

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

In the Matter of
LAWRENCE+MEMORIAL
CORPORATION,
LAWRENCE+MEMORIAL HOSPITAL,
INC., AND LAWRENCE & MEMORIAL
PHYSICIAN ASSOCIATION, INC.

Employer¹

and

AFT CONNECTICUT, AMERICAN
FEDERATION OF TEACHERS, AFL-CIO

Petitioner

Case 01-RC-134298
Case 01-RC-134311

DECISION AND DIRECTION OF ELECTION

AFT Connecticut and its affiliated locals (collectively referred to as AFT) currently represent a bargaining unit of licensed practical nurses (LPNs) and technical employees employed by Lawrence+Memorial Hospital, Inc. (the Hospital) in New London, Connecticut, as well as a bargaining unit of service and maintenance employees employed by the Hospital.²

Lawrence & Memorial Physicians Association d/b/a Lawrence+Memorial Medical Group (LMMG) operates several outpatient medical facilities in Connecticut, Rhode Island, and New York, including a facility in New London, Connecticut that is referred to as the Medical Office Building (MOB). The Hospital and LMMG are both subsidiaries of Lawrence+Memorial Corporation, d/b/a Lawrence+Memorial Healthcare (L+M Corporation). Petitioner asserts that

¹ The names of the Employer and Petitioner appear as amended at the hearing.

² The unit of LPNs and technical employees at the Hospital is represented by Local 5051, AFT Healthcare, AFT-CT. The service and maintenance unit is represented by Lawrence & Memorial Hospital Healthcare Workers Union, Local 5123 AFT-CT, AFT.

L+M Corporation, the Hospital and LMMG are a single employer. AFT seeks two separate *Armour-Globe* self-determination elections in which certain LMMG employees at the MOB would vote whether or not they wish to be included in existing Hospital units.³ In Case 01-RC-134311, AFT seeks to add LPNs employed at the MOB to the existing LPN and technical unit at the Hospital.⁴ In Case 01-RC-134298, AFT seeks to add medical assistants (MAs), patient coordinators, patient care navigators, and surgical schedulers employed at the MOB to the existing service and maintenance unit at the Hospital.⁵ Should I find self-determination elections to be inappropriate, AFT seeks, in the alternative, an election in a stand-alone unit at the MOB, in which the LPNs would be included in the same unit as the medical assistants, patient care coordinators, patient care navigators, and surgical schedulers.⁶

LMMG contends that a self-determination election is inappropriate, that a stand-alone MOB unit is inappropriate, and that the smallest appropriate unit is an LMMG-wide unit of all positions sought by AFT.

³ See, *Globe Machine & Stamping*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942); *Warner-Lambert Co.*, 298 NLRB 993 (1990).

After the hearing, AFT requested withdrawal of three related unit clarification petitions in Cases 01-UC-133703, 01-UC-133713, and 01-UC-133720. Those requests are approved.

⁴ After the hearing, AFT also requested withdrawal of its petition in Case 01-RC-134300, in which it had sought to add registered nurses (RN) at the MOB to an existing unit of RNs at the Hospital, because the evidence adduced at the hearing demonstrated that the licensed RNs at issue actually work in the capacity of LPNs, notwithstanding their license. That request is approved. Accordingly, AFT seeks to treat the MOB RNs who work in the capacity of LPNs as LPNs for purposes of their inclusion in any unit found appropriate.

AFT does not seek to represent those RNs at LMMG who are in the classifications of advance practice registered nurse or RN case manager.

⁵ In an amendment to its petition submitted at the hearing, AFT asserted that it seeks patient coordinators, including those located in patient accounts in the MOB, Call Center, and Administration, surgical schedulers, patient care navigators, and medical assistants. In its post-hearing brief, AFT asserts that it seeks patient coordinators, including those located in Check In and Patient Accounts, Call Center employees, surgical schedulers, patient care navigators, and medical assistants. The record does not reveal what the AFT meant by the term "Administration." All of the employees sought, with the exception of medical assistants, work in the Call Center group at the MOB. "Check In" and "Patient Accounts" are subsets of the Call Center.

⁶ At the hearing, AFT indicated its willingness to go forward to an election in a unit other than the petitioned-for units.

L+M Corporation and the Hospital assert that LMMG and the Hospital are not a single employer, that an *Armour-Globe* election is not permissible, and that the only appropriate unit must include all LMMG employees in the petitioned-for positions.

I find, for the reasons set forth below, that an *Armour-Globe* election is not appropriate either for the nurses or for the remaining MOB employees. I further find, for the reasons set forth below, that the petitioned-for employees at the MOB constitute an appropriate unit and I shall direct an election in a stand-alone unit at that facility.

The petition in this case was filed under Section 9(c) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

I. Appropriateness of a self-determination election for the MOB LPNs

A. Facts

L+M Corporation is the parent corporation of four health care entities, all of which service patient populations in southeastern Connecticut and southwestern Rhode Island. Two of the entities, L+M Hospital in New London, Connecticut and Westerly Hospital in Westerly, Rhode Island, are community hospitals that provide inpatient care, emergency room care, inpatient and outpatient surgery, and imaging services. The third entity, Visiting Nurse Association of Southeastern Connecticut (VNASC), is a home health agency. The fourth entity, LMMG,⁷ is a medical group practice that employs physicians and other health care providers in a physician's office setting. LMMG operates 13 patient care facilities, most of which are located in southeastern Connecticut and southwestern Rhode Island.⁸

⁷ The legal name of the medical group practice is Lawrence & Memorial Physicians Association, but the practice began to use the name Lawrence+Memorial Medical Group about two to three years ago to reflect the addition to the group of more non-physician providers, such as physician assistants, advance practice registered nurses, clinical social workers, and certified diabetes educators.

⁸ Although there was some testimony that LMMG has "about 17" locations, it appears from the various exhibits submitted into evidence that LMMG has the following 13 patient

Bruce Cummings is the President and CEO of L+M Corporation, as well as the CEO of L+M Hospital and Westerly Hospital. LMMG President Dr. Chris Lehrach reports to Cummings.

The Hospital and LMMG are parties to an Affiliate Services Agreement, pursuant to which the Hospital provides certain administrative support and management services to LMMG in exchange for compensation. These services include legal support, financial/accounting management and tax preparation, payroll administration, employee benefit planning and administration, human resources support at the Director level, facilities management and support, marketing support, physician recruitment, and EAP services. As a result, employees of the Hospital and LMMG are covered by common corporate health insurance, dental, vision, 401(k), and EAP plans. The Hospital and LMMG are also parties to an agreement under which the Hospital provides certain information technology services to LMMG in exchange for compensation. The Hospital and LMMG each approve their own employment policies, some of which are identical or similar and some of which are different.

Some LMMG physicians refer patients to the Hospital for tests and inpatient care, but they are not required to do so and they also refer patients to other hospitals. LMMG and the Hospital maintain separate electronic medical records systems, and employees have access to the medical records of patients only at the entity at which they work.

Hospital and MOB employees share a common parking lot, with dedicated shuttles running separately from the parking lot to the MOB and to the Hospital. Hospital and MOB employees attend some common training events, but the record does not reveal how often this occurs.

As noted above, AFT represents a unit of LPNS, technical employees and technologists employed at the Hospital. Hospital LPNs are required to be graduates of an approved school of practical nursing and to be licensed by the State of Connecticut. Working under the direction of an RN, they care for acutely ill patients. LPNs work in various units at the Hospital, including the cardiac, neurology, orthopedic, and respiratory units. LPNs begin their shift by taking report from nurses on the prior shift and end their shift by giving report to the incoming nurses. They participate in interdisciplinary rounds. They are responsible for performing head-to-toe physical assessments of the patients on their unit, which include listening to lung and bowel sounds, checking for skin

care facilities: locations in New London (the MOB), Pawcatuck (Stonington Medical Center), Old Lyme, Niantic, Waterford, Uncasville, Mystic, Groton, Ledyard, Connecticut; locations at three separate addresses in Westerly, Rhode Island; and a location in Fisher Island, New York. The Fisher Island facility goes by LMMG's prior name, "Sound Medical Associates," due to variations in state law concerning group practices.

breakdowns and infections, and evaluating the patients' mental status; checking vital signs; flagging lab results for physicians; and reporting any changes in patient condition to an RN. They administer medications, although they do not generally administer IV medications. They also put patients on oxygen.

Hospital LPNs are required to demonstrate additional "competencies," depending on the specific unit in which they work. For example, LPNs in the respiratory unit must demonstrate the following competencies: caring for patients who have a tracheostomy, patients who are dependent on a ventilator, patients who may be in isolation for conditions such as tuberculosis, thoracic surgical patients, dialysis patients, and peritoneal dialysis patients. They must also ensure that patients are breathing appropriately, assess and clean the site of tracheostomies, and check oxygen saturation levels, and they must be able to perform nasotracheal, endotracheal, and tracheostomy suctioning. LPNs in the cardiac unit must be able to interpret arrhythmias and intervene when necessary by reporting them to an RN or by initiating CPR and calling an emergency response team. LPNs on the neurology unit must be able to conduct neurological assessments, assist physicians during neurological procedures, care for patients wearing a "halo" brace used to stabilize the neck, monitor for infection, care for patients with a tracheostomy, and suction airways. LPNs with experience working in a doctor's office would not possess these competencies and would have to be trained to perform them.

In April 2014, LMMG opened a new facility, the MOB in New London. Several physicians' offices that had previously been located in various other buildings in New London and some physician practices that had previously leased space at the Hospital were consolidated into the MOB. With respect to those group practices that moved from leased space at the Hospital to the MOB, the providers and other employees of those practices were employees of LMMG rather than the Hospital both before and after the move, and the support staff in those practices, such as the receptionists and medical assistants, were non-union employees when those practices were located at the Hospital. When the MOB opened, the Hospital relocated a mini-laboratory and blood drawing station that had previously been located elsewhere to the MOB. The lab at the MOB is staffed by two to three phlebotomists who are employees of the Hospital and who are included in the service and maintenance unit.

The MOB, which has three floors, is now one of LMMG's largest locations. It employs about 120 employees, including about fifty providers, or about one third of LMMG's 163-167 providers. The MOB provides the following outpatient services: primary care, walk-in care, obstetrics/gynecology, cardiology, neurology, psychiatry/behavioral medicine, sleep medicine, physiatry/pain management, general surgery, neurosurgery, hand surgery, rehabilitation medicine, the Joslin Diabetes Center, and lab services. The MOB is about .8 mile from the Hospital and is substantially closer to the Hospital than any of the other LMMG facilities.

LMMG maintains a single job description for its nurses, who are required to have graduated from an accredited nursing school and to be licensed either as an RN or an LPN. All LMMG nurses, regardless of their licensure, perform within the scope of practice of an LPN.⁹ In this regard, they work under the direction of physicians and, unlike RNs, are not permitted to diagnose or treat patients on their own.

The MOB employs three nurses who work as LPNs: Jarai Blevins works as a primary care nurse, Aida Melendez works at the MOB's Joslin Diabetes Center, and Lorna Joyner works at the MOB's cardiology practice one day a week.¹⁰ MOB LPNs work in an outpatient setting. They take vital signs and weights, record patients' conditions and reactions to treatments into medical records, instruct patients in the collection of samples and tests, communicate test results, and educate patients, for example, in how to use an inhaler or glucometer. They perform minor wound care. They respond to phone calls from patients about medical issues and triage patients to ensure patients with emergency situations are seen promptly, which involves reporting to and relaying instructions from a physician. They follow up with prescription refill requests, maintain exam rooms for necessary supplies, and assist providers with exams and procedures. Unlike the Hospital LPNs, MOB LPNs do not care for acutely ill patients. They do not do a head-to-toe assessment, do not listen to lung or bowel sounds, do not routinely administer medications, and do not suction airways or flag lab results. Their functions are similar to those of the LMMG medical assistants, except that they are also able to give immunizations and intramuscular and subcutaneous injections.

LPNs at the Hospital report to various nurse managers and/or assistant directors of nursing, who report to nursing directors, who report, in turn to the Hospital's Vice President of Patient Care Services. The Hospital's nurse managers, nursing directors, and vice president of patient care services have no supervisory responsibility for the LPNs who work at the MOB. The MOB LPNs report to LMMG Clinical Nurse Manager Kathryn Roccon, who directly supervises

⁹ The Act defines a professional employee in terms of the work performed rather than in terms of individual qualifications. *Avco Corp.*, 313 NLRB 1357 (1994). Accordingly, I find, in agreement with AFT, that all LMMG nurses who work in the capacity of LPNs, whether they are licensed as LPNs or as RNs, shall be treated as LPNs for purposes of unit placement, and I shall refer to all of these nurses as LPNs.

¹⁰ Joyner works at LMMG's cardiology practice in Waterford, Connecticut on the other days.

the nurses at all of the LMMG sites.¹¹ Roccon supervises no employees at the Hospital.

The Hospital operates on a 24/7 basis, and LPNs at the Hospital work the traditional three day, evening, and night nursing shifts. They are required to work every other weekend and every other holiday. LPNs at the Hospital are permitted to swap shifts with one another. The MOB, like all of the LMMG facilities, is generally open from about 8 a.m. to 5 p.m. The LPNs at the MOB work either from 8 a.m. to 4:30 p.m. or from 8:30 a.m. to 5 p.m. They do not work nights, weekends, or holidays.¹² They are never on call and are not permitted to swap shifts.

Apart from whatever contact may be occasioned by the shared parking lot or common training, there is no evidence of contact between LPNs at the MOB and the Hospital. LPNs at the Hospital and LPNs at the MOB never fill in for one another, nor is there evidence that any MOB LPNS have taken jobs at the Hospital or vice versa.¹³

B. Analysis and conclusion

A self-determination election is a proper method by which a union may add unrepresented employees to an existing unit. *Globe Machine & Stamping*; 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942). Such an election may be appropriate regardless of whether the employees in question may be found to be a separate appropriate unit. *Great Lakes Pipe Line Co.*, 92 NLRB 583, 584 (1950). The appropriateness of a self-determination election, sometimes referred to as an “*Armour-Globe*” election, depends on the extent to which the employees to be included share a community of interest with unit employees and on whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990); *Unisys Corporation*, 354 NLRB 825, 829 (2009).

As for the community-of-interest factors, in determining whether a petitioned-for multi-facility unit is appropriate, the Board considers (1) similarity in skills, duties, and working conditions, (2) functional integration, (3) employee

¹¹ Roccon testified that the primary care director, who heads the area where most of the LPNs work, the medical director, the office manager, and she might be involved in disciplinary issues involving nurses.

¹² The MOB has a walk-in clinic that is open till 7 p.m., but no LPNs work there.

¹³ There would never be any “transfers” between the two entities, in the sense that a Hospital employee who wishes to work at an LMMG facility must apply for a job there. LMMG has different hiring procedures for internal and external candidates, and a Hospital employee would be considered an external candidate.

contact and interchange, (4) centralized control of management and supervision, (5) geographic proximity, and (6) bargaining history. *Verizon Wireless*, 341 NLRB 483, 485 (2004); *Clarion Health Partners*, 344 NLRB 332, 334 (2005); *Laboratory Corp. of America Holdings*; 341 NLRB 1079, 1081-1082 (2004). It is irrelevant that some larger or smaller unit might also be appropriate or most appropriate, and the Petitioner's position regarding the scope of the unit is also a relevant consideration. *International Bedding Company*, 356 NLRB No. 168 (2011), slip op. at 2.

Assuming that the MOB nurses constitute an appropriate voting group, I find that they do not share a sufficient community of interest with the employees in the Hospital's LPN and technical unit to warrant an *Armour-Globe* election.¹⁴ In this regard, the duties and skills required of LPNs at an acute care hospital are very different from those who work in a physician's office setting. LPNs at the Hospital assess and treat acutely ill patients, which requires a different skill set from that required of LPNs who work in a doctor's office. The working conditions of the two groups are distinct, in that LPNs at the Hospital provide around-the-clock care, including weekends and holidays, while LPNs at the MOB work only Monday through Friday during the day. LPNs at the Hospital may swap shifts, while LMMG LPNs may not. *Visiting Nurses Association*, 324 NLRB 55, 55 (1997)(nurses at a visiting nurses agency have separate and distinct work functions, skills, and working conditions – work setting, dress, daily routine, and different hours – and perform more general functions rather than the specialized functions performed by nurses at an acute care hospital). The MOB and Hospital LPNs are separately supervised. Each entity has its own human resources department, with a separate hiring process. LPNs at the two sites never fill in for one another, there is no evidence of permanent interchange between the two settings, and there is very little evidence of any work-related contact between the two groups of nurses other than possible contact at occasional common training events or at a shared parking lot. While there is some functional integration between MOB and the Hospital, in that the Hospital provides certain services to LMMG pursuant to their Affiliated Services Agreement and Information Technology Agreement, and MOB physicians refer patients to the Hospital, each entity has its own electronic medical records system, to which only its employees have access.

In reaching this conclusion, I acknowledge that some factors militate in favor of finding a community of interest between the two groups. Thus, the MOB

¹⁴ In light of my finding that *Armour-Globe* elections would be inappropriate with respect to both the MOB LPNs and, as set forth below, with respect to the MOB service and maintenance employees, on the ground of lack of community of interest, I need not reach 1) the assertion of LMMG and the Hospital that both LMMG voting groups are inappropriate, as they carve out an arbitrary segment of LMMG employees that would fracture the LMMG; 2) the Hospital's assertion that the Hospital and LMMG are not a single employer; and 3) the Hospital's assertion that the addition of MOB employees to the Hospital units would be inappropriate under the Health Care Rulemaking.

and the Hospital are less than a mile apart. Because of the Affiliated Services Agreement, MOB and Hospital employees share many corporate-wide benefits and payroll administration. Several Hospital and MOB policies are identical or similar, albeit approved separately by each entity. I find that these factors are outweighed by the two key elements of separate supervision and lack of interchange, as well as by the other factors set forth above.

II. Appropriateness of a self-determination election for the MOB service and maintenance employees

A. Facts

The service and maintenance unit at the Hospital includes employees who perform various clerical functions similar to those of the petitioned-for MOB service and maintenance employees, albeit with different titles. Thus, scheduling coordinators in the Hospital's Radiology Department coordinate the scheduling of outpatient appointments and obtain documentation for insurance and pre-certification. Scheduling coordinators in the Operating Room answer phones, schedule surgeries, relay information to physicians and patients, and ensure that patient demographic information is correct. Receptionists at the Hospital Information Desk greet and direct patients and visitors, answer the phone, and call for wheelchair assistance. Registrars register patients prior to admission or testing, obtain demographic and financial information, process requisitions for diagnostic testing, process payments, prepare patient cards and ID bracelets, and assign beds. Administrative assistants provide administrative support such as word processing and scheduling for department managers. Patient services specialists greet patients, answer phones, collect demographic information from patients, verify insurance, collect insurance copays, and schedule appointments for patients. These positions generally require a high school diploma or equivalent, with a medical background preferred.

The service and maintenance unit at the Hospital also includes medical assistants, who are employed in the Hospital's Cancer Center, Occupational Health Department, and Employee Health Department. They take patients' vital signs, prepare patients, equipment, and rooms for procedures, collect and label blood and urine samples, prepare charts for physicians, and cover phones and the front desk when needed. The medical assistants must be graduates of an accredited medical assistant program.

Finally, the service and maintenance unit at the Hospital includes phlebotomists, two to three of whom staff the lab operated by the Hospital at the MOB.¹⁵

¹⁵ The lab also employs one individual who registers patients who come to the lab, but the record does not reveal whether that employee is employed by the Hospital or the MOB or whether that employee is a member of the existing bargaining unit.

The petitioned-for employees at the MOB include patient coordinators, patient navigators, and surgical schedulers,¹⁶ all of whom work within a group referred to as the Call Center or Patient Access Center. The MOB employs about 15 patient coordinators. Some of them work in the “Check In” area, where they greet patients, obtain demographic and insurance information from patients, collect insurance copays, scan insurance cards, answer the phones, and schedule patient appointments. The remaining patient coordinators work in another area out of view of patients. They answer the phones, direct calls to providers, and schedule appointments.

The MOB employs five or six patient care navigators. They coordinate patient referrals from primary care physicians to specialists as well as referrals for imaging and other medical tests. They obtain referral authorizations from physicians, verify insurance information to determine if a referral is needed, pre-certify certain tests as required by insurance companies, schedule appointments for testing, and notify the patients of appointments and any necessary instructions. This position requires an associate’s degree, with a bachelor’s degree preferred.

The MOB employs three surgical schedulers, who schedule patient surgeries upon receiving orders from physicians and physician assistants, which involves calling the facility where the surgery will take place to book it with that facility’s scheduler. They coordinate appointments for any pre-surgery testing, and obtain pre-certification for surgeries from insurance companies. This position requires a high school diploma or GED, with an associate’s degree in a medical field preferred.

The MOB employs about 31 medical assistants, who are assigned to particular practices, such as primary care, cardiology, and obstetrics/gynecology. The medical assistants bring patients from the waiting area to an exam room, take their vital signs, update information such as the patient’s family history and medication list, document the reason for the patient’s visit, and prepare the patient’s chart and the room for the physician. They collect urine, blood, or tissue samples as ordered. After the exam, medical assistants at the MOB check out the patient by printing out a clinical summary of the visit, answering medical questions, and checking on prescription refills. They are required to be Certified Medical Assistants. A high school diploma is required and an associate’s or bachelor’s degree is preferred.

The employees in the existing service and maintenance unit at the Hospital report to managers in their respective departments at the Hospital, who

¹⁶ This position is referred to as “surgical scheduler” in organizational charts and as “surgical coordinator” in a job description, but it appears that the terms are interchangeable. The parties refer to the position as “surgical scheduler.”

report to higher level Hospital directors or managers, none of whom supervise any employees at the MOB. The patient coordinators, patient care navigators, and surgical coordinators at the MOB all report to a supervisor at the MOB, who reports to the Call Center manager at the MOB, who reports to the director of LMMG's call center, central business office and medical records group. Medical assistants at the MOB report to Clinical Nurse Manager Kate Roccon with respect to clinical issues and to the practice manager for their department with respect to administrative matters, such as time off requests. None of these MOB managers supervises any employees at the Hospital.

The Hospital, as noted above, operates around the clock, 365 days a year. The record does not reveal the particular hours of the employees in the service and maintenance unit at the Hospital; some but not all of the positions would appear to require off-hours coverage. The hours for the MOB employees are generally from about 8 to 4:30 or 8:30 to 5, Monday through Friday, with some variation. Some medical assistants at the MOB work after hours at a walk-in clinic that is open until 7 p.m.

With respect to contact, the phlebotomists at the MOB who are Hospital employees and bargaining unit members share a break room and restrooms with the MOB staff. MOB patient coordinator Kathryn Lavoie testified about one instance two weeks prior to the hearing in which she had work-related contact with a phlebotomist at the MOB regarding a doctor's order for a patient's urine culture, but the record does not reveal how often such contact occurs.

As for temporary interchange, medical assistants, patient care coordinators, patient care navigators, and surgical coordinators at the MOB never fill in for employees at the Hospital, nor do the medical assistants or other service and maintenance employees employed by the Hospital ever fill in at the MOB.

With respect to permanent interchange, MOB patient care navigator Donna Jalbert and MOB medical assistants Page Gingras and Maritza Shaffer were previously Hospital employees before they applied for their current positions at the MOB.¹⁷

B. Analysis and conclusion

I find that petitioned-for MOB employees do not share a sufficient community of interest with the Hospital's service and maintenance employees to justify a self-determination election. While the duties and skills of the two groups of employees are similar, they are separately supervised, and there are separate human resources departments for the two entities. There is no temporary interchange between the two groups, and there has been only an insignificant

¹⁷ The record does not reveal what positions they held at the Hospital.

amount of permanent interchange.¹⁸ While there is evidence of some functional integration between the MOB and the Hospital, MOB and Hospital employees work with separate electronic medical records systems. Although the MOB employees share a break room with the Hospital phlebotomists who work at the MOB, there is no evidence of regular or significant work-related contact with them. There is no evidence of any contact whatsoever between the MOB employees and the service and maintenance employees who work at the Hospital, apart from sharing a parking lot and some occasional common training events.

As was the case with the nurses' unit, there are some similar considerations that support AFT's position, such as geographic proximity, corporate-wide benefits and payroll administration, similar policies, and some evidence of functional integration between the two entities. Further, the duties and skills of the petitioned-for MOB employees are virtually the same as those in similar positions in the service and maintenance unit at the Hospital. On balance, however, I find that the completely separate supervision, lack of temporary or permanent interchange, and lack of contact support a finding that the community of interest between the two groups is insufficient to warrant a self-determination election.

III. Appropriateness of stand-alone MOB unit

A. Facts

As noted above, the MOB is one of 13 "doctor's office" locations operated by LMMG, which are, with one exception, located in southeastern Connecticut and southwestern Rhode Island. The three largest LMMG facilities are the MOB, the Stonington Medical Center in Pawcatuck, Connecticut, and one of LMMG's Westerly, Rhode Island sites. The drive from the MOB to Stonington takes about 20 minutes, from the MOB to Westerly about 30 minutes, and from Stonington to Westerly about 10 minutes. I take administrative notice that the distance from the MOB to Pawcatuck and Westerly is about 16-17 miles, that the distance from the MOB to the closest site in Groton is four miles, and that the distance from the MOB to the remaining sites, with the possible exception of Fisher Island, is somewhere between those two distances.

As noted above, the MOB is one of LMMG's largest locations. It has three floors and employs about 120 employees, including about fifty providers, or about one third of LMMG's 163-167 providers. The MOB provides the following

¹⁸ Assuming that Jalbert, Gingras, and Shaffer worked in bargaining unit positions at the Hospital before they were hired at the MOB, which is unclear from the record, only three out of the approximately 55 petitioned-for MOB employees have worked in both locations. There is no evidence that any MOB employees have taken bargaining unit positions at the Hospital.

outpatient services: primary and walk-in care, obstetrics/gynecology, cardiology, neurology, psychiatry/behavioral medicine, sleep medicine, physiatry/pain management, general surgery, neurosurgery, hand surgery, rehabilitation medicine, the Joslin Diabetes Center, and lab services.

Nine of the other LMMG facilities – Old Lyme, Mystic, Niantic, Uncasville, Groton, Ledyard, two of the Westerly sites, and Fisher Island – offer only primary care services. The Waterford, Connecticut facility provides only cardiology services. The Stonington Medical Center in Pawcatuck, Connecticut and one of the Westerly sites offer both primary care and a variety of specialty care services in fields such as dermatology, pain management, neurology, general surgery, orthopedic surgery, and obstetrics and gynecology.

As noted above, Dr. Chris Lehrach is the President of LMMG. Larry Nolan, who reports to Lehrach, is the Director of Primary Care Operations for all of the LMMG sites that provide primary care services, and Susan Vinchesi, who also reports to Lehrach, is the Director of Operations for specialty and surgical services for all of the sites that offer those services. Below the director level, the MOB has a different practice manager for each of its three floors. In other locations, there is one practice manager for the entire facility or for two facilities.¹⁹

Uniform employment policies apply to all LMMG locations, which are overseen by a single human resources director. LMMG employees at all locations are eligible to receive the same corporate-wide benefits.

LMMG employs nine nurses in the LPN classification. Two LPNs work exclusively at the MOB, and a third divides her time between the MOB and Waterford. There is one LPN at each facility in Mystic, Groton, Old Lyme, and Niantic, and there are two LPNs in Stonington. All of them perform the same duties, and regardless of location, they all report to Clinical Manager Kathryn Roccon.²⁰

¹⁹ In its post-hearing brief, AFT relies on an LMMG job posting, Petitioner Exhibit 6, that purports to summarize the duties of its managers and supervisors, which AFT introduced through LMMG supervisor Karyn Eckert. When LMMG objected that Eckert was not in a position to testify about the document's accuracy with respect to the duties of managers, AFT offered it only for those portions that relate to the supervisor position. Accordingly, and in the absence of testimony by any LMMG managers about its accuracy, I decline to rely on this exhibit as evidence of the authority of LMMG's managers.

²⁰ Roccon visits up to four locations per week to supervise LPNs, medical assistants and patient care navigators. She handles clinical and performance-type issues for those employees, but other managers at the various locations may be involved in disciplinary issues.

LMMG employs about 82 medical assistants, including about 31 who work at the MOB.²¹ They all perform the same function, regardless of location. For clinical issues, medical assistants at all locations report to Roccon, either directly or through an intermediate supervisor. For matters such as time off requests, they report to the practice manager for their department.

LMMG employs about 55 patient coordinators, 15 of whom work at the MOB.²² LMMG employs about 10 patient care navigators, six of whom work at the MOB. LMMG employs about three surgical schedulers, all of whom appear to work at the MOB. Employees in these positions perform the same duties at all locations. Patient coordinators, patient care navigators, and surgical schedulers at the MOB all report to Call Center Supervisor Karyn Eckert.²³ Eckert's supervisory duties include handling the Call Center employees' requests for time off and timekeeping issues, reviewing overtime reports and adjusting staffing to minimize overtime, and analyzing and improving daily staffing. Eckert reports to MOB Call Center manager Lynette Whittle, who reports, in turn, to Kathy Donis, the Director of LMMG's business office, who reports, in turn, to Lehrach. It appears that patient coordinators and patient care navigators at the other locations report to an LMMG manager at their location.

LMMG employs six individuals in the position of "float." These employees are sent to any of the LMMG facilities as needed, including the MOB, to fill in for medical assistants and for patient coordinators who are absent. All of them are per diem employees.²⁴

²¹ I have estimated the numbers of employees in each position based on an organizational chart submitted into evidence, but the actual total number may be a little higher, as the organizational charts did not include LMMG locations in Ledyard or Fisher Island.

²² At least two employees work in a combined medical assistant/patient coordinator role.

²³ Roccon oversees some of the patient care navigators at the various locations with respect to clinical matters, such as making sure they send the correct clinical documentation, such as test results, to the specialists to whom patients are referred.

²⁴ It appears from Board Exhibit 2 that AFT seeks to include per diem employees in the unit to the degree they average at least four hours per week, with the exception that it seeks to include LPNs to the degree that they work an average of eight hours per week. In the absence of any evidence of a basis for deviating from the Board's standard formula for determining the regularity of employment of part-time employees, I shall use the standard formula, i.e., employees who regularly averaged four hours or more of work per week during the quarter preceding the eligibility date shall be included in the unit. *Trump Taj Mahal Casino*, 306 NLRB 294, 295 (1992); *Sister of Mercy Health Corp.*, 298 NLRB 483 (1990)

Apart from the designated floats, patient coordinator Dorothy Rockwell, who works at the Waterford cardiology practice, has filled in at the MOB at least a half dozen times, the last time within a month prior to the hearing. Patient coordinator Luz Garcia, who works in Stonington, has also filled in at the MOB, the last time in June 2014 for several days. Kathryn Donis, the director of the business office, testified that medical assistants and patient coordinators from Mystic, Groton, and Westerly may float to other locations, including the MOB, but she gave no specifics. Roccon testified that LPNs have floated to cover for one another, but not routinely, and she gave no specific examples. None of the patient coordinators, patient care navigators, or surgical schedulers who work at the MOB fill in for their counterparts at other LMMG facilities.

There is some evidence that a few of the employees at issue are regularly assigned to work at more than one location. Thus, as noted above, LPN Lorna Joyner works four days per week at the cardiology practice in Waterford and one day per week at the MOB. LPN Denise Arnold works half-time in Stonington and half-time at LMMG's Infectious Disease practice, which is located at the Hospital. Patient care navigator Allison Swatts works physically at the Niantic facility but also performs patient care navigator work at the MOB. The Mystic and Groton offices share the services of patient care navigator Linda Walker.

In some instances, certain physicians work at more than one location, and their medical assistants travel with them when they do. Thus, medical assistant Sarah Siefert follows two cardiologists who divide their time between Waterford and the MOB. Two obstetrician/gynecologists from Westerly travel to the MOB once a week and bring along their medical assistants, Julie Tryon and one other. Two physicians in the Behavioral Health practice travel to five primary locations per week - Niantic, Ledyard, Groton, the MOB, and Stonington – and their two medical assistants travel with them.

There is no record evidence of any permanent transfers between the MOB and the other LMMG locations, nor is there any evidence of permanent transfers between LMMG locations other than the MOB.

LMMG job openings are posted at all LMMG locations. When the MOB opened in April 2014, most of its employees were relocated there because the practices they worked for were relocated to the MOB. However, two employees transferred there from other LMMG patient care locations: MOB patient coordinator Sheryl Sealy transferred from Waterford, and patient care coordinator Julie George transferred from Old Lyme. Sometime after the Joslin Diabetes Center moved to the MOB, LPN Aida Melendez transferred there from her job as a primary care nurse in Old Lyme.

All LMMG facilities are open from about 8 a.m. to 5 p.m., Monday through Friday, and both the MOB and Stonington have walk-in clinics that are open until 7 p.m. Employees at all locations work similar hours.

In addition to her role as an MOB supervisor, Karyn Eckert also serves as a trainer for new hires at all LMMG facilities. She trains medical assistants and other types of employees in LMMG's computerized registration and scheduling system. The training takes place at the MOB for four half days, and new hires from various LMMG facilities are trained together.

LMMG maintains a business office/headquarters at a separate location in New London. Employees in the business office bill insurance companies for services, collect patient payments, and maintain electronic medical records for all of LMMG's patient care facilities.²⁵

At the hearing, AFT stipulated that, prior to the opening of the MOB, AFT attempted to organize LMMG's Connecticut facilities as a whole from time to time.

B. Analysis and conclusion

It is well settled that a petitioned-for single facility unit is presumptively appropriate and that the presumption applies with equal force in the healthcare industry. *California Pacific Medical Center*, 357 NLRB No. 21, slip op. at 1 (2011). The party opposing a single-facility unit has the heavy burden of overcoming the presumption and, in order to rebut it, must demonstrate integration so substantial as to negate the separate identity of the single facility. *Mercy Sacramento Hospital*, 344 NLRB 790, 790 (2005). The Board examines such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; the degree of employee interchange, transfer, and contact; functional integration; similarity of skills, functions, and working conditions; geographic proximity; and bargaining history. *Id.*

I find that LMMG has failed to meet its heavy burden of demonstrating that the integration among the LMMG facilities is so substantial as to negate the separate identity of the MOB. With the exception of the LPNs, who constitute only a small part of the unit, the petitioned-for employees at the MOB and at the other locations report to immediate supervisors at their own location. Thus, the MOB's patient care coordinators, patient care navigators and surgical schedulers report to a Call Center supervisor and manager at the MOB. While the medical assistants report to LMMG-wide Clinical Manager Roccon for clinical matters, some of them do so through an intermediate supervisor, and all of them report to

²⁵ AFT does not seek to represent any employees in the business office/headquarters, and it does not appear that any party contends that they should be included. Thus, I have not relied on evidence that two business office employees have filled in as patient coordinators at the MOB or that one business office employee transferred to a patient coordinator position at the MOB.

a practice manager at their location for personnel matters such as time-off requests.

The amount of temporary interchange is not significant. Thus, there are six floats, two patient coordinators from other sites who have occasionally filled in at the MOB, two employees who are regularly assigned to work both at the MOB and another location, and five medical assistants who cover multiple locations, including the MOB, when they travel with their physicians. Given the size of the unit - 57 or so employees in the petitioned-for unit at the MOB and approximately 165 employees in the proposed multi-unit location – this amount of temporary interchange is not sufficient to defeat the appropriateness of a unit limited to the MOB. I note that no MOB employees ever fill in for their counterparts at other locations. There have been only three permanent transfers from other LMMG sites to the MOB, and no transfers from the MOB to other sites. Apart from the contact occasioned by the temporary interchange above, the only other evidence of contact is that which occurs at training for new hires, a one-time event for employees and only at the outset of their employment.

While it is true that employees in the petitioned-for classifications share the same duties, qualifications, and working conditions, and that there is centralized control over labor relations by a common human resources department and common employment policies for all locations, I find those factors to be outweighed by the separate supervision at the MOB and lack of substantial interchange and contact. In this regard, the Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. *Mercy Sacramento Hospital*, supra at 790. See also, *California Pacific Medical Center*, supra, slip op. at 2 (existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support the single location presumption.)

The geographic distance between the MOB and the other LMMG locations, ranging from 4 to 17 miles, also supports the appropriateness of a separate unit. *Mercy Sacramento Hospital*, supra at 791 (approving separate unit where other hospitals were 12 to 20 miles away from the petitioned-for hospital). Finally, there is no determinative bargaining history. While AFT previously sought to organize all LMMG locations in Connecticut, that was before the MOB had opened, and an attempt to organize a larger unit does not preclude a finding that a smaller unit might also be appropriate.

St. Luke's Health System, 340 NLRB 1171 (2003), cited by LMMG, does not warrant a different result. In that case, the Board found that the employer had rebutted the single-facility presumption in a case involving a petitioned-for unit of employees located at one of the employer's 16 clinic locations. There, unlike here, there was evidence of substantially greater temporary and permanent interchange. Thus, 15 to 20 percent of employees in all job

classifications worked forced “floats” to other locations in any given year. Further, within the employer’s proposed unit of 121 employees at 16 locations, there had been 29 permanent transfers throughout the system in a two-year period.

Accordingly, I find that 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:

All full-time, regular part-time, and per diem LPNs, medical assistants, patient coordinators, patient care navigators, and surgical schedulers employed by the Lawrence & Memorial Physicians Association d/b/a Lawrence +Memorial Medical Group at its location at the Medical Office Building in New London, Connecticut, but excluding all other employees, business office employees, RN case managers, advance practice registered nurses, professional employees, guards and supervisors 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. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **AFT CONNECTICUT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO**. The date, time and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which 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 if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (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.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining whether there is an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **October 14, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,²⁶ by mail, or by facsimile transmission at 617-565-6725. To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of

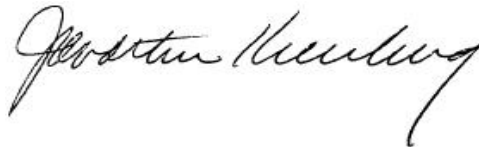
²⁶ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **October 20, 2014**. The request may be filed electronically through the Agency's website, www.nlr.gov, but may not be filed by facsimile.

DATED: October 6, 2014



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