

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

PATHWAY VET ALLIANCE, LLC

Employer

Case 03-RC-281879

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS

OCTOBER 8, 2021

Petitioner

PATHWAY'S POST HEARING BRIEF

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I. INTRODUCTION

On August 25, 2021, the International Association of Machinists and Aerospace Workers (“Union” or “Petitioner”) filed a petition seeking to represent all full-time and regular part-time employees at Pathway Vet Alliance’s (“Pathway” or “Employer”) veterinary hospital at 825 White Spruce Boulevard in Rochester, NY. This veterinary hospital is known as Veterinary Specialists & Emergency Services (“VSES”). VSES is the only location that Petitioner is seeking to organize. However, there are several other smaller hospitals (as well as a laboratory and crematorium) within the same group as VSES—all located in the Rochester area—whose employees the Union is not seeking to represent (together with VSES, referred to as “the Monroe Group”).

This approach fractures the most appropriate bargaining unit, which is a multi-facility bargaining unit. The employees at VSES share a substantial community of interest with other employees in the Rochester area. The record in this matter, comprised of both testimony and voluminous documentation, shows that the employees at VSES and at the excluded locations share the same and/or similar skills, duties and working conditions, are functionally integrated with respect to clinical and non-clinical operations, have substantial interchange amongst locations in the Rochester area, and are subject to centralized control of management and supervision.

Based on the evidence, the Region should order that the proper bargaining unit for this petition must include all full-time and part-time employees of the hospitals within the Monroe Group, excluding managers, supervisors, veterinarians and guards.

II. FACTUAL BACKGROUND

A. Pathway Vet Alliance and the Ecosystem Model

Pathway is a company that acquires and manages veterinary practices. Hearing Transcript (“TR”), p. 20. It manages veterinary practices by having “support teams that are in the field supporting veterinarian hospitals, as well as back-office functions, [such as] legal, marketing,

people operations, finance, . . . that would support and prop up the business . . . in a centralized fashion so that veterinarians and veterinary staff can do what they do best, and that's practice medicine and support pets.” *Id.* Pathway currently has roughly 10,000 employees with locations in 37 states. TR, p. 21. Pathway has approximately 450 practices and spans geographically from Hawaii to Maine. *Id.*, p. 22.

Pathway strives to have its practices operate under what it describes as the ecosystem model, which is “a tight geographic cluster of hospitals that function together and operate as one unit.” TR, p. 23. The Chief Operating Officer for Pathway described this model as a “hub and spoke effect,” in that the object of this model “is to start with a multi-specialty ER facility in the center of a geographic area that has the ability to accept referrals from general practices that are circular or surrounding those centralized locations.” *Id.* One of the biggest advantages of this model is to ensure that the consumer has access to points of care from entry level care at a general practice all the way to the highest specialties that might be found at an emergency hospital. *Id.*, p. 24. In this way the consumer can experience the system “in all facets of care.” *Id.*

In addition to providing excellent and efficient care for the consumer, another purpose of the ecosystem model is to have a team-based approach. TR, p. 30. Through this approach the Director of Ecosystem (“DOE”) works closely with the practice managers for the hospitals. Further, there are many situations, including with the Monroe Group, where practice managers manage multiple hospitals within a system and/or veterinary technicians rotate across multiple hospitals to service customers. *Id.*, p. 31. Doctors and technicians are shared across multiple hospitals based on their willingness and ability to do so. TR, p. 45. This is implemented “for two reasons, one, there’s a shortage; number two, the jobs that they do are very similar” *Id.*¹

¹ Pathway has developed a program called Jobs Unleashed, which helps the hospitals coordinate filling in open shifts and enabling staff at various hospitals to fill in at other hospitals on a more organized basis. TR, p. 45. Thus, when

Another aim of this model is to ensure that pets can be easily referred from one location to another. *Id.*, p. 43.

The DOE is the point of contact for the hospitals. TR, p. 60. The DOE helps manage the personnel, the recruiting and the marketing engagement and support. *Id.*, p. 61. The DOE's direct points of contact are the practice managers at the hospitals in the system and the medical directors at each location. The DOE has weekly, if not daily, interaction with all of the managers of each facility. *Id.* In addition, the DOE has responsibility for the fiscal management of each location, including the profits and losses of each. *Id.*, p. 62; *see* Employer Exhibit ("ER Ex.") 2.

The practice managers at each location are responsible for the day-to-day operation of the hospital, including managing a team of employees. *See* ER Ex. 3. Each practice for the most part has the following employees: customer relations professionals; veterinarian assistants; licensed veterinarian technicians; kennel professionals; and veterinarians. TR, p. 65.

B. Acquisition of the Monroe Group

Pathway found the Monroe Group to be a very attractive target to acquire based on the fact that it was a tightly geographically clustered business that had the ability to refer and share team members. TR, p. 67. Indeed, the hospitals within the Monroe Group shared customer relations professionals, technicians and in some cases doctors across the locations, as well as referred customers to other locations. *Id.* In addition, the Monroe Group had a laboratory system integrated within the business that served all of the facilities, as well as a crematorium, enabling them to partner with pet owners "from cradle to grave." *Id.*

an opportunity to fill shifts presents, the hospital can post it on this platform, and it automatically communicates with various resources, including existing employees, employees from other hospitals who have filled in in the past and relief agencies. *Id.*, p. 47. While this program is not currently in place for the Monroe Group, it is in place in many other systems and will be implemented at all locations, including the Monroe Group, eventually. *Id.*, p. 48.

Importantly, Pathway found that the Monroe Group was an intact and mature ecosystem. TR, p. 72. The Monroe Group’s operations aligned with what Pathway was trying to achieve with its ecosystem model in that the hospitals shared team members, had internal referrals and operated an internal laboratory and crematorium. *Id.* Thus, Pathway made the decision to acquire the Monroe Group and purchased the hospitals within the system under one federal EIN number. *Id.*, p. 83.

C. Hospitals within the Monroe Group

There are sixteen hospitals in the Monroe Group, along with a laboratory, a crematorium and a rehabilitation facility. They are geographically tightly clustered in the Rochester area. Each hospital has a practice manager, though some practice managers cover more than one hospital. The list of facilities within the Monroe Group, their practice managers and the distance between each facility and VSES is as follows:

<u>Hospital</u>	<u>Practice Manager</u>	<u>Miles from VSES</u>
Veterinary Specialists & Emergency Services	Andrea Battaglia – Hospital Administrator	
825 White Spruce Blvd., Rochester, NY 14623		
Veterinary Laboratory of Rochester	Paula Hilling	0
825 White Spruce Blvd., Rochester, NY 14623		
Animal Hospital Of Pittsford	Sheila Casler	4.6 miles
2816 Monroe Avenue, Rochester, NY 14618		
Animal Junction Veterinary Clinic	Tess Bischooping	19.8 miles
5380 Lincoln Road, Ontario NY 14519		
Bayview Animal Hospital	Jeannine Natale	11.5 miles
1217 Bay Road, Suite 1A, Webster, NY 14580		
Canandaigua Veterinary Hospital	Shawn Bauer	31.5 miles

4410 County Rd 50, Canandaigua, NY 14424		
Cats & Critters	Gina DeRosia	4.8 miles
32 Somerton Street, Rochester, NY 14607		
Chili Animal Care	Maria Pirrami	8.6 miles
3388 Chili Avenue, Rochester, NY 14624		
Companion Animal Hospital	Sheila Casler	1.7 miles
2800 West Henrietta Road, Rochester, NY 14623		
Fairview Veterinary Hospital	Gina DeRosia	10.2 miles
6735 Pittsford-Palmyra Road, Fairport, NY 1445		
Greece Animal Hospital	Kristy Throumoulos	13.7 miles
3180 Latta Road, Suite 800, Rochester, NY 14612		
Irondequoit Animal Hospital	Jeannine Natale	7.9 miles
2150 Hudson Avenue, Rochester, NY 14617		
Penfield Veterinary Hospital	Maria Pirrami	8.7 miles
1672 Penfield Road, Rochester, NY 14625		
Perinton Veterinary Hospital	Kathy Sercu	11.0 miles
11 LaSalle Parkway, Victor, NY 14564		
Roc Pet Rehab	Corey Hafler	.2 miles
580 White Spruce Blvd., Suite #1, Rochester, NY 14623		
Rochester Community Animal Clinic (RCAC)	Cyndy Dewey	6.1 miles
985 Bay Street, Rochester, NY 14609		
Stone Ridge Veterinary Hospital	Shawn Bauer	9.5 miles
550 Center Place Drive, Rochester, NY 14615		

Suburban Animal Hospital	Tracy Conderman	2.2 miles
2495 East Henrietta Road, Rochester, NY 14623		
Forever Friends Crematorium	Dustin Novitzki	11.5 miles
888 Turk Hill Road, Fairport, NY 14450		

There is also a medical director at each facility, each of whom reports to the Regional Medical Director, Dr. Whilen, who was the former managing director/Chief Executive Officer of Monroe Veterinary Associates. *See* ER Ex. 30; TR, pp. 241, 245. The practice managers for each location report directly to the DOE, Sheryl Valente. TR, p. 143. In addition, there is a supervisor named Dustin Novitzki who also reports to Ms. Valente, who oversees the couriers that provide couriering services to the lab, the crematorium or to the various hospitals in the Monroe Group. *Id.*, p. 142. Mr. Novitzki also oversees the crematorium, as well as the environmental services provided at VSES.

The following positions work at each of the hospitals, including VSES: client service representative (“CSR”); animal care assistant (“ACA”); licensed veterinarian technician (“LVT”); and doctors. TR, pp. 299; 314-315. Some of the hospitals also have kennel attendants where boarding is available. CSRs answer the phones, schedule appointments for clients, attempt to answer clients’ questions when possible and/or refer to a technician or doctor to speak with a client on a medical question. The ACAs assist the doctors and LVTs in anything from wellness visits to placing an IV catheter, including by holding the animal to assist an LVT or doctor. *Id.*, pp. 300-301. An LVT will “really do anything and everything the doctor needs,” including anesthesia, radiology, client education, filling medication, lab testing and pain management. TR, p. 299. They also will assist the doctor in surgery by, *inter alia*, doing anesthesia, anesthesia monitoring, intubations, IV catheter placing, CPR and administering medications. *Id.* Some hospitals have

kennel attendants, as well, who will feed and walk the patients and ensure their cages are clean. *Id.*, p. 301. Finally, VSES has coordinators who assist with the coordination of scheduling appointments and also assist in providing invoices to customers. *Id.*, p. 96.

The functions of CSRs, ASAs and LVTs at VSES are very similar to their functions at the general practices. TR, p. 302-303. The medications administered at VSES may differ at times from those utilized at the general practices, but an LVT can easily ask for help in administering an unfamiliar medication. *Id.*, p. 303.

As set forth above, there is a rehabilitation facility utilized by the hospitals in the Monroe Group system. Corey Halfler supervises the rehabilitation facility, as well as the CSRs at VSES. TR, p. 141. The rehabilitation facility is located across the parking lot from VSES.

The types of services offered generally at the general practices include the following: wellness, vaccinations, surgeries, spays and neuters, sick visits, radiographs and urgent care. TR, p. 144. VSES generally provides the following services: urgent care, surgeries, emergency care and advanced imaging. *Id.*² Urgent care, located within the Animal Hospital of Pittsford (“AHOP”), offers “a step down from [VSES],” in that they treat anything that would not require hospitalization during its hours of operation, which are on the weekends and holidays, when the other general practices are closed. *Id.*, p. 176.

The type of equipment available at the general practices is similar for each practice and includes x-ray machines, ultrasound machines, anesthesia monitoring machines, monitoring machines for blood pressure, lasers and surgical equipment. TR, p. 176; p. 303. VSES also has the same equipment, as well as CT machines and MRI machines. *Id.*, p. 101.

² A detailed list of services offered at each hospital in the Monroe Group is contained in ER Ex. 79.

D. Interchange Among Monroe Group Hospitals

1. Meetings Among Managers

The record evidenced a significant amount of collaboration among the hospitals within the Monroe Group system. First, the DOE meets with the practice managers for each hospital, including VSES, on a weekly basis. TR, p. 147. During those meetings they discuss workflow changes among the hospitals, any changes in processes and procedures, issues involved with the transition to Pathway ownership, as well as updates from each hospital that may potentially affect other hospitals. *Id.* They also specifically discuss updates for VSES, including volume and workflow there, as well as any updates to the urgent care facility located at AHOP. *Id.*, p. 148; *see also* ER Exhs. 20-27 (meeting minutes from DOE meetings with practice managers). In addition, the practice managers, including the hospital administrator at VSES, meet with the medical directors from each hospital on a monthly basis. TR, p. 205; ER Exhs. 28-29.

2. Sharing of Staff

A few times per week, the practice managers at VSES and the general practices, including Ms. Battaglia and Mr. Hafler at VSES, will reach out to the other practice managers to ask for help in filling open shifts. TR, p. 184. For instance, the managers may e-mail each other to ask if another manager has a staff member that could fill a shift, or they may send out a message via Microsoft Teams to do the same. *See* ER Ex. 36. Many staff members among the various hospitals will pick up shifts at other hospitals, including VSES, due to either known or last-minute staff shortages. TR, pp. 183, 304, 306, 320.

In addition, the employees at VSES and the general practices—including LVTs, CSRs and ACAs—have a holiday commitment to work at VSES or Urgent Care each year as follows: (1) Full-time employees at a general practice with 1 to 3 years of service within the Monroe Group are required to work 2 holidays per year; (2) Full-time employees at a general practice with 3 to 5

year of service within the Monroe Group are required to work 1 holiday per year; (3) Full-time employees at a general practice with 5 or more years of service within the Monroe Group are required to work 1 holiday every other year; and (4) Full-time employees at VSES are required to work 3 holidays per year. TR, p. 593; ER Ex. 81. There are similar requirements for part-time employees, as well. *Id.*

Christine West, the Staffing and Workload Administrator—and an LVT—at VSES schedules the holidays for the employees at both VSES and Urgent Care. TR, p. 594. Ms. West first schedules the VSES employees for their required holidays. Then, once their commitments are fulfilled, Ms. West fills in the remaining holidays with the general practice employees. *Id.*, p. 594-95. Ms. West coordinates with Sheila Casler, the practice manager for Urgent Care, to schedule the holiday commitments at Urgent Care, as well. *Id.*, pp. 594; 183.

When non-VSES employees fill in at VSES for a holiday shift, they are provided with training prior to doing so. During the training, employees are educated on where to find supplies and/or equipment at VSES, as well as their triaging system and their electronic treatment sheet program called Instinct. TR, p.155; TR, p. 107; ER Ex. 43. Thus, they are not trained on any technical, medical skills prior to filling in for a shift at VSES. All LVTs and ACAs are trained by Pam Pavia, and CSRs are trained by Sarah Midden. TR, p. 597.

Ms. West also schedules open shifts that become available at VSES on a last-minute basis by first reaching out to VSES staff and then subsequently reaching out to general practice staff that enjoy picking up shifts at VSES. TR, p. 598. If she cannot fill the shift by taking those steps, she will then reach out to the practice managers for the general practices to see if they have any volunteers to fill the shifts. *Id.*

The Employer prepared data regarding shift coverage across the Monroe Group hospitals. From January 1, 2019 through May 14, 2021, there were 933 instances in which a non-VSES employee worked at VSES.³ *See* ER Ex. 10. Unfortunately, the legacy system was unable to capture detail regarding how many hours were worked and instead shows only the number of times an employee was *paid* while working at a different hospital. Thus, the instances could reflect one hour, 16 hours or 40 hours. TR, p. 363. In addition, in that same time frame, there were 529 instances in which a VSES employee worked at another hospital within the Monroe Group. ER Ex. 10. Finally, also in that same time frame, there were 2,750 instances in which an employee worked at his/her non-permanent location, other than VSES.⁴ *Id.* The Employer also provided data from May 15, 2021 through September 15, 2021 regarding shifts being covered at the different hospitals, including non-VSES employees working at VSES, as well as VSES employees working at the general practices. The data showed that this type of shift coverage occurred 442 times in that time period.⁵ ER Ex. 78; TR, pp. 272-73.

In addition, during COVID, there were approximately 70 employees who were furloughed for varying periods of time, as well as employees whose hours were reduced as opposed to being furloughed. TR, p. 344. As a result, some staff were reassigned to other hospitals to ensure coverage and/or to provide additional hours of employment. *Id.*

³ This number excludes administration employees working at VSES, as they are not included within the petitioned-for bargaining unit.

⁴ There is a large number of employees from AHOP who picked up shifts at Urgent Care. This number is a bit misleading because AHOP and Urgent Care, while separate businesses, are located in the same facility, and Urgent Care prefers to utilize AHOP staff there. However, there are instances where non-AHOP employees picked up shifts at Urgent Care, as well. TR, p. 364.

⁵ There were not many instances during this limited time period where VSES employees covered shifts at the general practices. This is due to the fact that there has been high volume at VSES, along with staffing shortages. TR, p. 369. Thus, VSES employees can pick up any additional shifts at VSES without having to seek additional shifts elsewhere. *Id.*

Further, Monroe Group employees often transfer from one hospital to another, including to and from VSES, as well as to and from the general practices. The Employer provided data for all permanent transfers of employees from VSES to the general practices or from the general practices to VSES between January 1, 2019 and May 14, 2021, as well as all permanent transfers of employees between and among the general practices. ER Exhs. 8, 9. For that time period, there were 39 transfers between the general practices and VSES, and there were 33 transfers between and among the general practices. *Id.*; TR, p. 361. The Employer also presented data regarding transfers between May 15, 2021 and September 15, 2021. During this time period there were twelve transfers between and among the Monroe Group hospitals, including VSES. ER Ex. 77.

3. Duties of Non-VSES Employees Covering Shifts at VSES

There are four different roles available for an LVT working on a holiday at VSES: intermediate care (such as post-operative, stable patient care); intensive care unit (“ICU”); receiving; or float positions. TR, p. 595. Non-VSES employees are typically placed into either an intermediate care role or a receiving role. Ms. West tries not to place them in the ICU, as working in the ICU requires intensive training that VSES does not have sufficient time to provide prior to a holiday shift. While “any New York State licensed technician can work [in the] ICU, it . . . requires that [VSES] spend a lot of time on training And [VSES does not] have the time” to conduct the training. *Id.* However, there are also VSES employees that Ms. West will not assign to the ICU because they have not received the appropriate training either. *Id.*, p. 597.

On a regular, non-holiday shift, non-VSES LVTs perform various duties, including administering anesthesia, administering heavy sedation, taking radiographs and/or administering medications or IV fluids. TR, p. 600. Ms. West would not assign a non-VSES employee to take on a surgical case at VSES because that would require extensive training to be able to do so, which VSES cannot provide on short notice. *Id.* Similarly, there are also VSES employees that Ms. West

would not assign to a surgical case for the very same reason. *Id.* Nevertheless, non-VSES LVTs are still able to assist with non-surgical emergency procedures by, *inter alia*, getting blood work, placing catheters, monitoring general anesthesia or administering heavy sedation. *Id.*, pp. 600-01.

4. Sharing of Supplies and Equipment

There is an inventory manual that guides all of the Monroe Group hospitals with respect to handling inventory, including ordering supplies. ER Ex. 75. Prior to the Pathway acquisition, there was a centrally-located stockroom to which all supplies would be ordered. Currently, the hospitals each order their own supplies but do so through the same Pathway program called Vetcove. TR, p. 209. Thus, the hospitals are taking advantage of Pathway's central ordering system.

The hospitals will on occasion share supplies when one hospital has an over-abundance of supplies or medication that another hospital needs. *Id.*, pp. 116, 210. For instance, some supplies can be ordered only in bulk, which the smaller hospitals would not need. In those instances, the smaller hospital would reach out to the larger hospitals to ask if they have any additional supplies so that the smaller hospital does not have to order the supply in bulk when it will not use all of it. *Id.* As one witness noted, “[t]hat frequently happens with VSES as well, so because they are, again, a high-volume hospital, they’re able to get things in bulk and provide some of those drugs and medical supplies to a location that may not go through as many.” *Id.* In addition, the general practices may also reach out to VSES to ask for supplies or medication if the hospital is out of a supply or medication and has an urgent need to obtain it. *Id.* With respect to VSES sharing medications with the general practices, that occurs weekly. *Id.*, p. 116; *see also* ER Ex. 39 (list of medications and other consumables shared between VSES and general practices).

The hospitals also share equipment amongst the various locations. At times, the general practices will reach out to VSES to ask to use some of their equipment. For instance, recently

VSES was asked to share an incubator. TR, p. 115. They have also shared syringe pumps and fluid pumps, as well. *Id.*, pp. 101, 115.

5. Referring Appointments

All of the hospitals within the Monroe Group use a system called Infinity to schedule appointments for patients. TR, p. 191. Currently the hospitals are unable to view appointments for hospitals other than their own, but Pathway is developing software to enable that to occur in the near future. *Id.*, pp. 191-92. However, the hospitals have a shared spreadsheet created for each week in which the general practices set aside various appointments throughout the day to see critically ill pets that VSES is not able to see due to a high volume of patients. TR, p. 193; ER Ex. 40. VSES will schedule clients into those available appointment slots and will send a message via Microsoft Teams providing additional information regarding the patient and why the patient is being sent to the general practice. TR, p. 193. VSES also sends patients to the general practices under other circumstances, as well, including the lack of availability of a surgeon to perform a surgery or a client's inability to pay a higher cost for the surgery to be performed at VSES. *Id.* VSES will often refer to the general practices patients that need surgical intervention quickly, including foreign body ingestion, pyometra (an infection of the uterus that can become fatal) or a cystotomy (stone removal). TR, pp. 197-98. This occurs at least on a weekly basis but sometimes multiple times per week. *Id.*, p. 114. To make the general practices aware of the need to send a patient to them, VSES will send out a message via Microsoft Teams, asking if any of the general practices can take on a patient. *Id.*, p. 194; ER Ex. 35.

Prior to the pandemic, VSES was seeing critical and urgent cases. TR, p. 196. However, because of the increased volume of patients, VSES is really focused solely on the critical cases, so the general practices have taken on more of the urgent cases, such as vomiting, diarrhea, urinary

tract infections or upper respiratory infections, in addition to the more minor cases that are neither urgent nor critical, such as itching or some other issue that can wait a few days. *Id.*, pp. 196-97.

E. Human Resources Functions

1. Hiring

Recruitment for open positions within the Monroe Group hospitals is handled the same across all locations. TR, p. 354. Open positions are posted on the Pathway program called Jobvite, Indeed and/or the Pathway website. *Id.* There is also a single regional recruiter who services all of the hospitals within the Monroe Group with respect to finding support staff candidates, including LVTs, ACAs and CSRs. *Id.*, p. 188.

If an internal candidate wants to apply to a position, he or she would apply through Jobvite, just as an external candidate would have to do. TR, p. 354. Internal candidates are subject to this same requirement to ensure compliance requirements are met, such as demonstrating that the position was in fact posted and that other candidates were given the option of applying. *Id.* However, with respect to internal candidates, they will frequently let their supervisor know that they are seeking an internal transfer and will often send a resume directly to the hiring manager, as well. *Id.* The practice managers at the hospitals, including VSES, will often coordinate regarding candidates if, for instance, they interview a good candidate but do not have an opening and think the candidate would be a good fit at another location. TR, p. 189.

Once an employee is hired into a hospital within the Monroe Group, they undergo an onboarding process during which they select benefits and participate in an orientation. All employees, regardless of the location they are working at within the Monroe Group, including VSES, the general practices, the crematorium or the lab, undergo the same orientation. TR, pp. 332-33. The only difference in the orientation program is the information given to the employees

related to OSHA information because the location of certain equipment varies from location to location. *Id.*

Finally, there are job descriptions for each position at VSES and the general practices. TR, p. 352; Exhs. 48-76. On occasion the job descriptions for comparable or identical positions at VSES and the general practices will differ based on whether an employee may, for instance, specialize in surgery at VSES. *Id.* In contrast, at the general practices a position like an LVT is a generalist position that is not specializing in anything. *Id.*

2. Benefits and Wages

All employees within the Monroe Group have the same available benefits, regardless of the location at which they work. TR, p. 350. The only difference in the benefit options relates to whether an employee is full-time or part-time. *Id.* See ER Exhs. 13 (full-time benefits) and 14 (part-time benefits).

In addition, the Employer provided data regarding the minimum and maximum wage rate for each position at each location. ER Ex. 80. The data shows that the wage ranges are similar for comparable or identical positions at each location, including VSES. For instance, for the Animal Care Assistant II position at AHOP, the range is \$14.50 to \$16.00 per hour, while it is \$15.25 to \$18.50 per hour at VSES. TR, pp. 279-80. However, at Greece Animal Hospital, the maximum paid to an Animal Care Assistant II is more than the maximum paid at VSES. ER Ex. 80. Similarly, for the Client Service Representative position, the wage range at VSES is \$15.25 per hour to \$16.75 per hour. Similarly, the wage range for this same position at Suburban Animal Hospital is \$14.50 per hour to \$16.00 per hour. However, there are several other locations, including Stone Ridge Veterinary Hospital, Perinton Veterinary Hospital, Irondequoit Animal Hospital, Companion Animal Hospital and Canandaigua Veterinary Hospital, where the maximum amount

paid to the Client Service Representative position is more than the maximum paid at VSES. ER Ex. 80.

3. Discipline and Performance Evaluations

Allen Ibrisimovic, the Senior People Operations Partner, is the sole point of contact for on-site Human Resources for the Monroe Group hospitals, including VSES, the general practices, the lab and the crematorium, and is physically located in the administrative building on White Spruce Boulevard, a short walk from VSES. TR, pp. 345, 346. Mr. Ibrisimovic is involved in the discipline, when needed, for the employees of the Monroe Group hospitals. Further, there is a standard corrective action form used for verbal and written warnings with all Monroe Group employees. *Id.*, pp. 347-48; ER Ex. 15.

In addition, there is Pathway handbook, along with a New York state supplement, that apply to all Monroe Group locations. TR, p. 348; ER Ex. 6, 7.

Finally, there is a standardized evaluation form used for each position for all Monroe Group employees, including LVTs, ACAs and CSRs. TR, pp. 340-41; ER Ex. 19. The supervisors for each of those positions also have a standardized evaluation form. TR, p. 342; ER Ex. 17. Mr. Ibrisimovic was involved in standardizing the evaluation forms in 2019. TR, p. 340.

III. ARGUMENT

A. Legal Standard

Section 9(a) of the Act permits employees to form a bargaining unit “appropriate” for collective bargaining purposes. 29 U.S.C. § 159(a). The Act grants the Board discretion to determine whether a petitioned-for unit is appropriate. *Id.* § 9(b).

Given that the Union has petitioned for a single facility, a single-facility unit is presumptively appropriate “unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity.” *R&D*

Trucking, Inc., 327 NLRB 531 (1999). “To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any.” *Id.* at 532.

B. There is a well-established community of interest among the Monroe Group hospitals based on an analysis of the relevant factors sufficient to overcome the single-facility presumption.

The evidence presented at the hearing irrefutably establishes that the Monroe Group hospitals share a well-defined and established community of interest based on the following factors:

- the employees’, including LVTs, ACAs and CSRs, skills, duties, and working conditions are virtually identical;
- the operation of the Monroe Group facilities is functionally integrated with respect to management of the operation;
- the Monroe Group hospitals have a substantial amount of employee contact and interchange among all facilities;
- the Monroe Group hospitals are subject to centralized management and supervision
- regarding geographic proximity, the Monroe Group hospitals are located in a tightly clustered geographical area in the Rochester area; and
- there is no established bargaining history to consider.

A bargaining unit consisting of only the petitioned-for employees located at VSES would be a fractured unit.

1. Skills, Duties and Working Conditions

The skills and duties of all LVTs, ACAs and CSRs across the system are remarkably similar. First, all LVTs, regardless of where they work within the Monroe Group, are required to be licensed by New York State. TR, p. 295. ACAs and CSRs are not required to be licensed, but must possess similar qualifications to work at any of the hospitals within the Monroe Group. While the job descriptions for the various positions may vary slightly, they are very similar. See ER Exhs. 48-52; 65-68.

The duties of the LVTs are similar, regardless of whether they are working at one of the general practices or at VSES. TR, p. 303. Indeed they “will carry out whatever directives that he DVMs give them . . . if a patient needs treatments, fluids, outpatient procedure, anesthesia, sedation, anything of that nature.” *Id.* The only difference in job duties between LVTs at VSES and LVTs at a general practice is that there are different medications used at times at VSES. *Id.* Jennifer Gargan, LVT supervisor at Fairview Veterinary Hospital—and former LVT supervisor at VSES—confirmed this point:

Q: And the role of the LVTs at VSES, can you tell us what they do there?

A: Yeah, I mean, a lot of that is the same [as at Fairview]. Obviously, the type of patients that we would see there versus in . . . general practice, are a bit different because a lot of those are critically ill patients So it is a little bit more frequent catheter placements, and you know, fluid and things like that. Different types of medications in between the two places that would be used but all generally the same types of work.

Id., p. 317.

While there are certain surgeries that are only performed at VSES—because they are performed by Board-certified surgeons—the duties of the LVTs in carrying out those doctors’ orders are really no different. TR, p. 308. Indeed, as practice manager at Perinton Veterinary Hospital—and former LVT at VSES—Kathy Sercu testified,

[t]he types of cases may be different that they'll see at VSES, but the actual role that the LVT will play in them is completely the same. Because anesthesia is anesthesia. You address the vital signs based upon your patient and then adjust what is needed for your patient, of that nature. So even though the DVM may be doing something different, it doesn't matter what the DVM is doing. You're still going to treat your patient, and the vitals, and the anesthesia, based upon what you have there, and that's completely the same from patient to patient.

Id. Thus, the fact that slightly different procedures are on occasion done at VSES does not have any effect on the duties of the LVTs assisting the doctors performing those procedures. Moreover, many of the same procedures—surgical and otherwise—are performed at VSES as are performed at the general practices. For instance, Ms. Sercu testified that, at Perinton, they perform the following surgeries: foreign body surgeries; spays; neuters; gastropexies; cranial cruciate ligament repairs; leg amputations; tail amputations; toe amputations; enucleations; and growth removals. TR, p. 297. She then testified that at VSES they “very regularly” do those same surgeries. *Id.*, p. 298; *see also* Testimony of Jennifer Gargan, TR, p. 314 (“Q: And what type of surgeries are offered at VSES? A: A lot of the same as far as nonroutine type surgeries.”).

With respect to ACAs, they also perform similar duties whether they are working at one of the general practices or at VSES. For instance, there is a training manual for ACAs applicable to all ACAs within the Monroe Group, including at VSES. TR, p. 212; ER Ex. 44. Moreover, all ACAs (and actually LVTs, as well) undergo restraining training when they are hired at any hospital within the Monroe Group. TR, p. 607. Pam Pavia conducts the training for all employees doing the restraint training. *Id.* Moreover, while the patients who are at VSES may be critically ill or injured at times—as compared with some patients who are at the general practices for well visits—the restraints the ACAs have to use at VSES do not differ in any way from the restraints they are required to use at the general practices. *Id.*, pp. 606-07. Indeed, all ACAs have “to approach the same type of patients, the same type of case in the same manner, and ultimately, the goal is that

everyone is safe . . . [and] to obtain whatever sample is needed or to treat the patient appropriately.”
Id., p. 607.

Finally, CSRs also perform similar functions whether working at the general practices or at VSES. For instance, the Union’s own witness, Leah Walker, testified that, in determining the capabilities of a CSR filling in for a shift at VSES, the CSR manager, Corey Hafler, will look at not only how many shifts the employee has done at VSES previously, but also how long they have been at the general practice because “the skills from the [general practice] translate to [the employee’s] ability to work at VSES.” Tr, p. 580. Ms. Walker also agreed that the tasks she performed as a CSR while working at Suburban Animal Hospital – i.e., checking clients in and out, scheduling clients and communicating with clients—are also tasks she performs as a CSR at VSES. *Id.*, p. 581. She also agreed that CSRs at both VSES and a general practice have to be able to communicate with clients about medical issues, which requires them to be familiar with certain medical terminology. *Id.*, p. 582. Further, while there are often client calls that come in at VSES that require a CSR to consult an LVT or a DVM, not every call requires this additional step. Moreover, this additional step is sometimes required at a general practice, as well. *Id.*, p. 583.

With respect to the working conditions at each location, they are very similar. VSES is open twenty-four hours a day and seven days a week, while the general practices are not. Yet, Urgent Care at AHOP is open on weekends and holidays, similar to VSES, and moreover, as noted above, employees of the general practices often cover shifts at VSES, including for the required holiday shift coverage. In addition, VSES regularly sees critically ill patients with emergent needs, while the general practices do not see critically ill patients with emergent needs nearly as often. However, not only do the general practices often take referrals from VSES of critically ill patients on a regular basis, but they also will refer patients to VSES for additional care and/or VSES will

refer patients back to the general practices and/or the rehabilitation facility post-care. Absent these differences, the working conditions are very similar across all hospitals, as they have the following similarities:

- All hospitals have LVTs, ACAs, CSRs and DVMs. TR, pp. 299; 314-315.
- They all provide similar services and perform various procedures, including surgeries, on a wide variety of pets. TR, p. 144.
- They all contain similar equipment, including x-ray machines, ultrasound machines, anesthesia monitoring machines, monitoring machines for blood pressure, lasers and surgical equipment. TR, pp. 176; 303.

The record evidence overwhelmingly demonstrates that the skills, duties and working conditions of all LVTs, ACAs and CSRs within the Monroe Group are markedly similar.

2. Employee Interchange and Contact

There is an overwhelming amount of interchange among staff within the Monroe Group hospitals. A few times per week, the practice managers at VSES and the general practices, including Ms. Battaglia and Mr. Hafler at VSES, will reach out to the other practice managers to ask for help in filling open shifts either directly by phone, or through Teams or e-mails. TR, p. 184. Many staff members among the various hospitals, therefore, will pick up shifts at other hospitals, including VSES, due to either known or last-minute staff shortages. TR, pp. 183, 304, 306, 320. Notably, there is no record evidence to dispute this fact.

In addition, the employees at VSES and the general practices—including LVTs, CSRs and ACAs—have a holiday commitment to work at VSES or Urgent Care each year. TR, p. 593; ER Ex. 81. Ms. West schedules the holidays for the employees at both VSES and Urgent Care. TR, p. 594. Ms. West first schedules the VSES employees for their required holidays. Then, once

their commitments are fulfilled, Ms. West fills in the remaining holidays with the general practice employees. *Id.*, p. 594-95. Ms. West coordinates with Sheila Casler, the practice manager for Urgent Care, to schedule the holiday commitments at Urgent Care, as well. *Id.*, pp. 594; 183.

When non-VSES employees fill in at VSES for a holiday shift, they are provided with training prior to doing so. All LVTs and ACAs are trained by Pam Pavia, and CSRs are trained by Sarah Midden. TR, p. 597.

Ms. West also schedules open shifts that become available at VSES on a last-minute basis by first reaching out to VSES staff and then subsequently reaching out to general practice staff that enjoy picking up shifts at VSES. TR, p. 598. If she cannot fill the shift by taking those steps, she will then reach out to the practice managers for the general practices to see if they have any volunteers to fill the shifts. *Id.*

From January 1, 2019 through May 14, 2021, there were 933 instances in which a non-VSES employee worked at VSES. *See* ER Ex. 10. In addition, in that same time frame, there were 529 instances in which a VSES employee worked at another hospital within the Monroe Group. ER Ex. 10. Finally, also in that same time frame, there were 2,750 instances in which an employee worked at his/her non-permanent location, other than VSES. *Id.* From May 15, 2021 through September 15, 2021, there were 442 times when shifts were covered at the different hospitals, including non-VSES employees working at VSES, as well as VSES employees working at the general practices. ER Ex. 78; TR, pp. 272-73.

In addition, during COVID, there were approximately 70 employees who were furloughed for varying periods of time, as well as employees whose hours were reduced as opposed to being furloughed. TR, p. 344. As a result, some staff were reassigned to other hospitals to ensure coverage and/or to provide additional hours of employment. *Id.*

Further, Monroe Group employees will often transfer from one hospital to another, including between VSES and the general practices, as well as between and among the general practices. From January 1, 2019 to May 14, 2021, there were 39 transfers between the general practices and VSES, and there were 33 transfers between and among the general practices. TR, p. 361; ER Exhs. 8, 9. From May 15, 2021 to September 15, 2021, there were twelve transfers between and among the Monroe Group hospitals, including VSES. ER Ex. 77.

3. Functional Integration of the Operation

Many aspects of the operation of the Monroe Group hospitals are functionally integrated. Indeed, the whole purpose and benefit of this ecosystem model is the functional integration of the system as a whole. There is an emergency hospital at the center of the system that both refers patients out to the general practices and also takes referrals from the general practices. The Monroe Group hospitals are able to easily refer patients throughout the system based on a particular patient's or client's needs and/or the particular hospital's ability to meet those needs in the moment or in general. Even more notably, the general practices actually set aside various appointments throughout the day to see critically ill patients that VSES is not able to see due to a high volume of patients. Tr, p. 193. However, VSES will often make referrals to the general practices on an unplanned basis. For instance, they will refer to the general practices patients that need surgical intervention quickly, including foreign body ingestion, pyometra (an infection of the uterus that can become fatal) or a cystotomy (stone removal). TR, pp. 197-98. This occurs at least on a weekly basis but sometimes multiple times per week. *Id.*, p. 114. This referral of patients by VSES to the general practices illustrates how the ecosystem is designed to provide a seamless continuum of care.

Further, all locations utilize the services of both the lab and the crematorium, as well as of the couriers who work throughout the system. TR, p. 67. There is also a rehabilitation facility

utilized by the hospitals in the Monroe Group system. Corey Hafler supervises the rehabilitation facility, as well as the CSRs at VSES. TR, p. 141.

The supplies and equipment are also integrated within the system. For instance, all hospitals order supplies through the same Pathway program called Vetcove and often share supplies with each other based on other hospitals' needs. TR, pp. 209, 116, 210. The hospitals also will share medications on a weekly basis. *Id.*, p. 116. In addition, the hospitals share equipment at times, such as syringe pumps and fluid pumps. *Id.*, p. 115. There have also been occasions where VSES's centrifuge has broken, and the practice groups have shared their centrifuge. *Id.*, p. 132. On another occasion, VSES's autoclave failed, and they had to bring their equipment to a general practice to have their equipment sterilized. *Id.*

Also, the human resources functions are integrated throughout the Monroe Group hospitals, including the following:

- A regional recruiter services all of the hospitals within the Monroe Group with respect to finding candidates for LVT, ACA and CSR positions. TR, p. 188.
- All new hires within the Monroe Group undergo the same orientation upon being hired. TR, pp. 332-33.
- All full-time employees within the Monroe Group have the same available benefits, and all part-time employees within the Monroe Group have the same available benefits. Tr, p. 350.
- Senior People Operations Partner Allen Ibrisimovic is the sole point of contact for on-site Human Resources for all Monroe Group hospitals. TR, p. 346.
- There is a standard corrective action form use for verbal and written warnings for all Monroe Group employees.

- There is a single handbook, along with a New York state supplement, that apply to all Monroe Group locations. TR, p. 348.
- There is a standardized evaluation form used for each position for all Monroe Group employees. TR, pp. 340-41.

The Employer provided data regarding the minimum and maximum wage rate for each position at each location. ER Ex. 80. The data shows that the wage ranges are similar for comparable or identical positions at each location, including VSES.

Grasping at straws in a desperate attempt to show a difference in the skills required of an LVT at VSES, the Union introduced an e-mail dated December 9, 2015, that provided that in October 2014, an LVT incentive was implemented at VSES “in recognition of the advanced skill set and knowledge base necessary to meet the minimum standard of care at VSES, *as well as the additional responsibilities of mandatory on-call and the demands of working in a 24 hour facility.*” Union Ex. 1 (emphasis added.). In addition, the e-mail provides that as of January 1, 2016, “the LVT incentive will be implemented at the date of hire *rather than after the demonstration of particular skills.*” *Id.* (Emphasis added.) This e-mail—from almost *six years ago* and from a prior hospital manager (and from a prior employer)—does not even support the Union’s argument.

First, the e-mail states that the incentive for LVTs was implemented not solely to recognize the allegedly advanced skillset necessary to work at VSES, but also to recognize the additional responsibility of mandatory on-call and the demands of working in a 24-hour facility. Thus, the incentive is compensating the LVTs not only for any additional skills, but also for the requirement of having to take mandatory on-call shifts and work in a 24-hour facility. Moreover, the e-mail also provides that this incentive will be implemented for LVTs as of the time of hire, instead of after they have demonstrated any type of particular skillset. Thus, as of January 2016, this

incentive was applied across the board to any newly-hired LVTs and did not require that they possess or demonstrate any advanced skills prior to receiving the incentive. This significantly undercuts the Union's argument that this incentive is somehow related to possession of an advanced skillset. Further, this incentive is applicable *solely* to LVTs at VSES, not the other positions.

The e-mail also provides that VSES had decided to increase the base pay of ACAs, CSRs and LVTs because they were adding a mandatory on-call requirement, as well as because of the demands and expectations of performing the roles in a 24-hour facility. Union Ex. 1. Notably, VSES did not justify this increase in base pay because of any advanced skillset required to be an ACA, CSR or LVT at VSES. Indeed, the record evidence shows that the skills and duties required of an ACA, CSR and LVT at VSES are incredibly similar – if not identical – to those required of those positions at a general practice. The fact that this lone e-mail is the only evidence the Union can present to show differences in the skills required *only of an LVT* at VSES speaks volumes.

4. Geographic Proximity

The sixteen hospitals in the Monroe Group are all located in a geographically tightly clustered area in the Rochester area. The tightly-clustered nature of these hospitals is apparent in viewing a map of all locations. ER Ex. 4 (slide 21). Thus, the geographic proximity of these hospitals weighs in favor of a bargaining unit including employees at all of the hospitals.

5. Centralized Control of Management and Supervision

There is a practice manager at each location, and a hospital administrator at VSES, each of whom reports directly to the DOE, Ms. Valente. *Id.*, p. 143. In addition, there is a medical director at each location who reports up to the Regional Medical Director, Dr. Whilen. *Id.*, pp. 241, 245. In addition, Mr. Novitzki, who also reports up to Ms. Valente, oversees the couriers that provide couriership services to the lab, the crematorium or to the various hospitals in the Monroe Group.

Id., p. 142. Mr. Novitzki also oversees the crematorium, as well as the environmental services provided at VSES.

Further, the DOE meets with all practice managers, including the hospital administrator and CSR supervisor at VSES, once a week to discuss issues relating to the various hospitals. In addition, the practice managers meet with the medical directors from each hospital on a monthly basis.

LVTs, CSRs and ACAs are supervised locally at each hospital. However, when the employees cover shifts at their non-permanent locations they are then supervised by the local supervisors at the hospital at which they are filling in for a shift.

6. Bargaining History

Bargaining history is afforded great weight in consideration by the Board, when determining appropriate units. In the absence of any bargaining history, as in this case, the remaining traditional community of interest factors are afforded additional weight in determining the appropriate unit. There is no collective bargaining history to consider regarding any Pathway hospital, companywide.

C. A unit inclusive of the entire Monroe Group is the only appropriate unit.

Given the weight of evidence showing a community of interest among the hospitals within the Monroe Group, it is clear that a multi-facility unit comprised of all of these hospitals is the appropriate unit. All of the factors in the Board's community of interest test weigh in favor of a finding that a multi-facility unit is the appropriate one. Further, case law is clear that a multi-facility unit is appropriate here.

For instance, in *In Re St. Luke's Sys., Inc.*, 340 NLRB 1171 (2003), a majority of the Board reversed the Regional Director's decision and concluded that the petitioned-for unit was inappropriate. In this case, the union petitioned for a unit comprised of 11 of the employer's 21

healthcare clinics. The Board analyzed the community of interest factors in arriving at this conclusion. First, the Board found that the employer demonstrated that the clinics operate as a single network “and are functionally integrated both as to the services provided and as to the employees who provide them. Thus, patients are able to transition out of acute care and receive a full range of health-related services at the various clinics.” *Id.* at 1172. In the present case, this also rings true. Indeed, the Monroe Group operates as a single network, enabling customers to easily transition from the emergency hospital to a general practice or vice versa when the need arises.

In *St. Luke’s*, the Board also found that “[t]he frequency of temporary and permanent transfers throughout the clinics also establishes the high level of functional integration among the clinics.” *Id.* at 1173. This is also the case with the Monroe Group hospitals. The data introduced by the Employer at the hearing shows that transfers between VSES and the practice groups—as well as transfers among the practice groups—are numerous and frequent. The Board also found that employees were frequently temporarily assigned to other clinics in that nurses floated to other clinics to offer additional assistance or substitute for vacationing nurses and nurse practitioners and physician assistants temporarily aided short-staffed clinics. *Id.* Similarly, in the present case, the evidence showed that LVTs, ACAs and CSRs frequently cover shifts at other locations to fill in for open shifts and also that all general practice LVTs, ACAs and CSRs are required to fulfill a holiday requirement at VSES.

Finally, the Board found that the employer’s clinics were all located in the Sioux City area. While most were all located in the metropolitan area and were a 10-minute drive from each other, the remaining clinics were 15 to 55 miles from the downtown of Sioux City. *Id.* at 1174. Similarly, the Monroe Group hospitals are all located within the Rochester area. While most are very close

together, there are a few that are slightly farther away, but all remain in the Rochester area. The Region here should similarly find that the appropriate unit should be comprised of *all* of the hospitals within the Monroe Group.

In addition, in *Clarian Health Partners, Inc.*, 344 NLRB 332 (2005), the Board decided that a unit comprised of skilled maintenance employees at only two hospitals was not appropriate where all skilled maintenance employees performed the same “primary function” at nearby hospitals. In support of its decision, the Board noted that the “primary function of all the skilled maintenance employees is the same regardless of the hospital at which they are based,” as well as that the skilled maintenance employees, regardless of location, are in contact with each other on a regular basis and went to different facilities to “borrow equipment, engage in training and perform work.” *Id.* at 334. Further, the Board found that the hospital maintenance managers “occasionally ask for assistance from other supervisors and managers, and there are regular temporary assignments of personnel from one location to another.” *Id.* Thus, the Board held that the Regional Director erred in finding the appropriate unit to be limited to skilled maintenance employees at only two locations. *Id.* at 335. While the Board did not ultimately decide the appropriate unit, it did hold that the petitioned-for unit was not appropriate because of “the close geographic proximity of all three hospitals and the significant degree of centralized administration, management, and functional integration throughout the Employer's system, especially the centrally administered personnel policies, the centralized hiring process, and the identical terms and conditions of employment.” *Id.*

Similarly, here there are centrally administered personnel policies, a regional recruiter that hires for positions at all the hospitals, an identical on-boarding process for all new hires and identical benefits for all employees within the system, as well a significant amount of functional

integration as evidenced by the ecosystem model exemplified by the Monroe Group, which enables customers to easily obtain all levels of care throughout the system. Moreover, there is centralized administration, as all practice managers, and the VSES hospital administrator, report up to the DOE, and all practice managers meet on a weekly basis with the DOE. Moreover, the map shows that these hospitals are all geographically clustered in the Rochester area. Thus, a multi-facility unit comprised of all hospitals within the Monroe Group is the appropriate unit.

IV. CONCLUSION

After a four-day hearing and, upon a thorough review of the evidence, it is clear that the appropriate multi-facility bargaining unit should include all Monroe Group hospitals based on the overwhelming evidence of a community of interest among all hospitals within the system.

Respectfully submitted,

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CERTIFICATION

This is to certify that on October 8, 2021, a copy of the foregoing document has been delivered, via electronic mail to all counsel and *pro se* parties of record as follows:

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