

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

UNISYS CORPORATION¹

Employer

and

Case 7-RC-23167

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO
and its LOCAL 1313²**

Petitioner

APPEARANCES:

Russell Linden and Chaka Keiller, Attorneys, of Detroit, Michigan, for the Employer
Stephen Anthony Yokich, Attorney, of Chicago, Illinois, for the Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ At the hearing, Employer's Exhibit 8 and Petitioner's Exhibits 1 and 2 were admitted on the condition that the parties would forward copies of the exhibits to the court reporter by no later than January 25, 2008. Employer Exhibit 8 was timely received. The court reporter received Petitioner Exhibits 1 and 2 on February 14, 2008. On February 5, 2008, the Region received Petitioner Exhibits 1 and 2 directly from Petitioner. The Employer received these exhibits on about February 8, 2008. Despite the untimely receipt of Petitioner's exhibits, there is no indication that any party was prejudiced and Petitioner Exhibits 1 and 2 are received into evidence. The Employer and Petitioner timely filed briefs, which were carefully considered.

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Petitioner currently represents a unit of approximately 110 general production employees and 14 electronic product technicians (EPTs) at the Employer's Plymouth facility (hereafter, this group of employees will be referred to as "the unit" or "unit employees.") It seeks an *Armour-Globe*⁴ election to accrete one employee to the unit, Gerald Sarna, who currently works in the classification of "production control assistant (PCA)"⁵ Petitioner asserts that Sarna is a plant clerical employee, and has a community of interest with and is appropriately included in the unit. Further, because Sarna had previously been represented by Local 1440, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (Local 1440), with terms and conditions of employment similar to the unit, bargaining history warrants his inclusion in the unit.

The Employer contends that Sarna does not have a community of interest with unit employees, and, as such, his inclusion in the unit currently represented by Petitioner would be inappropriate. It contends that Sarna has a community of interest with other employees, including the other PCAs, and certain shipping and receiving employees and analysts, such that he cannot be in a unit separate from these employees. The Employer further argues that an *Armour-Globe* election is inappropriate because it contemplates a residual unit of historically unrepresented employees, whereas Sarna was represented by Local 1440 for many years. It also contends that the current contract between the Petitioner and the Employer acts as a bar to an election. Petitioner disputes that there is a contract bar.

I find that the community of interest shared by Sarna and other unrepresented employees is sufficient that any election excluding them would be inappropriate.

⁴ *Armour and Co.*, 40 NLRB 1333 (1942); *Globe Machine and Stamping Co.*, 3 NLRB 294 (1937).

⁵ At the hearing, the Petitioner stipulated that, as asserted by the Employer, Sarna's correct job title is "production control assistant," as opposed to "chief production control dispatcher," which is the job title described in the petition.

Overview of Operations

The Employer manufactures check processing equipment, such as large-scale machines that process thousands of checks for the Federal Reserve, to smaller products such as a desktop check processor or check sorter for commercial bank application.

Its Plymouth, Michigan facility is comprised of four buildings, connected by breezeways. The main building, or Building 1, is located at 41100 Plymouth Road and serves primarily as an office building. It houses the Employer's engineering staff, accounting staff, human resources and payment systems headquarters. Building 2 is located at 13100 Haggerty Road, at the north end of Building 1, and houses the Employer's "supply chain" organization. This is where the Employer's products are assembled. Buildings 3 and 4 serve as warehouses and share an address at 13250 Haggerty Road. Building 3, at the north end of Building 2, is the site of the Employer's reclamation and warehousing operation. Building 4 is at the north end of Building 3. It houses Unisys Direct, a separate department that manages the warehouse and distributes consumables, such as toner cartridges; handles software and literature distribution; and contains a print shop and office area.

Larry McCarter is the vice president of supply chain operations. He oversees all operations in Building 2, and some of the operations in Buildings 3 and 4. Reporting to McCarter are six department managers: John Earl (Payment Productions), Jim Whiting (Procurement), Bill Holmes (Spare Supply Chain Warehouse & Inventory Management/Depot Repair⁶), Paul Osickey (IT Program Manager), Brian Koehler (Control), and Jackie Johnson (Human Resources Business Partner).

Karen Bedy is the employee labor relations consultant, and is responsible for labor relations issues involving the UAW and unit employees. She has been involved in past contract negotiations with Petitioner and with Local 1440, beginning in 1998, and most recently, in the spring of 2007.⁷

History of Bargaining

Local 1313

Petitioner's Local 1313 has been the servicing representative of the Employer's production and maintenance employees since about 1964. Pursuant to the current collective bargaining agreement, Petitioner represents: all hourly-rated production

⁶ Depot Repair was previously headed by Whiting, and is in the process of being transitioned to Holmes.

⁷ The parties stipulated that it would not be appropriate to include any of the individuals named as "supervisors" on the Employer's organizational chart in the unit. The record indicates that McCarter, Earl, Whiting, Holmes, Osickey, Koehler, Johnson, and Bedy are among the individuals so named on the organizational chart.

employees of the plants located at 41100 Plymouth Road and 13100 Haggerty Road, Plymouth, Michigan, including general production and electronic technicians (manufacturing), but excluding office clerical employees, professionals, all other technical employees, guards, assistant foremen, foremen, and all other supervisors as defined in the Act, and all other employees presently covered by existing collective bargaining agreements between labor organizations and the company.⁸ The most recent contract between the parties is effective from April 24, 2007 to April 24, 2009.

Local 1440

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local 1440 began representing the Employer's salaried plant clerical employees in about 1967.⁹ The most recent contract between the parties was effective from March 30, 2002 to March 25, 2006. The parties extended that contract for one year, and again extended it to an unspecified date. The unit described in the most recent contract covered the salaried plant clerical employees employed in Building 2 only. The only classification falling under this description was "senior materials clerks." Sarna was in the Local 1440 bargaining unit. Sometime in the spring of 2007, Local 1440's charter was revoked by the International Union. Local 1313 assumed representational responsibility for Sarna, the remaining employee in the unit. On about June 15, 2007, the Employer withdrew recognition from Local 1440 because it was a one-employee unit.

The terms and conditions of employment under Local 1440's contract historically were substantially similar to the terms and conditions of the Local 1313 contract. For example, each contract provided similar cost of living adjustments, union security and dues checkoff provisions, call-back and availability pay provisions, holidays, and service days. The contracts generally expired within a relatively close time frame of one another (approximately 1-2 weeks apart), and successive agreements were negotiated sequentially (i.e., upon completion of Local 1313 negotiations, the parties commenced negotiations for the Local 1440 contract).

Local 1313 Unit Employees

The majority of unit employees work in Building 2 and report to three production coaches, Jerry Kiesel (33 unit employees, including all of the EPTs), Gayle Rodriguez (42 unit employees), and Steve Steen (43 unit employees). Kiesel, Rodriguez and Steen report directly to John Earl. Approximately five unit employees work in Depot Repair, performing repairs on returned products, and report directly to Bill Holmes. The

⁸ In the past, the unit contained additional classifications; the current unit description was modified in the most recent collective bargaining agreement.

⁹ The record is silent as to why Sarna, an hourly senior materials clerk, was included in Local 1440's salaried plant clerical unit.

remaining six general production unit employees primarily perform janitorial work and are supervised by Michael Safranski.¹⁰ Approximately four of these employees work in Building 1, and two work in Building 2. There are no unit employees working in Buildings 3 or 4.

General production unit employees are primarily responsible for product assembly. Building 2 is divided into about 10-12 different departments, which are further divided into separate functions and product lines. General production employees are assigned to specific departments, which are also referred to as “work cells.”

The EPTs are responsible for testing and trouble-shooting the assembled products. The majority of EPTs work in the test room, located in Building 2. A few are assigned to specific departments and work on specific product lines. A few of the general production unit employees also are assigned to the test room.

General production employees earn a minimum of \$11 per hour, and a maximum of \$19.88. EPTs earn a minimum of \$20.66 per hour, and a maximum of \$25.05 per hour. General production employees are required to have a high school diploma or its equivalent. There are no other job qualification requirements. EPTs are required to hold an electronics certificate from a two-year certificate program, through a training school or a local community college.

General production employees can become EPTs if there are openings, and if they complete the education requirement. The parties’ collective bargaining agreement sets forth the procedure for posting open positions and job bidding.

Non-janitorial general production employees and EPTs have a choice of two different day shifts: either 7:00 a.m. to 3:30 p.m., or 8:00 a.m. to 4:30 p.m. About 90% of the general production employees work the earlier 7:00 a.m. shift. Janitorial employees typically work from about 4:00 a.m. to 12:30 p.m.. A few work a later starting shift, extending into the early evening. No unit employees are required to be on call. They do not have Employer-provided cell phones, nor do they utilize their own computers or telephones for the completion of their job duties.

Unit employees are not eligible for merit pay increases but do receive cost of living increases as negotiated with the Petitioner. They are not on call, and thus do not receive availability pay.¹¹ They are entitled to call-back pay, but a different formula is used to compute it than the formula used for unrepresented employees.¹² Unit employees

¹⁰ Kiesel, Rodriguez, and Steen “supervise” bargaining unit employees, report directly to John Earl, and are specifically named on the Employers organizational chart. As stipulated by the parties, they are not included in the bargaining unit. The record is silent with regards to Safranski.

¹¹ Availability pay is provided to employees on call after hours, and/or on the weekend.

¹² Call-back pay is provided when the Employer directs an unscheduled employee to report to work.

receive six “service days” a year for absences. They are covered by the contractual short-term disability plan, which withholds payment for the first five days of absence, and then pays at two-thirds of their wages.

Gerald Sarna

Benefits

Gerald Sarna began working for the Employer in 1974 as a senior materials clerk, and was represented by Local 1440 for many years. His pay and benefits were determined by Local 1440’s collective bargaining agreements with the Employer. Sarna has been directly supervised for approximately the past five years by Beth Fisher-Smith (material order management planning manager), who in turn reports to Holmes.¹³ Fisher-Smith does not supervise any unit employees.

On July 2, 2007, after the Employer withdrew recognition from Local 1440, it reclassified Sarna to the PCA classification. On July 13, 2007, the Employer notified Sarna of the changes to his benefits package as a result of his reclassification. In his new position, Sarna earns \$21.96 per hour, which is the same rate he received as a senior materials clerk under the Local 1440 contract.

As a Local 1440 member, Sarna’s benefits were substantially similar to those of unit employees. However, as a PCA, Sarna now receives the same benefits that all other nonunion employees receive. For example, he is now eligible for merit pay increases and does not receive cost of living increases. Sarna is now covered by the Employer’s nonexempt pay practice policy for call-back pay and availability pay. He is no longer eligible for service days, and instead he may request days off as needed from his manager, to be approved at his manager’s discretion. Sarna is covered under a short-term disability plan that provides 100% coverage from the first day through 26 weeks of absence. He also is covered by a different vacation policy. Sarna retained his prior medical coverage, but his share of the premium rates is subject to change.

The Local 1440 and Local 1313 units were covered by the same UAW pension plan. Sarna was a participant in this plan. The Employer froze the unit employees’ pension plan on April 1, 2007. It froze Sarna’s pension plan on July 1, 2007. After these plans were frozen, the Employer placed Sarna and the unit employees under its savings plan. This plan also covers all other employees employed by the Employer. However, benefits under the plan are calculated differently for union and nonunion employees.

¹³ Fisher-Smith is named on the Employer’s organizational chart, and the parties stipulated that she is not included in the unit.

Job Responsibilities

Sarna works in a cubicle in Building 2, in an area referred to as “cube city.” He has his own computer and telephone at his cubicle. No unit employees work in cube city. Sarna also has a work station, with his own computer, on the receiving dock.¹⁴ He is scheduled Monday through Friday, 8:00 a.m. to 4:30 p.m., and is on call. He receives an unpaid 30-minute lunch, as do all other nonexempt employees. Typically, he either eats lunch alone, or goes home for lunch.

Sarna, as both a senior materials clerk and as a PCA, has been primarily responsible for emergency order processing and “next flight out” orders. When an emergency order for a part is received from a customer or customer service engineer,¹⁵ Sarna processes the request. He picks, packs, and ships the part as soon as possible. To “pick” a part, Sarna goes to various departments within Building 2 to pull the part from inventory. He has his own cart that he uses for this purpose. Because these “emergencies” can occur at any time, Sarna works on-call. The Employer reaches Sarna during his off hours by cell phone or by e-mail. Sarna typically is called in after hours about 3-5 times a week. He also does transactions for incoming shipments that are not barcoded. Much of this work is performed on-line.

As a PCA, Sarna now has additional responsibilities. In July 2007, around the same time that he was reclassified, the Employer reorganized its payment system business unit, the unit Sarna’s department is in, and acquired supporting printer equipment in addition to its check sorting equipment. Sarna became responsible for processing emergency orders for spare parts for printer equipment. These parts are manufactured outside of the Employer’s Plymouth facility, and are primarily drop-shipped.¹⁶ Sarna works with outside vendors and/or with procurement analysts to process these parts. He e-mails vendors to ascertain the shipping and delivery dates for the part. Previously, all of Sarna’s duties involved products manufactured at the Plymouth facility. As a result of the change, Sarna processes approximately 290 additional emergency orders per month. This accounts for more than 50% of his monthly order processing, which totals between 400 and 500 orders. The additional work requires an hour or more of Sarna’s time in a typical work day.

Generally, Sarna arrives at his cubicle at about 8:00 a.m. and updates emergency orders on the computer system. He then answers e-mails and makes phone calls regarding the emergency orders. About 11:00 a.m., when the carriers (such as DHL, Federal Express, etc.) arrive, he goes to the receiving dock and handles packages that are not bar-coded; this takes about an hour. Sarna then goes to lunch at about noon. After

¹⁴ The record is not clear whether this receiving dock is located in Building 2, Building 3, or at a location between the two buildings.

¹⁵ Customer service engineers work in customer locations, and repair the Employer’s check processing equipment.

¹⁶ The part is shipped from the outside vendor directly to the Employer’s customer.

lunch, at about 12:30 p.m., he returns to his cubicle to follow up on e-mails and check on orders. He continues processing emergency orders by going to the specific departments to retrieve the required parts. Near the end of the day, about 3:00 p.m., he returns to the receiving dock and prepares any shipping that needs to go out that day.

Sarna is required to be familiar with, and has been trained on, three computer systems: BAMCS (the Employer's manufacturing database), GLS (parts distribution system) and OMS (a component of GLS utilized for international orders). Unit employees are required to have knowledge only regarding BAMCS. All employees are trained on BAMCS. Shipping and receiving clerks also work on GLS and OMS. It is not clear if any other employees work on GLS or OMS.

PCAs

Sarna is one of six PCAs. The remaining five PCAs work in Buildings 3 and 4. PCAs Deborah Abbot, Martin Marcot, and Charles Mullins, Jr., work in Building 3 and report to Supervisor Alan Yew. They work in the reclamation area, performing inventory management. PCA Frank Zupancic reports to Supervisor Sue Erdman, and works in Building 4 in the print shop pick-pack area. He performs inventory management for literature and software. PCA Elizabeth McDougal reports to Supervisor Bob Sheeler; her job responsibilities were not described in the record.¹⁷ It is unclear how long each PCA has held that job title, or how long the job title has been in existence. None of the other five PCAs were previously unit employees. The PCA position has never been represented by a labor organization.

The PCA position does not require a degree or any special training. According to the job description for PCAs, they are responsible in part for reviewing records on stock status, material requirements, orders processing, inspection, and future production. They maintain records on current production activities and determine if materials on hand will support those activities. They frequently interact with customers. Their job functions include warehousing, inventory control, using systems, and software applications. The record does not reflect whether the other PCAs use the same computer systems that Sarna uses. The other PCAs receive the same benefits as Sarna, as described above. The record did not reflect whether any of them work on-call.

All PCAs are paid hourly, on a bi-weekly basis. Each PCA has a different hourly rate. The hourly wage is determined by a market reference point. Each year, after the compensation organization performs external salary surveys, the market reference or mid-point for a particular job is determined. The market reference point for PCAs is currently about \$50,000. PCAs are evaluated every year. The salaries for PCAs are determined around the start of each year, based on their performance rating from the

¹⁷ There is no record evidence or stipulations regarding the supervisory status of Yew, Erdman, or Sheeler.

previous year in relation to the current market reference point. Sarna has not yet been evaluated as a PCA, and, as such, his salary has not been set in relation to the PCA market reference point.

Other Nonrepresented Positions

Other nonrepresented positions include order managers, material analysts, procurement analysts (also referred to as buyers), engineers, technicians, and shipping and receiving clerks. It does not appear that any of these positions have ever been represented by a labor organization. Order managers and material analysts are salaried and work mostly in Buildings 2 in cube city, in Building 3 in asset recovery, and in Building 4 in Unisys Direct. Procurement analysts and engineers are also salaried and work in Building 2, in cube city. The technicians and shipping and receiving clerks are paid hourly, and work in asset recovery in Building 3, and in Unisys Direct in Building 4.

In addition to Sarna, Beth Fisher-Smith supervises three spare part planners, two order manager analysts or material analysts (Jason Doliezel and Eileen Barbacci),¹⁸ and two shipping and receiving clerks (Lynn Burroughs and Diane Reno) and a technician from asset recovery.¹⁹ Additional shipping and receiving clerks report to the open warehouse and stockroom manager, who in turn reports to Bill Holmes.²⁰ The seven procurement analysts currently report to Holmes, and are being transitioned to reporting to Whiting. It appears that the remaining order manager analysts and material analysts report indirectly to Jim Whiting.

Two of the spare part planners supervised by Fisher-Smith work out of Bluebell, Pennsylvania, where the Employer's corporate headquarters are located. The third spare part planner supervised by Fisher-Smith works out of Holland, Ohio. The spare part planners are responsible for planning the lifecycle of a part, and ensure there are enough parts in the field; they are salaried employees.

Order manager analysts follow up with procurement on parts orders, to make sure that they ship on time, and they do reporting. Material analysts make sure parts that have to be manufactured get to work cells in a timely manner. They determine the flow of the product, to make sure the product is in place at the right time to fill the orders. Procurement analysts work with various suppliers to buy parts.

The shipping and receiving employees who work in asset recovery in Building 3 are responsible for receiving, stocking, picking, packing, and shipping parts and equipment. They also receive printouts and ship emergency orders out of the warehouse,

¹⁸ The record is conflicting with respect to whether these individuals are material analysts or order manager analysts.

¹⁹ The record does not reflect the technician's job responsibilities.

²⁰ The open warehouse and stockroom manager position is currently open. Fisher-Smith is temporarily supervising the shipping and receiving clerks reporting to this position, until the position is filled.

and arrange shipment for next flight out orders. Emergency orders go to shipping and receiving first, if there is stock, and if there is no stock, it resources back to Sarna. Like Sarna, shipping and receiving clerks work on-call to handle these emergency orders, and they carry a cell phone provided by the Employer.

Interaction Among Employees

Sarna interacts with unit employees when he obtains a part from the assembly area. He physically goes to the department and asks the coordinator in the department (a unit employee) to prioritize a part. If he needs the part immediately, and gets it, he may carry the part to small parts packing. The unit employee in small parts packing, Jules Patzinski, packages the part and performs the required inventory transaction on the computer. Sarna then takes the part to the dock for shipment. Sarna does this on a daily basis, throughout his day. He visits every department in Building 2, but he does not go to every department every day. He spends about 5-10 minutes at each department he visits. He estimates that the total time spent in this process in an average day is approximately one hour. He also spends, on average, anywhere from 30-90 minutes a day in small parts packing, on the computer, receiving parts into inventory and then charging the same parts out of inventory for shipping. He uses a universal computer terminal in that area for this purpose. This terminal is also used by material analysts. He sometimes packs the parts himself.

Sarna works in the receiving area with unit employee Jose Carillo. Carillo processes the bar-coded shipments, and sets aside the noncoded shipments for Sarna to process. Sarna inputs the transaction on his computer at his personal workstation in that area to print the receiving label, and gives the label to Carillo, who affixes the label to the box and delivers it to the appropriate area. The record is not clear regarding how much Sarna actually interacts with Carillo to perform this task.

Sarna interacts with shipping and receiving clerks in asset recovery in Building 3 if he is trying to coordinate an emergency order or needs stock. Sometimes he has to deliver parts to shipping and receiving so an order can be shipped out of that area rather than out of Sarna's area. His interaction with shipping and receiving clerks amounts to about 15 minutes a day. When he is absent, the Building 3 shipping and receiving clerks handle his shipping responsibilities. Unit employees may also have some interaction with shipping and receiving employees. For example, unit employee Patzinski delivers packaged parts to the Building 3 stockroom.

Sarna interacts with the field engineers, located outside of the facility and throughout the country, who are requesting parts. He also interacts with CPAC, located in Bluebell, Pennsylvania, which submits work orders to Sarna from the engineers.²¹

²¹ The record does not indicate what CPAC stands for.

Sarna also interacts daily with the procurement analysts, if parts are not available at the facility. Usually this interaction is by e-mail. He also deals with the spare parts planners who work offsite.

Sarna regularly interacts with the two material analysts/order manager analysts, Doliezel and Barbacci, who are also supervised by Fisher-Smith. Barbacci is in charge of routine orders for the payment systems plant organization, and she may contact Sarna if she needs something expedited off the plant floor. Doliezel is in charge of repair parts. Many of the parts that Sarna works with for the printers are repair only, so he may have to ask Doliezel to re-circulate the parts for repair. Barbacci or Doliezel have also e-mailed Sarna if they want his assistance on something. Sarna's interaction with Doliezel occurs approximately every other day, and on those days it amounts to about 15-20 minutes. Sarna interacts with Barbacci about once a week.

Sarna also regularly interacts with analysts Gayle Guknecht, Fred Kuriakose, and Denise Durkin. Sarna's interaction with each of the analysts averages up to 20 minutes a day. Guknecht works in Building 2 in Department "B-Mod" and the "QX" work cell. Sarna may contact her for help, for example, if he needs something built in her department and can't find a coordinator. Kuriakose is in charge of the stockroom, and Sarna contacts him if he needs something done in the stockroom, such as an order release. Durkin is in charge of depot repair, and Sarna may have to speak to her if there is a problem with one of the repair units being shipped, such as an incorrect address. When Sarna is absent from work, material analysts cover his duties related to ground shipping. Typically, either Doliezel or Guknecht fills in for him in this respect.

It appears Sarna has no interaction with the other PCAs. It does not appear that Sarna interacts with the shipping and receiving clerks in Building 4, nor does it appear he interacts with any analysts located outside of cube city, except for Guknecht, Kuriakose, and Durkin.

In Building 2, material analysts work closely with procurement analysts to avoid shortages, and order managers work closely with procurement analysts to make sure parts are being ordered on time. The record does not reflect whether, or how much, any of the Employer's analysts interact with the others in their positions in other buildings, or how much they interact with unit employees, shipping and receiving clerks, or any other employees.

Analysis

An *Armour-Globe* self-determination election permits employees sharing a community of interest with an already-represented unit of employees to vote on whether

to join the existing unit.²² *UMass Memorial Medical Center*, 349 NLRB No. 35 (February 20, 2007), citing *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). It is well settled that there is more than one way in which employees of an employer may appropriately be grouped for purposes of collective bargaining. *Overnight Transportation Co.*, 322 NLRB 723 (1996); *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4th Cir. 1963), *cert. denied*, 375 U.S. 966 (1964). The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001).

For a unit to be appropriate, the key question is whether the employees in that unit share a sufficient community of interest. In determining community of interest, the Board has traditionally examined 12 factors: (1) similarity in the scale and manner of determining the earnings; (2) similarity in employment benefits, hours of work, and other terms and conditions of employment; (3) similarity in the kind of work performed; (4) similarity in the qualifications, skills, and training of the employees; (5) frequency of contact or interchange among the employees; (6) geographic proximity; (7) continuity or integration of production processes; (8) common supervision and determination of labor relations policy; (9) relationship to the administrative organization of the employer; (10) history of collective bargaining; (11) desires of the affected employees; (12) extent of union organization. See *NLRB v. Lundy Packing*, 68 F.3d 1577, 1580 (4th Cir. 1995); *Home Depot USA*, 331 NLRB 1289 (2000). A union's desire is always a relevant, but not dispositive, consideration. *E.H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

Petitioner asserts that Sarna is a plant clerical employee, and that under Board law, plant clerical employees may seek representation in a production and maintenance unit. *Armstrong Rubber Co.*, 144 NLRB 1115 (1963); *Fisher Controls*, 192 NLRB 514 (1971); *Robbins & Myers, Inc.*, 144 NLRB 245 (1963). Plant clerical employees are customarily included in a production and maintenance unit because they generally share a community of interest with the employees in the plantwide unit. *Armour & Co.*, 119 NLRB 623, 625 (1957); *Raytee Co.*, 228 NLRB 646 (1977). However, plant clerical employees may also constitute an appropriate unit by themselves. See generally *Plakington Packing Co.*, 116 NLRB 1225 (1956); *Rudolph Wurlitzer Co.*, 117 NLRB 6 (1957).

²² The Employer argues that its current collective bargaining agreement with Petitioner acts as a contract bar to an election. There is no contract bar in this case. Petitioner is not seeking an election among employees who are covered by a contract; rather, it seeks an *Armour-Globe* election for a currently unrepresented employee who is not covered by a contract. See *UMass Memorial Medical Center*, *supra*.

The test as to whether an employee is a plant clerical is usually whether the employee's duties are related to the production or service process (plant clericals) or related to general office operations (office clericals). The distinction is rooted in community of interest concepts. *Mitchellace, Inc.*, 314 NLRB 536 (1994); *Cook Composites & Polymer Co.*, 313 NLRB 1105 (1994). Some of the duties that plant clericals generally perform include timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies. *Hamilton Halter Co.*, 270 NLRB 331 (1984).

I find that Sarna is a plant clerical employee. He is generally responsible for processing orders for parts, and in doing so he picks and packs the parts and ships them. These job duties are more related to the Employer's production or service process as opposed to general office operations. However, the Petitioner seeks to add only Sarna to the unit. The Petitioner does not seek other employees who hold the same classification as Sarna, nor does it seek other employees with whom Sarna shares a greater community of interest than he has with unit employees.

Sarna is paid hourly, as are shipping and receiving clerks and unit employees. However, as a nonunit employee, Sarna is subject to merit-based pay increases rather than the cost of living increases that unit employees receive. His pay is based on a market reference point for the PCA position, in relation to his performance evaluations. Unit employees are not similarly evaluated, do not receive merit pay increases, and are paid according to rates negotiated with the Petitioner.

Sarna and shipping and receiving clerks work on-call to process emergency orders and carry Employer-provided cell phones; unit employees do not work on-call, nor do they carry Employer-provided cell phones. Sarna, like other nonunit employees, is eligible for availability pay and call-back pay. Unit employees do not receive availability pay; they receive call-back pay, but it is computed differently from call-back pay for nonunit employees. Unit employees receive service days; nonunit employees do not. Unit and nonunit employees are subject to different vacation policies and different short-term disability plans.

The skills and functions of the PCA position are most similar to the nonunit shipping and receiving clerks and analysts. For example, like Sarna, shipping and receiving clerks handle emergency orders and next flight out orders. They also, like Sarna, arrange for shipment of parts. The shipping and receiving clerks perform Sarna's shipping duties when he is sick or on vacation, and they use the same computer systems that he uses. The analysts, like Sarna, work at their computers in cube city and monitor the Employer's parts or materials supply and/or provide parts to customers. The analysts fill in for Sarna, processing emergency orders, when he is sick or on vacation. Unit employees work in a separate area on the plant floor, engaged in the assembly and testing

of parts. It appears that the other PCAs perform inventory management, which, like the jobs of the analysts and Sarna, is more related to parts supply rather than parts assembly.

While Sarna interacts with unit employees when he travels to different production departments to pick and pack parts, this interaction is brief and is outweighed by his more substantive contacts with nonunit employees. Sarna only briefly interacts with unit coordinators in each department. He spends time in small parts packing, the work area of unit employee Patzinski, but while there, he works separately on a computer that Patzinski does not access. He also works in the same vicinity as unit employee Carillo in shipping and receiving when he processes non-barcoded packages.

Sarna's interaction with shipping and receiving employees is similar in length to his interaction with unit employees. Sarna briefly speaks only with unit employees to find out if they have a part he needs. On the other hand, he interacts with shipping and receiving clerks in Building 3 to coordinate an emergency order with them, to get stock, or to transfer an order to them for shipping. Similarly, while Sarna interacts with only a few material analysts every other day, his communications with them are more substantial with respect to his job. Sarna and these material analysts help one another with various tasks when needed. It does not appear that Sarna ever assists unit employees with their job, nor do unit employees assist him, other than by providing him with a requested part.

The majority of unit employees work on the production floor in work cells or the test area in Building 2. Sarna works in "cube city" in Building 2 along with analysts. He has his own computer that he uses to perform his job. Sarna regularly communicates with field engineers²³ and spare parts planners located throughout the country, and responds to emergency parts orders from outside vendors and customers. No unit employees work in cube city, and it does not appear that they have any reason related to the performance of their job to visit cube city. It does not appear that unit employees have or use a computer, or in any way communicate with outside entities to perform their jobs. Sarna is supervised on a day to day basis by Fisher-Smith, who does not supervise any unit employees. Sarna is also located in a different department from the majority of unit employees.

Both the Petitioner and the Employer rely on the bargaining history between the parties to support their respective arguments. The Petitioner argues that Sarna was represented by Local 1440 for many years, and that Local 1440's contract terms closely mirrored the contract terms for unit employees. Petitioner asserts that the similarities between the contracts outweigh any differences between the two units. The Employer asserts that the 40-year history of collective bargaining with the Petitioner and Local

²³ The parties stipulated that Sarna does not have a community of interest with field engineers.

1440 for separate units weighs heavily in favor of a finding that Sarna does not share a community of interest with production and maintenance employees.

The Board has long given substantial, but not conclusive, weight to prior history of collective bargaining. *General Electric Company*, 107 NLRB, 70, 72 (1953). Herein, the record provides no explanation for the separation of plant clerical employees and production and maintenance employees. It is unclear if the separation was based on a lack of community of interest between the two units, or whether the separation occurred simply because of happenstance or convenience. Furthermore, at past points in time, hourly plant clericals were included in Petitioner's unit, even though Local 1440 represented a separate unit of salaried plant clerical employees. The record does not address which employees were considered plant clericals under Local 1313's past agreements, or how these employees came to be removed from the unit. Because of these factors, I do not find that collective bargaining history is dispositive of the issue herein.

In any case, even though Sarna was previously represented by a union as a senior materials clerk, he has been reclassified. His community of interest with bargaining unit employees must be evaluated based on his current position as a PCA, not by his former position. The PCA position has historically been an unrepresented position. Bargaining history is not as material when, as here, the disputed employees were previously unrepresented, unless the change in the unit threatens the stability of established bargaining relations. *Wheeler Van Label Co. v. NLRB*, 408 F.2d 613 (2nd Cir. 1969), cert. denied, 396 U.S. 834 (1968).

The Employer argues that an *Armour-Globe* election is inappropriate because the proposed voting group excludes the other unrepresented residual employees similar to Sarna. Based on the community of interest factors described above, I agree. The Board requires that all unrepresented employees residual to an existing unit or units be included in an election to represent them on a residual basis. *The Armstrong Rubber Co.*, 144 NLRB 1115, 1119, fn. 11 (1963); *American Radiator & Standard Sanitary Corp.*, 114 NLRB 1151, 1154-1155 (1955). It is well established that a residual unit is appropriate only if it includes all unrepresented employees of the type covered by the petition. *Fleming Foods*, 313 NLRB 948 (1994). *Eastern Container Corp.*, 275 NLRB 1537, 1538 (1985).

Petitioner is seeking a self determination election for one individual, excluding others from the group who hold the same job title and share a strong community of interest. It is seeking to represent only a segment of a group, which under established policy is impermissible. *Syracuse University*, 325 NLRB 162, 167 (1997); See also *Mary Thompson Hospital*, 242 NLRB 440 (1979). An *Armour-Globe* election seeking only the inclusion of Sarna is thus inappropriate.

ORDER

IT IS ORDERED that the petition is dismissed.²⁴

Dated at Detroit, Michigan, this 21st day of February 2008.

(SEAL)

/s/ Stephen M. Glasser

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²⁴ 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, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **March 6, 2008**. The request may be filed electronically through E-Gov on the Board's website, www.nlr.gov, but may **not** be filed by facsimile. To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, www.nlr.gov.