op. at 7 fn. 16; see also *Casino Aztar*, 349 NLRB at 604-05. Accordingly, “the integrated nature of the operation does not by itself reflect functional integration.” *Nissan North America, Inc.*, 372 NLRB No. 48, slip op. at 10 (2023).

AMAs, MAs, and UTs have specific and well-delineated roles in the Employer's business operations. AMAs work exclusively at three workstations in the front-office area of their facility. They are in constant communication with each other and share the same office supplies and equipment. Their function is to check patients in and out, and they help each other when there

are many patients to process at one time. Only when patients are fully checked in do MAs and UTs take over. Once the patients' medical needs are met, MAs and UTs transfer them back to the AMAs for checkout. In short, MAs and UTs do not participate in checking patients in or out, and AMAs do not assist in the provision of medical care. While they all use eClinicalWorks, the Employer's electronic-medical-records software, AMAs do so to record administrative data, while MAs and UTs use it for medical purposes. The Employer argues that AMAs work alongside MAs and UTs when translating for non-English speakers, but it ignores its new rule prohibiting AMAs from translating unless they have passed a fluency test. The only AMA to testify on the matter stated that she has not done any translation work since the new rule was introduced.

Based on this evidence, I find that AMAs are functionally integrated in the performance of front-office work, which supports finding a community of interest between them. Moreover, I find that the compartmentalization of their respective job functions weighs against finding a community of interest—much less an overwhelming one—between AMAs, MAs, and UTs. See, e.g., *WideOpenWest*, supra, slip op. at 7 (finding that employees who planned and coordinated long-term repair and construction projects, and others who focused primarily on the administrative and billing components of customer-service issues, did not share community of interest with EEs involved in day-to-day service-and-repair functions of employer's phone and broadband operations); *DTG Operations, Inc.*, 357 NLRB 2122, 2128 (2011) (“Although the Employer's facility is functionally integrated, with all employees working toward renting vehicles to customers, each classification has a separate role in the process.”).

5. Interactions with other employees

The Board will more likely find a community of interest between employees that have frequent contact with each other in the performance of their job duties. See *WideOpenWest*, 371 NLRB No. 107, slip op. at 6 (finding petitioned-for unit appropriate where employees had frequent contact and worked together to resolve problems); cf. *Casino Aztar*, 349 NLRB at 605 (rejecting proposed unit where included and excluded employees worked side-by-side).

Within a given facility, AMAs interact with each other constantly to address patient needs, help each other out, or schedule breaks. However, due to the very different nature of their work, AMAs have few interactions with MAs and UTs in the back office. Those interactions have further diminished since the Employer began requiring AMAs to pass a test to do translation work. Therefore, I find that this factor supports finding that AMAs share a community of interest between themselves, and but not an overwhelming community of interest with MAs and UTs.

6. Interchange with other employees

For purposes of evaluating the appropriateness of a petitioned-for unit, interchangeability refers to temporary work assignments or transfers between different groups of employees. See *AT&T Mobility Services, LLC*, 371 NLRB No. 14, slip op. at 16 (2021)

Frequent interchange may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills. As a result, 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.

Id. Evidence of permanent transfers, though relevant, is not as important as evidence of temporary interchange. *Nissan North America*, 372 NLRB No. 48, slip op. at 9.

The record establishes that there is frequent interchange among stationary AMAs. AMAs are trained to operate all three front-office windows, and they pitch in to help each other when a given workstation is backed up. Stationary AMAs also work at other facilities on a regular basis to help alleviate staffing shortages. As for float AMAs, their very purpose is to rotate between facilities as needed. I find that this evidence supports finding a community of interest between AMAs.

The same cannot be said of interchange between job classifications. As discussed earlier, MAs and UTs perform duties of an entirely different nature than AMAs, and which require specific education and certificates. For this reason, AMAs cannot cover for MAs or UTs if necessary. This also explains why the Employer recorded only 6 instances of AMAs becoming MAs, or vice-versa, between October 2019 and April 2023. In addition, AMAs who become MAs lose their job seniority. I find that this factor weighs against finding an overwhelming community of interest between AMAs, MAs, and UTs. See *AT&T Mobility Services*, 371 NLRB No. 14, slip op. at 16 (“Lack of significant . . . interchange between groups of employees is a strong indicator that employees enjoy a separate community of interest.” (quotation marks and citation omitted)).

7. Terms and conditions of employment

The Employer maintains a centralized management, including HR and payroll departments. All employees receive the same insurance and retirement benefits regardless of their work location. They are also given the same employee handbook and trainings regarding diversity, harassment, and discrimination. All employees must apply the Employer’s WE CARE values in fulfilling their work duties, and they are subject to the same progressive-discipline system. They all work four weekly 10-hour shifts and clock in at the same kiosk. All locations have similar hours of operation with three staggered shifts per day, and each day begins with a morning huddle attended by all employees. The Employer has a centralized scheduling department, and all employees are subject to the same leave policies.

I find that this factor weighs in favor of finding that AMAs share a community of interest, but also that they share an overwhelming community of interest with MAs and UTs. However, I note that many, if not all of these terms and conditions apply equally to all employees. Therefore, this factor does not weigh as heavily in favor of finding an overwhelming community of interest as it would if those terms and conditions of employment were specific to AMAs, MAs, and UTs. See, e.g., *MGM Mirage*, 338 NLRB 529, 534 (2002) (noting, in craft-unit context, that [w]hile the [petitioned-for employees] share terms and conditions of employment such as vacation, leave, and benefit programs with other employees, these policies are common to all of the Employer’s employees, not just those employees in the engineering department.”).

8. Supervision

AMAs have different lines of supervision than MAs and UTs. Stationary AMAs, including leads, report to the Co-Manager in health centers, and to the Surgical Manager in surgical centers. Float AMAs are supervised by their county's Float Co-Manager. By contrast, regular and lead MAs report to Senior Co-Managers in health centers, surgical MAs report to the Surgical Administrator, and float MAs to their county's Float Senior Co-Manager.¹² The Vice President of Human Resources testified that employees are disciplined by their direct supervisor or manager. I note that Co-Managers and Senior Co-Managers work opposite schedules that only overlap on one day; however, there is no evidence as to whether one manager can discipline an employee who does not otherwise report to them when the other manager is absent.

The fact that AMAs report to different supervisors than MAs and UTs supports finding a community of interest between them. It also weighs against finding that the three classifications share an overwhelming community of interest.

Conclusion

Of the eight factors comprising the *American Steel* analysis, I find that all but one—terms and conditions of employment—support finding that AMAs share a community of interest distinct from MAs and UTs. 372 NLRB No. 23, slip op. at 13. The petitioned-for unit consists of a single classification of employees, who have the same skills, training, and job requirements, use the same equipment, fulfill a specific function in the Employer's operations, communicate constantly with each other and frequently rotate positions, and have their own lines of supervision. In all these respects, they are distinct from MAs and UTs, with whom they have much less contact and whose classifications, skills, training, equipment, functions, and supervision are completely different. The Board has rejected attempts to join groups of employees with greater similarities. See, e.g., *WideOpenWest*, 371 NLRB No. 107, slip op. at 7-8 (finding that sought-after employees lacked community of interest with excluded employees despite sharing terms and conditions of employment and working in same department); *Harron Communications, Inc.*, 308 NLRB 62, 63 (1992) (same where clerical employees at cable-television operator shared terms and conditions of employment, breakrooms, some trainings, and had regular contact with, technical employees).

In this case, the overlap between the front and back offices of the Employer's facilities consists of transferring patients between them and not much else. Based on this evidence, I find that AMAs share a community of interest between themselves. I find further that AMAs do not share a community of interest with MAs and UTs, much less one that is overwhelming.

B. Whether OC and SBC AMAs Share a Community of Interest

Having established that AMAs do not share an overwhelming community of interest with MAs and UTs, the remaining question is whether the petitioned-for unit of OC AMAs is

¹² The evidence regarding MA trainers is vaguer. It appears that every category of MA trainer has their own supervisor, who reports to the Employer's Director of Training/Project Management, unlike other MAs who report to their county's Director of Operations. However, MA surgical trainers appear to be supervised by the Surgical Administrator.

appropriate on its own, without including AMAs working in SBC facilities. A different test applies for this analysis. See *AT&T Mobility Services*, 371 NLRB No. 14, slip op. at 1. An appropriate multifacility unit is one that has a “distinct” community of interest from the excluded facilities. *Audio Visual Services Group, LLC*, 370 NLRB No. 39, slip op. at 2 (2020). To determine whether employees in a multifacility unit share the requisite community of interest, the Board examines the following factors: employees’ skills and duties; terms and conditions of employment; centralized control of management and supervision; geographic proximity; employee interchange; functional integration; and bargaining history. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1081 (2004). The Board will also consider the extent of employee organization.¹³ See *American Steel*, 372 NLRB No. 23, slip op. at 5 (“[T]he extent of organization is always a relevant consideration” in determining unit appropriateness (internal quotation marks and citation omitted)); see also, e.g., *Freshpoint South California, Inc.*, No. 28-RC-252613, slip op. at 2 (June 18, 2020) (citing *Exemplar, Inc.*, 363 NLRB 1500, 1501 (2016)). The party objecting to a petitioned-for multifacility unit bears the burden to show that it is inappropriate. *Executive Resources Associates*, 301 NLRB 400, 402 (1991).

1. Employees’ skills and duties

The Employer’s job descriptions for AMAs are the same across all its operations, and there is no dispute that AMAs possess the same skills and duties regardless of location. The few differences that exist between OC and SBC with regard to patient wait times, scheduling procedures, and insurance verification do not alter this conclusion. I find that this factor weighs in favor of including AMAs from SBC into the petitioned-for unit.

2. Terms and conditions of employment

As discussed in section II.A.7, above, all EEs share the same terms and conditions of employment. This factor supports adding SBC AMAs to the petitioned-for unit.

3. Centralized control of management and supervision

The Employer’s managerial staff is based in the Katella building and reports to a single chief executive. The Employer’s centralized administration includes HR, scheduling, and compliance departments. The HR department manages all personnel matters, including creating job descriptions, setting facility hours of operation, determining employee wages and benefits, issuing attendance and disciplinary policies, onboarding new employees, and giving company-wide trainings. The scheduling department publishes employee work schedules and assists facility managers in setting aside blocks of time for different types of procedures. The

¹³ The Union argues that the Board also considers a labor organization’s jurisdictional limitations “as one element in reaching a decision as to an appropriate unit.” *Dundee’s Seafood, Inc.*, 221 NLRB 1183, 1184 (1975). However, the Board has expressed skepticism as to whether jurisdictional limitations should be considered for this purpose. See *Alley Drywall, Inc.*, 333 NLRB 1005, 1008 (2001) (“[A] union’s territorial jurisdiction and limitations do not generally affect the determination of the appropriate unit.”); *CCI Construction Co.*, 326 NLRB 1319, 1319 (1998) (stating that union’s geographic jurisdiction “is not relevant” to unit determination); *Groendyke Transport, Inc.*, 171 NLRB 997, 998 (1968) (“[T]he Board does not give effect [to the extent of union jurisdiction] in determining what constitutes an appropriate unit.” (footnote omitted)). In any event, I find it unnecessary to consider the Union’s jurisdictional limitations as it would not alter the result of this case.

compliance department investigates EEO complaints, as well as issues relating to safety, security, and data privacy. The Employer centrally administers the computer network and software systems used by all employees.

Notwithstanding this high degree of administrative centralization, the record shows that the Employer has deliberately divided its operations into two separate chains of command, one for OC and the other for SBC. All OC locations but one—Santa Ana—are overseen by the Director of Operations for OC, who is based in the Katella building, and the rest by the SBC Director of Operations in San Bernardino. See *Laboratory Corp. of America*, 341 NLRB at 1082 (finding unit inappropriate where petitioned-for facilities did not comport with employer’s organizational and supervisory structure).

Moreover, many of the decisions that affect employees on a daily basis are made at the local level. Facility managers interview candidates, make hiring decisions, draw up employee work schedules, and approve leave requests. They also oversee day-to-day operations and enforce the Employer’s work policies. See *Allways East Transportation, Inc.*, 365 NLRB No. 71, slip op. at 4 (2017) (finding that local oversight of day-to-day operations supported finding petitioned-for unit appropriate even though authority to hire, fire, grant raises, and approve leave requests was vested in managers at employer’s headquarters). Co-Managers are directly responsible for supervising AMAs and monitoring the work of float AMAs, whose supervisors are not on location but in their county’s administrative building. They evaluate the performance of stationary AMAs, discuss any work-related issues they may have, and write their annual reviews. Finally, they decide on a case-by-case basis whether to impose discipline, with little HR involvement except for EEO-related issues. Cf. *Laboratory Corp. of America*, supra (finding unit inappropriate where supervisor was required to consult with HR before imposing any discipline above a warning).

As shown above, HR and other departments set employment policies that apply across the Employer’s entire organization, but most supervisory prerogatives are vested in the facility managers who run day-to-day operations on the ground. I find that the significant degree of local autonomy reserved to local managers overcomes the centralized nature of the Employer’s management. See, e.g., *Starbucks Corp.*, 371 NLRB No. 71, slip op. at 2 (2022) (“Although the Employer maintains nationwide tools and policies, it is the Store Managers who implement these tools and policies at the local level,” and they “play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, . . . imposing discipline[, and] addressing employee complaints about work assignments.”).

4. Geographic proximity

“The Board has found the factor of geographic proximity to favor petitioned-for [multifacility] units.” *Audio Visual Services Group*, 370 NLRB No. 39, slip op. at 3 (citations omitted). The OC facilities are clustered together, with distances between them ranging from 2 to 23 miles and travel times from 6 to 41 minutes. The distances between OC and SBC locations range from 30 to 86 miles, and travel times run from 1 hour and 13 minutes to 2 hours and 25

minutes.¹⁴ The Area Director testified that the Employer avoids sending employees, including floats, across county lines because of the length of travel. Finally, the petitioned-for unit comports with the Employer's organizational structure, which is divided into two branches on either side of the Santa Ana Mountains. Based on this evidence, I find that this factor weighs in favor of finding that a unit consisting solely of OC AMAs is appropriate for bargaining. See *AT&T Mobility Services*, 371 NLRB No. 14, slip op. at 2 (finding that geographic proximity and the fact that "the petitioned-for locations cover a defined geographic area in which no excluded location is located" support finding proposed unit appropriate); cf. *Laboratory Corp. of America*, 341 NLRB at 1079, 1082 (finding unit inappropriate where employer's "organizational structure [was] based on geography" and petitioned-for facilities did not "constitute a coherent geographic grouping.").

5. Employee interchange

"The Board has found that the factors of employee interchange and functional integration weigh in favor of a petitioned-for multifacility unit where the petitioned-for employees have substantially more contact and interchange with each other than they do with excluded employees." *Audio Visual Services Group*, 370 NLRB No. 39, slip op. at 2 (citations omitted).

The Employer's data demonstrates that there is significant employee interchange between OC facilities, but hardly any between counties. Thus, from January to June 2003, between 8 and 31.2 percent of shifts at OC facilities were performed by AMAs borrowed from other in-county locations. During the same period, AMAs based in OC and SBC accounted respectively for 99.8 and 100 percent of their counties' staffing needs. And for both counties combined, 99.9 percent of AMA shifts were performed by same-county AMAs. See *Audio Visual Services Group*, supra, slip op. at 3 (finding high level of integration where "petitioned-for jobsites cover almost 95 percent of their own staffing needs and receive only 0.57 percent of their staffing hours from employees who work at the excluded jobsites."). These figures include float AMAs, who work almost exclusively in their own county. Indeed, the Employer's travel policy discourages sending floats across county lines by requiring that they be compensated for their mileage. Lastly, the Area Director confirmed that exchanges between Santa Ana and Upland are "rare" and limited to "one-off situations." (Tr. 378-79.) This is significant because, apart from sharing the same area director, those are the second-closest locations on either side of the county line.¹⁵

I find that this factor supports finding the petitioned-for unit appropriate for bargaining. See *Panera Bread*, 361 NLRB 1236, 1236 fn. 1 (2014) (finding unit appropriate where, inter alia, there was "little to no interdistrict interaction" between included and excluded facilities).

¹⁴ The evidence relied on by the parties to show distances and driving times was obtained from Google Maps. I recognize the limitations of this information, as traffic and other circumstances can create significant variations in Google's proposed routes and travel times. However, neither party disputes the basic fact shown by this data, which is that distances and travel times between OC and SBC locations are significantly greater than between OC facilities themselves.

¹⁵ Santa Ana and Upland are 34 miles apart. The two locations closest to each other are Upland and Anaheim (30 miles), but they report to different area directors.

6. Functional integration

As explained by the Board, “[f]unctional integration involves employees at the various facilities participating equally and fully at various stages in the employer’s operation, such that the employees constitute integral and indispensable parts of a single work process.” *AT&T Mobility Services*, 371 NLRB No. 14, slip op. at 12.

The functional integration between OC AMAs begins with the Employer’s decision to divide its operations into two county branches with separate reporting structures. Each branch is led by its own Director of Operations, and of the Employer’s nine locations, all but one is under the umbrella of the Director of Operations for its county. Contrary to the Employer’s claim, the fact that Santa Ana is overseen by SBC’s Director of Operations does not negate the fact that for every other facility, location determines their position in the organization. The Employer’s decision to divide its operations along county lines disproves its assertion that the only appropriate unit should include AMAs working at SBC facilities. *Neiman Marcus Group, Inc.*, 361 NLRB 50 (2014), on which the Employer relies, is inapposite. In that case, the petitioned-for unit consisted of an entire department, plus a subgroup of employees carved out from another department. *Id.* at 52. Here, all the petitioned-for employees, with the minor exception of those at Santa Ana, are grouped within the OC branch of the Employer’s operations.

In addition to this organizational integration, the record reflects that each county’s facilities work almost exclusively with one another. The AMA testified that she interacts with AMAs at other OC facilities about 50 to 60 times a year, but never with SBC locations. Since nothing suggests that the AMA’s experience is not representative of all OC AMAs, it is reasonable to infer that OC facilities are in almost daily contact with each other.¹⁶ Those interactions allow patients to find earlier appointments or book procedures, and thus contribute to fulfilling the Employer’s mission. They also further the Employer’s business interest of keeping patients within its own network. Significantly, the five OC health centers always refer patients to the Orange surgical center for specialty procedures, never to the one in San Bernardino. Lastly, and as discussed in the previous section, OC facilities support each other by lending and borrowing their AMAs when they are short-staffed.

“[T]he Board has generally been disinclined to find a multifacility unit appropriate when the petitioned-for facilities have no more functional interchange with each other than they do with the excluded facilities.” *Audio Visual Services Group*, 370 NLRB No. 39, slip op. at 2 (citations omitted). There is no question that OC facilities have more functional interchange with each other than they do with SBC locations. Accordingly, I find that this factor weighs against adding SBC AMAs to the petitioned-for unit. *Cf. Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005) (finding proposed unit too narrow where, “regardless of location,” employees were “in contact with each other on a regular basis, exchanging information, supporting each other’s duties, and interacting with other employees who work[ed] on similar equipment or systems.”).

¹⁶ There are 39 AMAs and 6 facilities in the petitioned-for unit, or 6.5 employees per facility. If each of them makes 55 calls to other facilities per year, that amounts to 6.88 calls per week, or almost one call per day. $(6.5*55)/52 = 6.875$.

7. Bargaining history and extent of organization

The parties have no bargaining history, but the extent of employee organization is limited to AMAs working in OC. I find that this factor tilts in favor of finding the petitioned-for unit appropriate for bargaining.

Conclusion

As set forth above, the factors of job requirements, training and skills, and terms and conditions of employment are the only ones to weigh in favor of a dual-county unit. Indeed, although the Employer's centralized administration sets employment policies for the entire organization, facility managers are solely responsible for managing day-to-day operations, including all matters relating to hiring, scheduling, employee supervision, discipline, and performance reviews. Moreover, not only do OC and SBC AMAs work in distinct geographic areas, but the Employer's records demonstrate that there is hardly any interchange between them. By contrast, the same data shows a significant amount of interchange between OC AMAs, and that OC facilities function as a county-wide unit to provide healthcare services. Finally, there is no bargaining history between the parties, and only AMAs working in OC have expressed the desire to organize.

The Board has found multifacility units appropriate in cases where the community-of-interest evidence was not as strong as this. For example, in *AT&T Mobility Services*, not only did the petitioned-for unit exclude employees with the same skills, duties, and terms and conditions of employment, but the employer's centralized management was also significantly more involved in making hiring and disciplinary decisions. 371 NLRB No. 14, slip op. at 2, 8. Nonetheless, the Board found those factors outweighed by the fact that the petitioned-for facilities were in close proximity within a common metropolitan area, included employees had more contact and interchange with each other than with excluded employees, and front-line supervisors had "significant autonomy with respect to day-to-day operations" that included being "involved in key decisions including hiring, scheduling, work assignments, performance management, coaching, training, discipline, and terminations." Id. at 2, 13. In *Audio Visual Services Group*, the Board found that even though "the factors of employee skills, duties, and terms and conditions of employment weigh[ed] in favor of a broader unit," they were "insufficient to overcome the high level of functional integration and employee interchange among the petitioned-for jobsites, as well as the strong geographic cohesion of the petitioned-for unit." 370 NLRB No. 39, slip op. at 2.

Based on the record evidence and Board precedent, OC AMAs not only share a community of interest with each other, but also that they are readily identifiable as a group and sufficiently distinct from SBC AMAs. See *American Steel*, 372 NLRB No. 23, slip op. at 13.

III. CONCLUSION AND FINDINGS

Based upon the entire record in this matter, including the parties' stipulations, and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
3. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹⁷
4. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, and regular part-time administrative medical assistants, including lead administrative medical assistants and floating administrative medical assistants, employed by the Employer at its facilities currently located at 801 E. Katella Avenue, Anaheim, California 92805; Anaheim Health Center at 303 West Lincoln Avenue, #105, Anaheim, California 92805; Costa Mesa Health Center at 1520 Nutmeg Place, Suite 101, Costa Mesa, California 92626; Mission Viejo Health Center at 26137 La Paz Road, #200, Mission Viejo, California 92691; Orange Health Center at 700 South Tustin Street, Orange CA 92866; Santa Ana Health Center at 1421 East 17th Street, Santa Ana, California 92705, and Westminster Health Center at 14372 Beach Boulevard, Westminster, California 92683.

Excluded: All other employees, professional employees, managerial employees, supervisors, and guards as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **United Food and Commercial Workers Union, Local 324**.

¹⁷ The parties stipulated that the Employer is a California corporation with a principal office located at 801 East Katella Avenue, Anaheim, CA 92805, and is engaged in the business of providing healthcare services. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its Orange County, California facilities goods valued in excess of \$5,000 directly from points outside of the State of California.

A. Election Details

The election will be conducted by mail. Ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **2:30 p.m. on Wednesday, May 29, 2024**. Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Wednesday, June 5, 2024**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by calling the Region 21 office at (213) 894-5254.

The ballots will be commingled and counted by the Region 21 office at **2:30 p.m. on Thursday, June 20, 2024**. To be valid and counted, the returned ballots must be received by the Region 21 office prior to the counting of the ballots.

The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending, **Saturday, May 4, 2024**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, May 15, 2024**.¹⁸ The list must be accompanied by a certificate of service showing service on all parties.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in English in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of**

¹⁸ The Petitioner did not waive any of its 10 calendar days with the voter list.

the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 13, 2024



William B. Cowen, Regional Director
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