

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

SOLARIS PAPER, INC.¹

Employer

and

Case 21-RC-21067

TEAMSTERS DISTRICT COUNCIL #2,
LOCAL 388-M, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CTW

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

I. SUMMARY

The Employer, Solaris Paper, Inc., is a Delaware corporation engaged in the business of manufacturing and distributing tissue products. The Petitioner filed the instant petition seeking to represent all full-time and part-time production, maintenance,

¹ The Employer's name appears as amended at the hearing.

² The Employer and Petitioner timely filed briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

shipping and receiving employees, excluding all office clerical employees, sales employees, guards and supervisors as defined in the Act. The Employer does not dispute that the employees in the petitioned-for unit are appropriately included, but asserts that the production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk-shipping employees must also be included because they are plant and warehouse clerical employees who share a sufficient community of interest with the other unit employees. In addition, the Employer asserts that approximately 90 temporary employees supplied by two temporary agencies share a community of interest with employees in the petitioned-for unit sufficient to require their inclusion in the unit. The Petitioner seeks to exclude the temporary employees.

Based on the record as a whole and the parties' briefs, I find the petitioned-for unit must also include the production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk-shipping employees the because they share a community of interest with the unit employees sufficient to require their inclusion in the appropriate unit. I also find, however, that the temporary employees should be excluded from the unit, as consent for such a multi-employer bargaining unit has not been attained from all parties.⁴

Below, I have set forth the record evidence concerning the Employer's operations, including evidence concerning the temporary employees and the clerical

⁴ In its brief, the Petitioner reiterates its request for enforcement of subpoenas it issued to the Employer and the temporary agencies, and requests that the hearing be reopened to receive such evidence. At hearing, the hearing officer granted the Employer's petitions to revoke these subpoenas. I find the record evidence sufficient to make an appropriate unit determination in this matter.

classifications in dispute related to the community of interest factors the Board considers when determining unit appropriateness. Following the presentation of the evidence, I have set forth a section applying the Board's legal standards to the evidence. The decision concludes with a Direction of Election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer is a Delaware corporation engaged in the business of manufacturing and distributing tissue products. The Employer moved into the main facility in about May 2007. The manufacturing operations at that site are a little over one-year old. The Employer converts raw tissue material into bath tissue, facial tissue, paper towels, napkins, and other tissue products. The Employer also imports and distributes similar finished products that are manufactured abroad. In addition to importing and manufacturing the finished product, the Employer also labels, wraps and packages its products to customers' specifications. The Employer's main facility is located in Santa Fe Springs, California. The Employer also has a satellite facility on the same street located less than two miles away from the main facility.⁵

The main facility includes production lines and warehouse space, as well as the main offices, the shipping and receiving office, the maintenance office and the production supervisors' offices. The satellite facility is primarily warehouse space where product is received, stored and prepared for delivery.

⁵ At hearing, the parties stipulated that the satellite facility is part of the main facility.

B. COMMUNITY OF INTEREST FACTORS

1. Employees in the petitioned-for unit

While the parties did not specifically stipulate to the inclusion of the employees sought in the petitioned-for unit, the parties agree that the unit found appropriate should include the petitioned-for production, maintenance and shipping and receiving employees at the Employer's main and satellite facilities. Throughout the hearing, the parties commonly referred to employees in these classifications as production operators, assistant operators, maintenance employees, general laborers and material handlers.

Material handlers also move product from the main facility to the satellite facility. Material handlers working at the satellite facility move and scan product, load and unload containers and trucks. They use lift trucks and scanning guns. They unload product and stage it for later delivery, or mix it with other finished product for delivery. General laborers help load and unload product and assist in production and maintenance functions.

After the raw material – jumbo rolls of tissue – is received at the main facility, material handlers move it from warehouse storage to the production lines where it is converted into finished product. Material handlers use lift trucks to bring materials to the production lines and cranes to actually place the rolls on the machines. Material handlers also unload and stage the imported finished products received at the satellite facility.

Production operators and assistant operators work on the machines to convert the raw material into finished product. There are 10 production lines at the main facility. Each line includes about five machines. Different machines produce a different range of products.

General laborers assist with a number of functions, including unloading and packing finished product.⁶ The finished product is boxed, placed on wooden pallets, wrapped and stored at the main facility or shipped to the satellite facility for delivery to the Employer's customers.

Andre Lair is the Manufacturing Director.⁷ The Manufacturing Department includes Product Planning and Inventory Control (PPIC), Maintenance Engineering, Quality Control and Production. Lair reports to Vice President of Manufacturing P.K. Sivakumaran

The production employees are supervised by the four production supervisors. The production supervisors report to Manufacturing Director Andre Lair. Shipping and receiving employees at the main facility report to Material Supervisor Rommel David. David reports to PPIC Manager Elani Baloran. Baloran reports to Manufacturing Director Lair. The maintenance employees report to Maintenance Engineering Manager J.F. Larose. Larose also reports to Manufacturing Director Lair.

The Supply Chain Department, also referred to as Logistics, includes shipping and receiving at the satellite facility. Shipping and receiving employees at the satellite facility are supervised by Warehouse Manager Eddie Martinez. Martinez reports

⁶ While general laborers are typically temporary employees, the record discloses that some general laborers are employed solely by the Employer.

⁷ Lair was the only witness who testified at the hearing.

to Logistics Manager Hari Halim. Halim, in turn, reports to Supply Chain Director Ronald Iswono.

Shipping and receiving employees, which include the material handlers, earn between \$9.00 and \$14.35 per hour. Production operators and production assistant operators earn between \$12.00 and \$16.00 per hour. The maintenance employees make \$14.00 to \$25.00 per hour. These employees punch in and out on time clocks, are eligible for overtime, and wear Employer-provided uniforms (once they have completed the probationary period). These employees generally work 12-hour shifts.⁸ After they complete the probationary period, these employees are eligible for benefits such as health insurance, paid holidays and paid sick time.

Lunchrooms and restrooms at the main facility are located in the shipping and receiving office area, the production supervisors' office area and the main office area. Employees are free to use any of these facilities, but access to the secure main office area requires magnetic keys. Employees in these classifications are not issued such keys, but may access facilities in the main office area with the assistance of those employees who have been issued the key cards.

The material handlers and warehouse clerks at the satellite facility use the same lunchroom and restrooms.

2. The temporary employees

In addition to the approximately 81 production, maintenance and shipping and receiving employees working at the main and satellite facility, the Employer also uses about 90 employees supplied by temporary agency employers Staff-It and

⁸ The Employer operates 24-hours per day, 7-days per week. According to the Director of Manufacturing Lair, the Employer is moving towards the goal of scheduling these employees for 12-hour shifts.

Cobblestone. These temporary employees work in many of the same classifications, and perform the same work under the same supervision as the Employer's employees.

Employees supplied by the two temporary agencies wear color-coded vests that identify from which agency they have been supplied. The temporary employees typically work 8-hour shifts.

3. The disputed production and warehouse clerks⁹

The clerical positions in dispute are all hourly positions eligible for overtime pay. After completing the probationary period, these employees are eligible for the same benefits employees as employees in the petitioned-for unit. Employees in these positions do not wear uniforms but instead wear "street clothes" (as do probationary employees in the petitioned-for unit). Employees in these classifications at the main facility have key cards for access to computers and work areas in secure office areas. These employees may use the same lunchroom and restroom facilities as other employees, including those in the secure main office area. These employees are generally scheduled for 8-hour shifts during the day, with 1-hour lunch breaks, and report their time on timesheets. There is no record evidence of transfers between employees in the petitioned-for unit and those in the disputed clerical positions.

a. Production clerk-planning

The production clerk-planning employee works at the main facility, in the PPIC department (which is in the Manufacturing Department). The production clerk-planning employee is supervised by PPIC Manager Baloran, who, as noted above, reports

⁹ There are a total of 10 employees in these eight disputed classifications.

to Manufacturing Director Lair. The production clerk-planning uses a computer in a cubicle in the main office area of the facility, near a corridor to the production floor.

After the Employer receives a purchase order, the order is given to the PPIC Department, which establishes the production plan. The production clerk-planning works from that plan, taking into account the materials needed to accomplish the production. The production clerk-planning issues work orders for operators and monitors raw materials brought to production lines. If there is a special product or packaging required, the production clerk-planning employee issues a work order with the appropriate specifications.

The production clerk-planning gives the work orders to the production supervisors and operators on the production lines. Manufacturing Director Lair estimated that about 10 such work orders are issued per week and that it takes about 5 to 15 minutes to walk out to the floor and deliver a work order. The production clerk-planning also tells the material handlers what product to move from storage to the production lines. According to Lair, the production clerk-planning spends about 50 percent of the work time interacting with production supervisors, production operators and material handlers.

The production clerk-planning needs an understanding of the entire inventory control procedure and requires higher math skills than production employees, as well as computer skills and communication skills in interacting with other departments.

The production clerk-planning works from 7:00 a.m. to 4:00 p.m. and is paid \$20.19 or \$28.19 per hour.¹⁰

b. Production clerk product specialist

The production clerk-product specialist is also in PPIC and is ultimately supervised by Manufacturing Director Lair. The production clerk-product specialist uses a computer in the same cubicle area of the main office as the production clerk-planning employee.

The production clerk-product specialist gets specifications from PPIC and customer service and uses computer software to determine the most efficient configuration for the placement of product on pallets and in delivery trucks. The production clerk-product specialist then generates a drawing showing how the product is to be placed on the pallet, which she gives to the production supervisors and operators on the production lines. Manufacturing Director Lair testified that the production clerk-product specialist's duties do not affect the daily production plan in the same time-sensitive way that of the production clerk planning. Nonetheless, the production clerk-product specialist interacts with production operators and supervisors concerning any problems with meeting the specifications and makes the necessary adjustments. The production clerk-product specialist also interacts with production operators in collecting samples from the production lines and in discussing adjustments in packaging or production.

¹⁰ Lair testified that the production clerk-planning is paid \$28.19 per hour. The written list of pay rates submitted by the Employer and received into evidence indicates that the production clerk-planning is paid \$20.19 per hour.

In addition, the production clerk-product specialist interacts with quality control and receiving employees (i.e., material handlers and the warehouse clerk receiving employee) to make sure the product they are receiving is in accordance with the specifications. According to Lair, the production clerk-product specialist spends about 30 percent of her work time on the production floor.

The production clerk-product specialist needs a slightly higher education and specialized knowledge of the computer software, as well as an understanding of what each machine can produce and what raw materials are appropriate for the machines.

The production clerk-product specialist is paid \$28.85 per hour. The production clerk product specialist works from 8:00 a.m. to 5:00 p.m.

c. Production clerk-purchasing

The production clerk-purchasing employee is supervised by PPIC Manager Baloran. The production clerk-purchasing works in the shipping and receiving office at the main facility.

The production clerk-purchasing employee is responsible for purchasing production materials such as glue, cardboard, core stock and wrap product. The production clerk-purchasing gets information from the production clerk-planning regarding the expected production in the coming days and weeks. Based on that information, the production clerk-purchasing issues purchase orders to suppliers for raw materials to be brought in for manufacture. The production clerk-purchasing uses the "APC" computer system to enter and issue purchase orders.

The production clerk-purchasing employee also does most of the purchasing of engineering parts and is responsible for inventory of spare machine parts and commonly replaced items. There is no computerized inventory system, so the production clerk-purchasing keeps track manually by interacting with maintenance engineers and mechanics.¹¹ According to Manufacturing Director Lair, the production clerk-purchasing interacts with maintenance employees, as well as the warehouse clerk mail and warehouse clerk imports employees, and spends about 50 percent of her time talking with the "requisition person" and checking inventory.

The production clerk-purchasing requires knowledge of the purchasing process and contracts, and is responsible for following the budget and achieving savings. The production clerk-purchasing also negotiates pricing and deals with suppliers when they offer the Employer a particular service or product.

The production clerk-purchasing is paid \$24.03 per hour and is scheduled to work from 8:00 a.m. to 5:00 p.m., primarily in order to be in sync with the Employer's vendors.

d. Production clerk-expediter

The two production clerk-expeditors are in the Manufacturing Department and report to PPIC Manager Baloran. The production clerk-expeditors use computers in the main office area and share a cubicle in the same area as the production clerk planning employee (near the corridor to the production floor).

¹¹ In addition, the production clerk-planning, production clerk-purchasing and warehouse clerk-receiving employees all assist with manual inventory at the main facility about 1 to 2 days per month.

The production clerk-expeditors follow orders through the system from production to shipping. The production clerk-expeditors track orders from inventory, and make sure that the Employer can timely deliver the right product in the right quantities. The production clerk-expeditors also talk to production supervisors to get information on the timing of orders and, based on that information, determine if the Employer will be able to deliver on time or if an adjustment in the delivery scheduled is necessary.

According to Manufacturing Director Lair, the production clerk-expeditors go out to the production floor three to four times per day. In this regard, Lair estimated that the production clerk-expeditors spend about 40-50 percent of their time on the production floor tracking orders and 30 percent of their time interacting with production employees, shipping and receiving employees and material handlers. The production clerk-expeditors interact with material handlers when double-checking to see if the Employer has the material to fill an order. They also check with material handlers to ensure that they load the appropriate finished product. The production clerk-expeditors interact with the warehouse clerk-shipping employee at the satellite facility by phone.

The production clerk-expeditors need computer skills, communication skills, and knowledge of the Employer's range of products.

The production clerk-expeditors are paid \$13.00 to \$15.30 per hour and work from 8:00 a.m. to 5:00 p.m., a schedule which is based on common shipping hours.

e. Warehouse clerk-receiving

The warehouse clerk-receiving employee works at the main facility and is supervised Material Supervisor Rommel David. David ultimately reports to

Manufacturing Director Lair. The warehouse clerk-receiving is located in the shipping and receiving area and has access to the receiving docks where trucks come in.

The warehouse clerk-receiving employee is responsible for entering new inventory into the Employer's Warehouse Management System (WMS). The warehouse clerk-receiving uses a computer to enter received product into the WMS. The warehouse clerk-receiving tracks when raw materials are due to arrive, unloads those materials with the help of material handlers, verifies load quantities and checks for damage, applies an Employer identification label to the load, scans the load, and identifies the proper location to stage that product.

The warehouse clerk-receiving employee, along with the production clerk-planning employee, also helps ensure that the correct raw materials are issued to production line and scans product being brought to the production lines. The warehouse clerk-receiving spends about 70 percent of work time interacting with the production clerk-purchaser, production clerk-planner, production clerk-expediter and material handlers. According to Manufacturing Director Lair, the warehouse clerk-receiving interacts with material handlers with regard to where particular products go in the warehouse.

The warehouse clerk-receiving requires computer skills, communication skills and knowledge of the Employer's products and raw materials.

The warehouse clerk-receiving employee works from 8:00 a.m. to 5:00 p.m. and is paid \$17.00 per hour.

f. Warehouse clerk-mail

The warehouse clerk-mail employee is part of the Shipping and Receiving Department and is supervised by PPIC Manager Baloran at the main facility. The warehouse clerk-mail works in the main office near the front door, where the Employer receives mail, parcels and courier deliveries.

The warehouse clerk-mail employee receives and signs for these deliveries and takes them to the appropriate location at the facility. In this regard, the warehouse clerk-mail matches the receiving paperwork with the employee who asked for the item, passes that information to the production clerk-purchasing to make sure the order is correct, and then delivers the package to the appropriate location at the facility. In some instances, deliveries are taken directly to the person needing the item while in other instances deliveries are taken to storage.

The warehouse clerk-mail employee also handles outgoing mail, such as product samples being sent to the Employer's customers. In this regard, after receiving a sample request from customer service or sales (customer service is part of the Employer's Sales and Marketing Department), the warehouse clerk-mail picks the product sample from production or the warehouse, packages it and has it shipped to the customer by a carrier. According to Manufacturing Director Lair, the warehouse clerk-mail employee spends about 30-35 percent of the work day interacting with maintenance employees, production employees, material handlers and the production clerk-purchasing employee.

The warehouse clerk-mail employee uses computer skills to fill out order forms on carrier websites and chooses the appropriate carrier for shipments.

The warehouse clerk-mail employee earns \$12.00 per hour and works from 8:00 a.m. to 5:00 p.m., a schedule designed to coincide with deliveries and carriers, as well as the Employer's customer service and sales employees.

g. Warehouse clerk-imports

The two warehouse clerk-imports employees work at the satellite facility where they are supervised by Warehouse Manager Eddie Martinez.

The warehouse clerk-imports employees have computer stations in the warehouse office area of the satellite facility. They track imports using computers and telephones. They are responsible for customs paperwork and tracking the arrival of raw materials at ports, scheduling carriers to transfer that product to the satellite facility, inspecting loads for damage and making sure that the product received matches what was ordered.

The warehouse clerk-imports employees receive goods sent from the main facility, as well as product coming directly to the satellite facility, and work with material handlers to get product unloaded and labeled. The warehouse clerk-imports employees scan and enter loads into the WMS. (After this information is entered into WMS, material handlers may use their scanners to continue to track the product.)

According to Manufacturing Director Lair, the warehouse clerk-imports employees spend 30-60 percent of their time interacting with the production clerk-expeditors, warehouse clerk-receiving, material handlers and general laborers either directly on the floor or over the telephone. The warehouse clerk-imports employees also communicate with the production clerk planning and production clerk purchasing

employees at the main facility concerning the timing of product arriving at the main facility.

The warehouse clerk-imports employees need computer skills, communication skills, and knowledge of the WMS and relevant contracts and laws.

One of the warehouse clerk-imports employees is paid \$16.00 per hour and the other is paid \$21.19 per hour. They are scheduled from 8:00 a.m. to 5:00 p.m., when the bulk of receiving and container traffic occurs.

h. Warehouse clerk-shipping

The warehouse clerk-shipping employee also works at the satellite facility and is supervised by Warehouse Manager Martinez. The warehouse clerk-shipping uses a computer in the warehouse office space.

The warehouse clerk-shipping employee is responsible for making sure that the trucks are properly loaded according to the orders. In this regard, the warehouse clerk-shipping employee prepares paperwork for material handlers to use to pick the right product and tracks product to make sure the load is okay. The warehouse clerk-shipping is also responsible for scheduling delivery with product carriers and ensuring loads are delivered on time. The warehouse clerk-shipping employee is responsible for making the last check before the product is shipped to the customer.

According to Manufacturing Director Lair, the warehouse clerk-shipping employee interacts with material handlers many times per day (including checking on the status of loads yet to ship for delivery) and spends 30-40 percent of the time on the warehouse floor. The warehouse clerk shipping employee, along with the warehouse

clerk-imports employees and material handlers, performs manual inventory at the satellite facility about 1 to 2 days per month.

The warehouse clerk-shipping must have knowledge of the WMS, as well as the Employer's products and product carriers.

The warehouse clerk-shipping earns \$20.68 per hour. The record does not disclose the hours that the warehouse clerk-shipping employee is scheduled to work.

III. ANALYSIS

A. The temporary employees

In its brief, the Employer contends that the employees supplied by temporary agencies Staff-It and Cobblestone must be included in the unit because these employees share such a strong community of interest with those in the petitioned-for unit. The Employer relies on M.B. Sturgis, Inc., 331 NLRB 1298 (2000), where the Board found appropriate the community of interest analysis in determining the appropriateness of a unit composed of both jointly and solely employed employees.

In Oakwood Care Center, 343 NLRB 659 (2004), however, the Board overruled M.B. Sturgis and returned to prior precedent, holding that combined units of solely and jointly employed employees are multi-employer units and statutorily permissible only with the parties' consent. The required consent must be clear and unequivocal, as manifested by express agreement or by actually entering into bargaining on a multi-employer basis. Employer consent will not be inferred from the joint employer relationship. Greenhoot, Inc., 205 NLRB 250, 251 (1973).

The Employer here proposes such a multi-employer unit, composed of both the regular employees employed solely by the Employer and temporary employees employed jointly by the Employer and the two temporary agencies.

Inasmuch as the Employer seeks to combine solely employed and jointly employed employees into a single bargaining unit, the facts here fall squarely within the holding of Oakwood. The Petitioner opposes the inclusion of the temporary employees in the unit, and the temporary agencies have not given clear and unequivocal consent to their inclusion in the unit. Thus, under present Board law, the inclusion of temporary employees in the unit is impermissible because the requisite consent of all parties is absent.

In light of the conclusion that the temporary employees should be excluded from the unit, it is unnecessary to determine whether or not the temporary employees and those in the petitioned-for unit share a sufficient community of interest to otherwise be included in a single bargaining unit.¹²

B. The disputed production and warehouse clerks

The Employer contends that the production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk-shipping employees must be included because they are functionally integrated plant and warehouse clerical employees who share a sufficient community of interest with the employees in the petitioned-for unit sufficient to require their inclusion

¹² In this regard, I conclude that the petitioned-for unit, as modified herein, is an appropriate bargaining unit, excluding the temporary employees.

in the unit. The Petitioner, on the other hand, contends that the disputed clericals are office clerical employees who do not share a community of interest with the petitioned-for employees and that they therefore must be excluded from the unit.

In The Boeing Company, 337 NLRB 152 (2001), the Board articulated its policy for determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry in the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Co., 331 NLRB 662, 663 (2000); NLRB v. Lake County Assn. for the Retarded, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967).

The Board's primary means of evaluating the appropriateness of a unit is determining whether the proposed unit shares a community of interest. In examining the distinction between plant and office clericals, the test is generally whether the employees' duties are related to the production process (plant clericals) or to general office operations (office clericals). Plant clerical duties typically include timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventory and ordering supplies. Kroger Co., 342 NLRB 202 (2004); Caesar's Tahoe, 337 NLRB 1096 (2002); Hamilton Halter Co., 270 NLRB 331 (1984). Typical office clerical duties include billing, filing, payroll, phone and mail. Mitchellace, Inc., 314 NLRB 536 (1994); Dunham's Athleisure Corp., 311 NLRB 175 (1993); Heintz Mfg. Co., 100 NLRB 1521 (1952).

Plant clerical employees are usually included in a production and maintenance unit because they generally share a community of interest with employees in

such a unit. Brown & Root, Inc., 314 NLRB 19 (1994). Office clerical employees, however, are typically excluded from such a unit. PECO Energy Co., 322 NLRB 1074 (1997). The distinction between plant and office clerical employees is grounded in community of interest factors. Cook Composites & Polymers Co., 313 NLRB 1105 (1994). Those factors include: (1) functional integration, (2) frequency of contact with other employees, (3) interchange with other employees, (4) degree of skill and common functions, (5) commonality of wages, hours, and other working conditions, and (6) shared supervision. Publix Supermarkets, Inc., 343 NLRB 1023 (2004).¹³

While the record here discloses factors that weigh both in favor and against inclusion of the disputed clerical positions, I find each of the disputed clericals to be plant clericals who share a community of interest with the petitioned-for employees sufficient to require their inclusion in the unit. In this regard, I find that the high level of functional integration, interaction, similarities in working conditions and some shared supervision, outweigh differences in skills, certain other working conditions, and the lack of interchange between the disputed clericals and employees in the petitioned-for unit.

While the Employer's manufacturing operations are relatively new, the evidence of interchange militates against inclusion of the disputed clericals. In this regard, while Manufacturing Director Lair testified that employees in the petitioned-for unit could move into the disputed classifications with the proper skills and training, there is no evidence that this has occurred. Nor does the record disclose any transfers between these employees or any examples of employees in the petitioned-for unit filling in for those in the disputed production and warehouse clerk positions.

¹³ While bargaining history may also be a factor to consider in unit determinations, the parties stipulated that there is no collective bargaining history between the Employer and the Petitioner involving the petitioned-for unit.

While employees in the disputed clerical positions use computer and communication skills that are not required of employees in the petitioned-for unit, the record also discloses that the functions they perform are highly integrated with those of the employees in the petitioned-for unit. In this regard, the record reveals that the disputed clericals' duties are integral to the production, maintenance, shipping and receiving functions of employees in the petitioned-for unit and that these clericals have regular and substantial contact with the petitioned-for employees. The disputed clericals are involved in the production and warehousing processes and frequently interact with the employees in the petitioned-for unit. Further, while the disputed clericals use computers in separate office areas, they also spend a substantial portion of their work time on the production and warehouse floors interacting with the petitioned-for employees.

In addition, while there are differences in scheduling and the manner in which the disputed clericals dress for work, the record reveals that the disputed clericals share many of the same working conditions as employees in the petitioned-for unit. In this regard, like the petitioned-for employees, the disputed clericals are hourly employees who are eligible for overtime. The record reflects that these clericals' pay rates are generally within the wide range of those in the petitioned-for unit. The disputed clericals are eligible for the same benefits as employees in the petitioned-for unit and may use the same lunchrooms and restrooms.

As for supervision, the record discloses that the production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter and warehouse clerk-mail employees are immediately supervised by PPIC, but are still within the broad Manufacturing Department as petitioned-for employees under

the ultimate direction of Manufacturing Director Lair. Moreover, the warehouse clerk-receiving employee, warehouse clerk-imports and warehouse clerk-shipping employees share the same supervisors (Material Supervisor Rommel David and Warehouse Manager Eddie Martinez, respectively) as coworkers in the petitioned-for unit.

In addition, the record reveals that the production clerk-planning, production clerk-purchasing, warehouse clerk-receiving, warehouse clerk-imports and warehouse clerk-shipping employees all assist with manual inventories at the facilities about 1 to 2 days per month.

The Board has held that expeditors and clerks responsible for scheduling and inventory, like the disputed production and warehouse clerks here, are properly included as plant clericals. Mosler Safe Company, 188 NLRB 650, 654 (1971).¹⁴ In addition, while mail duties are often the function of an office clerical employee, the Board has found that mail clerks who work in areas apart from production to be plant clericals when their work brings them into daily contact with production employees. The Magnavox Company, 126 NLRB 1419 (1960).

The record here discloses that in addition to receiving and delivering packages throughout the facility, the warehouse clerk-mail employee also regularly spends time on the production and warehouse floor delivering packages and picking product samples for delivery to customers. Thus, I find that the warehouse clerk-mail

¹⁴ In its brief, the Petitioner also asserts the production clerk-expeditors and the production clerk-planning employee make management decisions because they help determine which jobs to schedule on production machines. Contrary to this contention, however, the record reveals only that the functions of the production clerk-expeditors and production clerk-planning employees assist in planning and tracking production in an efficient manner. I do not find that the performance of these duties establish that these employees are supervisors within the meaning of the Act or that it otherwise warrants their exclusion from the unit.

employee, like the other production and warehouse clerks, is also properly included in the unit as a plant clerical.

In sum, I find the petitioned-for unit inappropriate and conclude that it must also include the plant and warehouse clerical employees in the classifications of production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk -hipping. This finding is based on the community of interest between these employees and those in the petitioned-for unit, particularly the high degree of functional integration, interaction and similarities in working conditions, as well as some shared supervision.

IV. CONCLUSION

On the basis of the foregoing and the record as a whole, I find the petitioned-for unit inappropriate and conclude that the unit must also include the production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk-shipping employees. I also find, however, that the temporary employees should be excluded from the unit. Accordingly, I shall direct an election in the following appropriate unit (hereinafter "Unit"):

All full-time and regular part-time production employees, maintenance employees, shipping and receiving employees, production clerk-planning, production clerk-product specialist, production clerk-purchasing, production clerk-expediter, warehouse clerk-receiving, warehouse clerk-mail, warehouse clerk-imports and warehouse clerk-shipping employees employed by the Employer at its facilities located at 13415 Carmenita Road, Santa Fe Springs and at 16220 Carmenita Road, Cerritos, California; excluding all other employees,

temporary employees, office clerical employees, sales employees, guards and supervisors as defined in the Act.

There are approximately 91 employees in the Unit found appropriate.¹⁵

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which

¹⁵ Inasmuch as I have found a unit different than that requested by the Petitioner, in accordance with established Board practice, I shall allow the Petitioner ten (10) days from the date of the Decision and Direction of Election in which to perfect its 30-percent showing of interest in the unit. In the event the Petitioner does not establish a proper showing of interest in the unit within the 10-day period, I shall dismiss the petition unless it is withdrawn. Should the Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition, without prejudice, by giving notice to that effect to the Regional Director within ten (10) days from the date of this Decision and Direction of Election.

commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **Teamsters District Council #2, Local 388-M, International Brotherhood of Teamsters, CTW.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before September 30, 2008.** No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be

submitted by electronic filing through the Agency's website, www.nlr.gov,¹⁶ or by facsimile transmission to (213)894-2778. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

¹⁶ To file the list 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 **Regional, Subregional and Resident Offices** 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. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks 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.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EDT, on October 7, 2008**. This request may **not** be filed by facsimile.

DATED at Los Angeles, California, this 23rd day of September 2008.

/s/[James F. Small]_____

James F. Small
Regional Director, Region 21
National Labor Relations Board