

**Alyeska Pipeline Service Co. and Paper, Allied-Industrial, Chemical and Energy Workers, Local 8-0369, AFL-CIO, Petitioner.** Case 19-RC-14600

September 29, 2006

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW  
AND WALSH

On February 9, 2005, the Regional Director for Region 19 issued a Supplemental Decision and Direction of Election (relevant portions of which are attached as an appendix) in which he found that the petitioned-for technicians at the Valdez Marine Terminal (VMT) constitute a presumptively appropriate single-facility unit, and that the Employer failed to rebut the presumption. He therefore directed an election in a unit limited to VMT technicians. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Supplemental Decision and Direction of Election on the grounds, *inter alia*, that the Regional Director should have applied the "public utility presumption" and found only a systemwide unit of technicians to be appropriate. The Petitioner filed an opposition to the request for review.

By Order dated April 6, 2005, the Board granted the Employer's request for review and issued a notice and invitation to file briefs to afford the opportunity to interested amici to submit briefs addressing the issues raised in the case. Three amicus briefs were received, along with briefs and reply briefs from the parties.<sup>1</sup>

After careful consideration of the entire record, including the briefs on review, we find that application of a systemwide presumption is warranted in the circumstances of this case, that the presumption has not been rebutted, and that the only unit appropriate for bargaining is a systemwide unit including the technicians at the VMT and those at the Employer's pump stations on the pipeline. Consequently, we reverse the Regional Director's findings and remand for further action consistent with this decision.

Facts

The Trans Alaska Pipeline System (TAPS) is owned by five companies. The current TAPS owners are BP Pipelines (Alaska) Inc., Phillips Pipeline Company, Koch

<sup>1</sup> An amicus submission in support of the Petitioner's position was received from the AFL-CIO. Amicus submissions in support of the Employer's position were received from Petro Star, Inc. (Petro Star) and the Trans Alaska Pipeline Maintenance Contractors' Association (TAPMCA).

Industries, Unical Pipeline Company, and Exxon Mobil Pipeline Company. The owners of TAPS formed Alyeska Pipeline Service Company (the Employer) in 1970 for the purpose of operating and maintaining the pipeline system. TAPS transports crude oil 800 miles from its point of origin on the North Slope of Alaska to its termination point at Valdez, Alaska. At Valdez, the Employer operates the VMT, where the crude oil is loaded onto tanker ships for transport or held in storage tanks pending transport. The pipeline and VMT are a functionally integrated system designed to move crude oil from one point to another. The Employer monitors and controls the entire system and flow of oil from its Operational Control Center (OCC) at the VMT. The Employer has seven pump stations located at intervals along the pipeline.<sup>2</sup> The pump stations maintain the flow of oil through the pipeline as it traverses the rugged Alaskan terrain. Most of the pump stations are in largely remote and undeveloped areas, and are often accessible only by airplane.<sup>3</sup>

Alaska is a large, sparsely populated State, and importing or exporting materials can be a substantial undertaking. Many cities and towns may be reached only by sea or by air. With its small population, vast distances, and subarctic and arctic conditions, there is little or no redundancy built into the economic and transportation infrastructure. Prudhoe Bay at the North Slope is ice free only for approximately 45 days a year; there is no rail service north of Fairbanks; and there are no roads that run all the way to the North Slope where the oil is produced.

TAPS is the only means of transporting oil to the three refineries in Alaska that are totally dependent upon TAPS oil. These refineries function on a "slip stream" system, whereby oil is siphoned off of the pipeline for their use and residual and unused oil is piped back into the pipeline. Each of these refineries would have to cease operation within hours of a TAPS shutdown. If TAPS is shut down for a week or more, it could take the system up to 2 weeks to become operational again. These refineries make diesel fuel, gasoline, jet fuel, and power generation fuel. They also make heating oil that is sold to homes and businesses. Many homes in Alaska rely exclusively on the heating oil produced by these refineries because alternate fuels are not available. The

<sup>2</sup> The distances between the pump stations and the VMT are as follows: pump station 1 is 800 miles away; pump station 3 is 696 miles away; pump station 4 is 656 miles away; pump station 5 is 525 miles away; pump station 7 is 386 miles away; pump station 9 is 251 miles away; and pump station 12 is 65 miles away.

<sup>3</sup> Pump Station 9 is located near the town of Delta Junction. All the other pump stations are located in remote areas.

power generation fuel produced by the refineries is used by electricity producers within the State. For example, Copper Valley Electric Association (CVEA) is the sole supplier of electricity for the communities of Valdez and Glenallen, Alaska. CVEA purchases all of its power generation fuel from Petro Star Valdez Refinery in Valdez, which in turn acquires all of its crude oil from TAPS. There is only one other refinery in the State, and it receives approximately half of its oil from TAPS as well. TAPS transports about 1 million barrels of oil per day, which is approximately 20 percent of the U.S. domestic crude oil production and approximately 98 percent of the crude oil produced in Alaska.

The Employer divides its operations into two administrative subdivisions, one covering the pipeline and the pump stations, and one covering the VMT facility. Each side is headed by its own manager. Both administrative subdivisions report to the vice president of operations and maintenance. There are approximately 163 technicians working at the VMT. The seven pump stations along the pipeline are staffed by an additional 165 technicians. Pipeline technicians are flown to the pump stations at the beginning of their scheduled workweek(s), and flown home at the end. While working, the pump station technicians live in company-provided living quarters and dine in company-paid cafeterias. VMT technicians live near their worksite in Valdez and are not provided with transportation, housing, or food.

Here, the Petitioner seeks to represent a unit of all operations and maintenance technicians at the Employer's VMT facility. The Petitioner relies on the Board's long-standing presumption that a single-facility unit is appropriate for collective bargaining. In opposing the petition, the Employer contends that an alternative presumption should apply, namely, the "public utility" presumption that a systemwide unit is optimal. Based on this presumption, the Employer argues that the unit must also include the technicians who work on the pipeline.

The Regional Director found that TAPS is not a "public utility" under Board law, and thus, the systemwide unit presumption is not applicable. The Regional Director noted that the Board has not decided whether to extend the public utility presumption to the crude oil pipeline industry. In determining whether the presumption should be applied, the Regional Director found that the public utility presumption has been applied only to traditional public utilities such as electricity, natural gas, telephone, and cable television services, where the employers provide an essential service directly to the public and are the only providers of that service. The Regional Director found that TAPS is merely a common carrier pipeline, moving oil from one point to another. It does not

own, sell, or refine the oil, nor does it distribute the oil to the public. The Regional Director found that TAPS' product is at least three steps removed from the general public, and that the public utility presumption does not apply where the users of the oil are commercial entities and not the general public. With regard to the national interest served by TAPS, the Regional Director found that at best TAPS has an indirect, aggregate effect on the public's consumption of oil. TAPS is not the sole source of crude oil for the U.S., the West Coast, or all of Alaska's refineries.

The Regional Director found that the single-facility presumption had not been rebutted in this case because the VMT and pipeline are two distinct administrative subdivisions, there is some local autonomy, the technicians on the pipeline and at the VMT have different job functions and working conditions, there is minimal interchange between technicians on the pipeline and at the VMT, and there are significant geographic distances between the VMT and the several pump stations. The Regional Director noted, however, that if TAPS were found to be a public utility under Board law, he would conclude differently and find that a systemwide unit of technicians would be the only appropriate unit.

As explained below, we find that the systemwide presumption is applicable. We agree with the Regional Director that with this presumption the petitioned-for single-facility unit is not an appropriate unit for bargaining.

#### Analysis

The Board has long held the view that a systemwide unit is optimal in the public utility industry. See *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Deposit Telephone Co.*, 328 NLRB 1029 (1999).

That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that the public utility industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations.

*Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973).

The Board's preference for a systemwide public utility unit is expressed as a rebuttable presumption, which does not foreclose the possibility of finding a smaller unit to be appropriate. Rather, the Board balances the employees' Section 7 rights against the public's interest in uninterrupted utility service that only a single entity provides. Striking this balance, the Board finds less than systemwide units appropriate where "compelling evidence" shows that collective bargaining would be a "feasible

undertaking,” *id.*—i.e., where (1) employees in the petitioned-for smaller unit share a substantial community of interest, *Colorado Interstate Gas Co.*, supra at 848–849, (2) the boundaries of the requested unit conform to a well-defined administrative segment *and* could be established without undue disturbance to the company’s ability to perform its necessary functions, and (3) there is no opposing bargaining history on a broader basis. *Baltimore Gas & Electric Co.*, supra at 201; see also *PECO Energy Co.*, 322 NLRB 1074 (1997).

The Board has not addressed the application of the systemwide “public utility” presumption to crude oil pipelines, but it has applied the systemwide presumption to natural gas pipelines that provide a vital service to public utilities. The Board did not specifically find the natural gas pipelines to be public utilities *per se*, but nonetheless found that the public utility systemwide presumption should apply because the pipelines are relied on as the source of supply for public utilities. *Michigan Wisconsin Pipe Line Co.*, 194 NLRB 469, 470 (1971); see also *Tennessee Gas Pipeline*, 254 NLRB 1031, 1032 (1981); *Colorado Interstate Gas Co.*, supra at 849; *Natural Gas Pipeline Co. of America*, 223 NLRB 1439, 1441 (1976).

Similarly, here TAPS, which has an integrated and interdependent operation, is the sole source of supply for public utilities that render essential services to the public, and the Board is thus reluctant to fragment the unit. In the natural gas pipeline cases, the Board applied the systemwide presumption where, as in the instant case, the employer was neither the producer nor the direct vendor of the product or service to the public. See, e.g., *Tennessee Gas Pipeline*, supra at 1031 (a natural gas transmission company purchased natural gas, transported it via pipeline and sold it to retail distribution companies); *Colorado Interstate Gas Co.*, supra at 849 (employer sold natural gas to public utilities, city utility departments, other natural gas transmission companies, and large industrial users of natural gas); *Michigan Wisconsin Pipe Line Co.*, supra at 469 (employer supplied natural gas to various public utility companies located along its pipeline); *Pacific Lighting Service Co.*, 181 NLRB 726 (1970) (employer operated a natural gas transmission system and did not sell gas to the public or others). The critical element in these cases is the public’s reliance on the employer’s services and the absence of available substitutes.

The natural gas pipeline cases are similar in many respects to the instant case. Like the Employer’s pipeline, the natural gas pipelines act as a transmission system for a fuel product. Pipeline operators do not sell the product directly to the public. Rather, they sell the fuel to other companies, including other transmission companies, and

to distributors that sell the fuel to the public. Here, the Employer not only transmits oil along the pipeline and loads the oil onto ships for further distribution, but also supplies crude oil directly to Alaskan refineries, which then sell refined heating fuel directly to the public. For example, one of the refineries that rely on TAPS oil makes approximately 50 percent of its refined product into home heating oil. Some of this home heating oil is sold to heating oil distributors, and the remainder is sold by the refinery directly to residential and commercial customers, including hospitals, schools, and businesses. TAPS is thus the same “distance removed” from the consumer as the natural gas pipeline companies that supply to utilities, which in turn provide the gas to consumers. See *Tennessee Gas Pipeline*, supra at 1031.

The dissent argues that the natural gas pipeline cases may be distinguishable because natural gas must be transported via pipeline, whereas crude oil can be transported by barge, tanker truck and/or railroad tanker. This may be the case with crude oil pipelines located in the lower 48 States, but it is not the case here. As noted, Prudhoe Bay at the North Slope is not navigable due to ice during much of the year. Over land, the pipeline travels 800 miles, starting 250 miles north of the Arctic Circle, through large areas of isolated, undeveloped terrain, and there is no rail service north of Fairbanks. No evidence was presented regarding any feasible alternate methods of transport for the oil from the North Slope to Valdez. The pipeline is the only method for moving the oil, and thus is similar to natural gas pipelines in this regard.

We therefore find that the systemwide presumption should apply here as it does in the natural gas pipeline cases, whether or not the Employer is deemed to be a “public utility.” As such, the unit should not be fragmented absent compelling evidence that collective bargaining in the petitioned-for VMT technicians unit would be feasible. Turning to the factors traditionally examined under the systemwide presumption, we find that the Petitioner has failed to make the required evidentiary showing either that employees in the petitioned-for unit share a substantial community of interest, or that, even assuming the boundaries of the requested VMT technicians unit conform to a well-defined administrative segment of the Employer, those boundaries could be established without undue disturbance to the Employer’s ability to perform its necessary functions.<sup>4</sup> *Baltimore Gas & Electric Co.*, supra at 201.

<sup>4</sup> There is no opposing bargaining history on a broader basis among the Employer’s technicians.

We begin this step of the analysis by applying, as we did in the natural gas pipeline cases, the traditional community-of-interest factors. See *Tennessee Gas Pipeline*, supra at 1032, and *Colorado Interstate Gas Co.*, supra at 847–848. The traditional community-of-interest factors include the following: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any exists. *Trane*, 339 NLRB 866, 867 (2003) (citing *J & L Plate, Inc.*, 310 NLRB 429 (1993), and *R & D Trucking, Inc.*, 327 NLRB 531 (1999)).

With respect to the factor of centralized control, the record shows that there is some local autonomy, in that day-to-day supervision of the technicians at the VMT and on the pipeline is delegated to local management. Local supervisors may grant overtime, sick leave, and vacation. Local supervisors also evaluate technicians' progress on a corporate-established 6-step skill progression, which allows technicians to move up on the pay scale. Although this demonstrates some local autonomy, there are significant areas with respect to the technicians' terms and conditions of employment that are controlled centrally by headquarters in Anchorage. Uniform policies apply systemwide to technicians working anywhere on the pipeline and at the VMT. Human resources policy and employee relations matters are centralized in Anchorage, and all technicians receive the same pay and benefits. Although local supervisors are involved in interviewing candidates and making hiring recommendations, the ultimate hiring decisions are made at the corporate level, and there is no evidence regarding how much weight is given to the local supervisors' hiring recommendations. While local supervisors administer informal discipline, such as verbal counseling and written warnings, corporate-level managers are directly involved in administering more formal discipline.

Regarding other community-of-interest factors, despite some differences, the skills and functions of the technicians who work at the VMT and on the pipeline are to a large degree similar.<sup>5</sup> Although permanent transfer of

<sup>5</sup> For example, mechanical maintenance technicians at the VMT and on the pipeline use the same or similar tools and equipment, and a mechanical maintenance technician at the VMT could transfer to work at a pump station with no additional training. VMT ballast water treatment technicians could perform water treatment on the pipeline. Pipeline and VMT technicians both set limit switches on limit torque actuators, and they both work on remote gate valves, accelerometers, motor operated valves, EIM actuators, and uninterruptible power supplies. Pipeline and VMT lab technicians perform similar oil sample analyses. Electrical technicians at both the VMT and on the pipeline

technicians between the VMT and the pipeline is limited, all technician job openings are posted and may be applied for systemwide, and the company prefers to hire technicians internally rather than from the outside. This is especially true during planned downsizing. There are significant temporary transfers and interchange between some of the VMT and pipeline technicians, especially among the lab technicians. There is also significant contact between some of the VMT and pipeline technicians. The working conditions at the VMT and the pump stations are different due to the remote location of the pump station worksites; however, in the natural gas pipeline cases, the remoteness of the work locations along the pipeline was not considered a compelling circumstance justifying fragmenting the unit, see *Tennessee Gas Pipeline*, supra at 1031, and similarly is not a compelling reason to fragment the unit here.

We recognize that there is no history of bargaining on the broad basis. But neither is there a history of bargaining on the narrow basis sought here. Given the other factors (recited above) in favor of the broader unit, we do not believe that there is "compelling evidence" that bargaining on the narrow basis is a prudent and feasible step to take.

Were we applying the single-facility presumption, the foregoing community-of-interest analysis might well support finding the petitioned-for unit to be an appropriate unit. However, under the systemwide presumption applicable here, the Board requires "compelling" evidence of a "substantial community of interest" to rebut that presumption. Measured against that exacting standard, the community-of-interest evidence falls short.<sup>6</sup>

In addition, although the VMT and the pipeline are separate administrative segments of the Employer's operation and have different subsidiary functions—the pipeline moves oil, and the VMT receives, stores and loads oil onto ships for transport—we find that the highly integrated and perhaps even unique nature of the overall operation demonstrates that it is not feasible to establish a separate technicians unit along administrative division lines.

must possess a State of Alaska Certificate of Fitness card, and they perform similar work. Instrument technicians on the pipeline and at the VMT also perform similar work. For example, VMT instrument technicians and pipeline SCADA technicians both work on vibration monitoring equipment. Control room operators on the pipeline and at the VMT also perform similar functions. All technicians who perform reconnaissance, whether at the VMT or on the pipeline, must take the same oil spill response training.

<sup>6</sup> In our view, the dissent's contrary conclusion about the separate community of interests of VMT technicians rests on a less demanding evidentiary standard that does not give sufficient weight to the systemwide presumption.

TAPS is uniquely situated; its geographic remoteness makes it the sole source of transport for the large amount of crude oil produced on the North Slope. TAPS transports 20 percent of the nation's domestically produced oil, 56 percent of the total oil consumed on the West Coast, and 98 percent of the oil produced in Alaska. Interruption of the supply of this amount of oil would have a significant impact on Alaska and, to some lesser extent, on the nation. For example, as discussed above, TAPS provides crude oil to Alaskan oil refineries to produce heating oil for homes and businesses in the State. Given Alaska's severely cold climate, a cessation or significant reduction in the supply of heating oil could have dire consequences. TAPS was built with the express Congressional expectation that it would supply significant amounts of crude oil for domestic use by the American public, and both the State of Alaska and the U.S. Congress have deemed the role played by TAPS to be an essential and vital service to the public. TAPS makes a singular contribution to meeting the country's energy needs. The public, both in Alaska and the lower 48 States, is highly dependent upon TAPS' services, and therefore the public interest underlying the systemwide presumption is well served by applying the presumption here.

In sum, the essential function of TAPS is to transport oil from remote oil fields to distant refiners and other users. Notwithstanding separate administrative divisions, the operational control center at the VMT monitors and controls this transport function throughout the entire system. Accordingly, we find that in the circumstances present in this case, there is not compelling evidence to show that a bargaining unit of VMT technicians can be established without undue disturbance to the Company's ability to perform its essential systemwide function.<sup>7</sup> If the Board did not require a comprehensive unit, a labor dispute or work stoppage at the VMT terminal would have far-reaching effects, threatening the supply of oil to most Alaskan refineries and initially cutting by more than half the supply of oil to the West Coast, with consequent severe disruptions in the provision to the public of

<sup>7</sup> We find that our dissenting colleague's analysis fails to give sufficient weight to this critical factor. As previously stated, the issue presented is not simply whether the petitioned-for employees work in a well-defined administrative segment of the Employer's operations. The Board must also find compelling evidence that the unit "could be established without undue disturbance to the company's ability to perform its necessary functions." *Baltimore Gas & Electric*, 206 NLRB at 201. We conclude that the petitioned-for VMT technicians unit cannot meet this test.

essential energy resources at sites far removed from the situs of the labor dispute.<sup>8</sup>

The dissent contends that a work stoppage at the VMT would disrupt the flow of oil whether or not the pipeline employees are included in the unit, thus suggesting that a systemwide unit would not necessarily be better for avoiding undue disturbances to the Employer's ability to perform its necessary functions. We disagree. The rule favoring systemwide units in public utilities reduces the number of units in which work disputes and stoppages could disrupt service across the system. *Verizon Wireless*, 341 NLRB 483, 484 (2004). Thus, the issue is not whether a work stoppage at the VMT would itself disrupt the flow of oil. Rather, the issue is whether a multiplicity of units is more likely to give rise to a service-disrupting work stoppage than would a systemwide unit. The Board's presumption in favor of a systemwide unit is based, at least in part, on the judgment that an increase in the number of units leads to an increase in the number of potential labor disputes and work stoppages. And, given the essential nature of the transport of crude oil by TAPS, and the potentially serious consequences of a work stoppage, either on the pipeline or at the VMT, increasing the likelihood of a disruption by finding a less than systemwide unit to be appropriate is unacceptable.

Accordingly, we remand this case to the Regional Director for action consistent with the Decision on Review and Order.

#### ORDER

It is ordered that this proceeding is remanded to the Regional Director for Region 19 for action consistent with the Decision on Review and Order.

MEMBER WALSH, dissenting.

The petitioned-for single-facility unit of technicians working at the Employer's Valdez Marine Terminal (VMT) facility is an appropriate unit for collective bargaining. The majority finds the petitioned-for unit inappropriate because it does not also include the technicians working at the Employer's remote pipeline pump stations located up to 800 miles away from the VMT. I dissent.

#### I.

The Employer operates and maintains the Trans Alaska Pipeline System (TAPS). TAPS transports crude oil through 800 miles of pipeline from the North Slope of Alaska to Valdez, Alaska, where the VMT is located. At the VMT, the crude oil is loaded onto tanker ships for transport or is held in storage tanks pending transport. Seven pump stations located at intervals along the pipe-

<sup>8</sup> We do not pass on whether a systemwide presumption should apply to any other oil pipeline operator in the United States.

line maintain the flow of oil through the pipeline.<sup>1</sup> Most of the pump stations are in remote and undeveloped areas, and are often accessible only by airplane.

The Employer's operations are divided into two separate administrative subdivisions, one covering the pipeline and the pump stations, and one covering the VMT facility. Each subdivision is headed by its own manager. The VMT employs about 163 technicians, and the seven pump stations along the pipeline employ an additional 165 technicians.

The VMT has a separate management structure from the pipeline, and the day-to-day supervision of the technicians at the VMT and on the pipeline is delegated to local management. Thus, local supervisors grant overtime, sick leave, and vacation time. In addition, local supervisors evaluate technicians' progress, and promotions and performance bonuses are determined locally by an employee's supervisor and manager. Local management interviews applicants and makes hiring recommendations. With respect to discipline, local supervisors initiate corrective action, investigate and determine if disciplinary action is warranted and recommend the type and severity of discipline. Local supervisors have the authority to administer informal discipline, including verbal counseling and written warnings, and local supervisors and managers play a significant role in the administration of formal discipline.

Working conditions at the VMT are very different from those on the pipeline. Pipeline technicians are flown to their remote worksites at the beginning of their scheduled workweek(s), and flown home at the end. While working, the pump station technicians live in company-provided living quarters, and eat in company-paid cafeterias. Pump station crews live inside barricaded compounds under armed guard. VMT technicians, however, live near their worksite in Valdez and are not provided transportation, housing, or food.

The VMT technicians' skills differ from those of pipeline technicians, and the pipeline pump stations contain equipment and facilities not found at the VMT. The pipeline has no functional equivalent to the VMT tank farms, vapor recovery system, marine operations, ballast water treatment facility, or biological treatment tanks. Similarly, pipeline technicians maintain equipment with which VMT technicians do not work. Unlike technicians at the VMT, pipeline technicians are responsible for the operation and maintenance of sophisticated crude oil pumps powered by jet engines, pipeline turbines, and related control mechanisms, and they operate and main-

tain refrigeration units designed to prevent melting of the permafrost. There are different certification requirements for technicians who maintain the refrigeration units on the pipeline. Further, ballast water treatment technicians at the VMT must have special licensing, and VMT marine technicians who load the tankers must have special training.

There has been very little interchange of employees between the VMT and the pump stations on the pipeline. Permanent transfer of technicians between the VMT and the pipeline has been limited.<sup>2</sup> In addition, there has been very little temporary interchange between the VMT and the pipeline.<sup>3</sup>

## II.

The Petitioner seeks to represent a unit of technicians at the Employer's VMT facility, relying on the Board's longstanding presumption that a single-facility unit is appropriate for collective bargaining. The Employer, on the other hand, argues that the Board's systemwide "public utility" presumption<sup>4</sup> should apply and that the petitioned-for single-facility unit is inappropriate. Without finding that TAPS is a public utility, the majority nevertheless applies the "public utility" presumption, and finds, in agreement with the Employer, that the only appropriate unit in this case would be systemwide. In so doing, the majority finds that this case is analogous to cases involving natural gas pipelines in which the Board applied a systemwide unit presumption. See, e.g., *Tennessee Gas Pipeline*, 254 NLRB 1031, 1032 (1981); *Natural Gas Pipeline Co. of America*, 223 NLRB 1439, 1440 (1976); *Colorado Interstate Gas Co.*, 202 NLRB 847, 848-849 (1973); and *Michigan Wisconsin Pipe Line Co.*, 194 NLRB 469, 470 (1971).

The Board in those cases stated that while it is reluctant to fragmentize natural gas pipeline bargaining units

<sup>2</sup> There were no permanent transfers of technicians from the VMT to the pipeline operations in 2002, 2003, or 2004. One VMT technician transferred to the pipeline in September 2001 and one transferred in June 1998. There were no transfers of pipeline technicians to the VMT in 2000, 2001, 2002, 2003, or 2004. In May 1999, there was a permanent transfer from a pump station operations supervisory position to a VMT technician position.

<sup>3</sup> Only one employee was formally temporarily assigned from the VMT to the pipeline. Although there was some anecdotal evidence regarding other "temporary assignments," no completed temporary assignment forms were presented with respect to those assignments.

<sup>4</sup> The Board has long held the view that a systemwide unit is "optimal" in the public utility industry, although systemwide units have not been required "in all instances." *Deposit Telephone Co.*, 328 NLRB 1029, 1030 (1999). In *Verizon Wireless*, 341 NLRB 483, 484 (2004), the Board referred to the public utility systemwide preference as a "presumption" and stated that "this systemwide preference is merely a presumption and does not foreclose the possibility of less sweeping units."

<sup>1</sup> The pump stations are located at various points between 65 and 800 miles away from the VMT.

absent compelling circumstances, it will, under certain circumstances, “permit the establishment of a unit less than systemwide in scope.” *Colorado Interstate Gas Co.*, supra at 848. “[T]he Board has found less than systemwide units appropriate where the petitioned-for employees (1) work in an administrative subdivision or a distinct geographic service area of the utility; (2) enjoy a substantial community of interest sufficient to make less than systemwide bargaining feasible; and (3) have no history of bargaining on a broader basis.” *Verizon Wireless*, supra at 484, citing *Colorado Interstate Gas Co.*, supra at 848–849.

### III.

The majority applies the systemwide presumption normally applied to public utilities, because the Board has applied this presumption to natural gas pipelines, and because of the apparent similarities of the oil pipeline to natural gas pipelines. As the majority appears to acknowledge, however, an oil pipeline is clearly not a “public utility,” and thus it is doubtful that the systemwide presumption should apply at all. I have substantial doubts as to whether the natural gas pipeline cases are analogous to the instant case.<sup>5</sup> However, for the sake of argument, I am willing to accept the applicability of the natural gas pipeline cases. But, as discussed below, even if the natural gas pipeline cases apply here and the systemwide unit presumption is applicable, the Petitioner has established all three prongs of the rebuttal test set forth above and has shown by compelling evidence that a less than systemwide unit is appropriate in this case.

First, the petitioned-for VMT employees work in a separate administrative division and a distinct geographic location. Thus, as discussed above, the Employer is divided into two major administrative subdivisions, the pipeline and the VMT, each with a distinct nature of operations. In addition, the divisions are geographically separated. There are significant distances between the VMT in Valdez and the pipeline pump stations, with the pump stations located from 65 to 800 miles from the VMT. The geographic separation is exacerbated by the inaccessibility of some of the pump stations. This factor

<sup>5</sup> Crude oil can be transported by other means such as barge, tanker truck, and railroad tanker, but natural gas appears to be exclusively transported from wellhead to residences and commercial users via pipeline. Thus, it is likely that disruptions of a natural gas pipeline will have a greater impact on commercial and residential users than will disruptions of an oil pipeline. The majority disputes my suggestion that the natural gas pipeline cases may be distinguishable, claiming that the nature of the climate and terrain make the Alaska pipeline more similar to natural gas pipelines than are crude oil pipelines in the lower 48 States. I see no reason to debate this point because, as set forth below, I am willing to accept the applicability of the natural gas pipeline cases for purposes of deciding this case.

strongly supports finding a separate VMT unit appropriate. Accordingly, the first element necessary for rebutting the systemwide unit preference has clearly been satisfied.

Second, in analyzing whether the second prong of the rebuttal test has been met, i.e., whether the petitioned-for VMT employees enjoy a substantial community of interest sufficient to make less than systemwide bargaining feasible, the Board applies the traditional community-of-interest factors. See, e.g., *Tennessee Gas Pipeline*, supra at 1032. The traditional community-of-interest factors include (1) centralized control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history. Applying these factors here, the second rebuttal prong has also clearly been met in this case.

Here, as set forth above, there is significant local autonomy with regard to day-to-day supervision. Thus, local supervisors at the VMT grant overtime, sick leave, and vacation time; evaluate, promote, and reward employees; and play a significant role in employee discipline and hiring.

The working conditions, skills, and functions of the VMT employees differ significantly from those of employees on the pipeline. Pipeline technicians are flown to and from their remote worksites and live in company-provided barricaded living quarters. VMT technicians, however, live near Valdez and are not provided with transportation, housing, or food. In addition, as discussed above, the VMT technicians’ skills and functions differ from those of pipeline technicians, and the pipeline pump stations contain equipment and facilities not found at the VMT.

Further, the degree of employee interchange between the VMT and the pipeline, both permanent and temporary, is minimal. Cf. *Red Lobster*, 300 NLRB 908, 911 (1990) (11 permanent transfers in 1 year in a combined work force of 185, and 19 temporary transfers in a work force of 85 is “minimal” and insufficient to support a multilocation unit).

In addition, as discussed above, the VMT employees work at a separate facility in Valdez that is geographically distant from the remote pump stations whose employees the Employer seeks to include. Moreover, there is no bargaining history involving these employees.

For these reasons, the application of the traditional community-of-interest factors to the facts of this case strongly supports a conclusion that the VMT employees enjoy a community of interest distinct from the pipeline employees and that separate bargaining for the VMT

employees would be feasible. Accordingly, the second prong of the rebuttal test has been satisfied.

Third, as set forth above, there is no bargaining history on a broader basis that would support a finding that separate bargaining would not be appropriate. Contrary to the suggestion of the majority, the fact that there is no history of bargaining on the narrow basis sought here does not preclude a finding that such a unit would be appropriate. Accordingly, the third prong of the rebuttal test has been met.

For the foregoing reasons, the Petitioner has satisfied all three prongs of the rebuttal test. In addition, the petitioned-for separate VMT unit would not unduly disturb the Employer's ability to perform its necessary functions. The majority maintains that if the Board does not require a systemwide unit, a labor dispute or work stoppage at the VMT terminal would threaten the supply of oil to Alaska and the rest of the United States. Although I share the majority's concern about potential disruption of the flow of oil from the Alaska pipeline, a work stoppage at the VMT would disrupt the flow of oil whether or not the pipeline employees were included in the unit. The majority claims that a VMT unit is inappropriate because an increase in the number of units would lead to an increase in the number of potential labor disputes. But allowing a separate VMT unit here would not necessarily lead to a proliferation of bargaining units.<sup>6</sup> Moreover, even if the risk of future work stoppages would possibly be elevated in the unlikely event that a proliferation of bargaining units were actually to come to pass at some time in the future, that risk is slight and is outweighed by the employees' Section 7 organizational rights. Under these circumstances, there is no basis for limiting the organizational rights of the employees by requiring them to organize only in a single comprehensive unit.

#### IV.

In sum, there is compelling evidence to show that the Petitioner has rebutted the systemwide unit presumption (assuming *arguendo* that the presumption applies) and has met its burden of showing that the petitioned-for unit is appropriate in this case. Accordingly, I would direct an election in the petitioned-for unit of VMT technicians.

<sup>6</sup> For purposes of this case, it is only necessary to decide whether a single systemwide unit is required, or whether there can be a separate unit comprised only of the VMT technicians. Such a finding would not necessarily lead to a conclusion that separate units comprised of technicians in each pump station would be appropriate. Thus, I am not sanctioning a multiplicity of bargaining units.

## APPENDIX

### SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, an initial 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. I issued an initial Decision and Direction of Election in this matter, finding, *inter alia*, that the Employer was not a public utility, and directing an election in the petitioned-for unit. Shortly thereafter, the Employer filed a motion to reopen the record in order to introduce additional evidence on the Employer's alleged "public utility" status. I granted the Employer's motion to reopen the record and subsequently, there was a hearing held for the limited purpose of taking additional evidence on the alleged public utility status of the Employer. Upon the entire record,<sup>1</sup> I am now issuing this Supplemental Decision and Direction of Election. This Supplemental Decision and Direction of Election supersedes my previously issued Decision and Direction of Election. Upon the entire record, I find the following<sup>2</sup>

#### Summary

The Employer, Alyeska Pipeline Service Co., operates and maintains the Trans Alaska Pipeline System (TAPS). TAPS transports crude oil from its point of origin on the North Slope, 800 miles south to its termination point at Valdez, Alaska. At Valdez, the Employer operates the Valdez Marine Terminal (VMT), where the piped crude oil is loaded onto tankers for transport. The Petitioner filed the instant petition seeking a unit of all full-time and regular part-time operations and maintenance employees (collectively referred to as "technicians") at the Employer's VMT facility.<sup>3</sup>

<sup>1</sup> Briefs from both parties were timely received and duly considered after the initial hearing. Additionally, briefs from both parties were timely received and duly considered after the reopened hearing.

<sup>2</sup> 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 herein 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 Sec. 9(c)(1) and Sec. 2(6) and (7) of the Act.

Additionally, the hearing officer deferred to me the decision regarding the admission of Emp. Exhs. 70 and 71. Those exhibits are employer documents relating to the transfer of employees—a relevant issue in this matter. The Petitioner's objection essentially deals with the concern that these exhibits were not produced for Petitioner pursuant to its subpoena served on the Employer prior to the hearing. However, the documents were introduced by the Employer, not in its case in chief but on rebuttal after Petitioner's case caused the Employer to make a closer look for transfer documents, which are not kept in a central location. Under these circumstances, I have decided to admit Emp. Exhibits 70 and 71 over Petitioner's objections.

<sup>3</sup> There are approximately 163 employees in the petitioned-for unit. The parties, by stipulation, clarified that the bargaining unit would include operations, maintenance and laboratory technicians.

The Petitioner argues that the petitioned-for unit, as a single-facility unit, is appropriate under the Board's single-facility unit presumption. In contrast, the Employer contends that the only appropriate unit must be a systemwide unit for two reasons. First, TAPS is so functionally integrated that anything less than a systemwide unit would be inappropriate. Second, the Employer is a "public utility" under Board law, which enjoys a systemwide unit presumption.

Based on the record and applicable Board law, I find, in agreement with the Petitioner, that the petitioned-for unit, as a single-facility unit, constitutes an appropriate unit,<sup>4</sup> as the evidence fails to rebut the Board's longstanding single-facility presumption. Additionally, the evidence fails to establish that TAPS is a "public utility" under existing Board law.

Below, I have set forth the evidence presented in the hearings in this matter describing the Employer's operations generally and the community-of-interest factors pertinent to my analysis. Following the evidence section is my analysis of the applicable legal standards and a section setting forth the Direction of Election.

#### I. EVIDENCE

##### A. *The Facilities*

The Employer, Alyeska Pipeline Service Co., is engaged in the operation and maintenance of TAPS. TAPS is an 800-mile pipeline that transports crude oil from the North Slope south to the VMT in Valdez, Alaska. TAPS currently transports about 1 million barrels of oil a day, which is approximately 20 percent of the United States domestic crude oil production and approximately 98 percent of the crude oil produced in Alaska.

Five oil companies collectively own TAPS.<sup>5</sup> Those five companies created the Employer, as a closely held corporation, for the exclusive purpose of operating and maintaining TAPS. The Employer has no ownership interest in the pipeline or the crude oil flowing through the pipeline. It is a service company whose sole business purpose is to maintain and operate TAPS.

The Employer divides its operations into two administrative subdivisions, one covering the pipeline and its pump stations and one covering the VMT facility. There are approximately 163 technicians working at the VMT in its various departments. The VMT's primary functions are to temporarily store the crude oil coming off the pipeline and to load the crude oil onto

tankers for transport. The VMT has an extensive tank farm system that can store about 9 million barrels of oil. The VMT also has several berthing ports used to load the crude oil onto tankers. Additionally, the VMT has a biological treatment facility to treat ballast water removed from the tankers.

Beyond the VMT, the Employer also operates several pump stations along the pipeline, along which the Employer employs an additional 165 employees. Currently, there are seven staffed pump stations along the pipeline.<sup>6</sup> Pump Station 1, near the North Slope, is approximately 800 miles from the VMT. Pump station 3 is approximately 696 miles from the VMT. Pump station 4 is approximately 656 miles from the VMT. Pump station 5 is approximately 525 miles from the VMT.<sup>7</sup> Pump station 7 is approximately 386 miles from the VMT. Pump station 9 is approximately 251 miles from the VMT. And Pump station 12 is approximately 65 miles from the VMT.

With the exception of pump station 9, which is located near Delta Junction, the operational pump stations are located in remote areas. At these locations, the Employer pays to transport the employees to and from the stations, usually by aircraft. Additionally, the Employer provides "Personal Living Quarters" in which it houses and feeds the employees during their workweek(s).

##### B. *Functional Integration of the Operation of TAPS*

Although TAPS has individual pump stations and a separate marine terminal, it is, by its nature, a functionally integrated system designed to move crude oil from one point to another. The Employer controls the overall flow of oil from its operational control center (OCC), which is the nerve center of TAPS. OCC controllers monitor the entire system from their office at the VMT.

The Employer maintains several systemwide programs to ensure the safe and efficient operation of TAPS. In particular, the Employer maintains systemwide maintenance and safety programs, which are requirements of its lease agreements with the State of Alaska and the Federal Government, to ensure the safe and environmentally clean operation of its system. Additionally, the Employer maintains a systemwide telecommunications system so that OCC controllers can be in constant contact with all facilities in the system.

##### C. *Managerial and Supervisory Structure*

David Wight is the Employer's CEO. Reporting to Wight is COO Dan Hisey. Reporting to Hisey are Oil Movement Manager Mike Joyner and Vice President of Operations and Maintenance Greg Jones. Reporting to Joyner is Lab Services Supervisor Juliet Cruz, who oversees the Employer's three laboratories located at VMT, pump station 1 and at the North Pole

<sup>4</sup> The parties stipulated that the following employees are 2(11) supervisors under the Act: CEO David Wight, COO David Hisey, Oil Movement Manager Mike Joyner, VP Operations and Maintenance Greg Jones, Terminal Manager Rod Hansen, BWT/Marine Operations Manager Joe Kuchin, Maintenance Manager Bill Amberg, PV/OMS Operations Manager Tom Stokes, Valdez Lab Supervisor Satch Tapangco, all VMT operations supervisors, all VMT maintenance supervisors and all VMT operations supervisors. Additionally, the parties stipulated that Dale Bruns, Paul Smith, and Duane Edelman are currently functioning as "step-up supervisors" and as 2(11) supervisors and, therefore, are not eligible to vote. Based upon the parties' stipulation and the record, I find that the above individuals are supervisors within meaning of Sec. 2(11) of the Act and, thus, are excluded from the bargaining unit.

<sup>5</sup> BP Pipelines (Alaska) Inc.; Exxon Mobil Pipeline Company; Phillips Transportation Alaska, Inc.; Unocal Pipeline Company; and Williams Alaska Pipeline Company, L.L.C.

<sup>6</sup> There were 12 pump stations in the original design of the pipeline. Due to operational needs, only 11 were actually built and only 7 are in regular operation today.

<sup>7</sup> Pump station 5 is currently being operated as a "relief station." Pump station 5 has several storage tanks but does not have a mainline pump. The purpose of pump station 5 is to temporarily divert oil off the pipeline to relieve pressure on the pipeline.

Meeting Station.<sup>8</sup> Valdez Lab Supervisor Satch Tapangco-Tapangco directly supervises the VMT laboratory and reports to Cruz, who directly supervises pump station 1 and the North Pole Metering laboratories. Reporting to Vice President of Operations and Maintenance Greg Jones are Pipeline Manager Jim Johnson and VMT Terminal Manager Rod Hanson. There are two more levels of management under Pipeline Manager Jim Johnson on the pipeline side of the Employer's operation. Reporting to VMT Terminal Manager Hanson are VMT Ballast Water Treatment/Marine Manager Joe Kuchin, Maintenance Manager Bill Amberg, and PV/OMS Operations Manager Tom Stokes. Kuchin has three VMT operations supervisors reporting to him. Amberg has three VMT maintenance supervisors reporting to him. Stokes has four VMT operations supervisors reporting to him.

In sum, the VMT and pipeline are separated into two administrative subdivisions of TAPS. Each side is headed by its own manager, Terminal Manager Rod Hanson on the VMT side and Pipeline Manager Jim Johnson on the pipeline side. Technicians on the pipeline and technicians at the VMT share common supervision at the fourth level of management with Vice President of Operations and Maintenance Greg Jones.

#### *D. Conditions of Employment/Control of Labor Relations/ Local Autonomy*

Labor relations are sometimes handled at a corporate level and sometimes at a local level. In general, the Employer's labor relations are centralized at a policy level, but are usually administered on a day-to-day basis, with some autonomy, at a local level.

The Employer's corporate headquarters are in Anchorage, Alaska, where its human resource department is also located. The Employer's financial, fire/safety, regulatory compliance, training, and payroll departments all operate out of its corporate headquarters in Anchorage. Employees, employerwide, share the same work schedules,<sup>9</sup> pay scales, benefits plans, and share much of the same policy manuals and codes of conduct.

However, much of the day-to-day labor relations are administered locally. There are two human resource specialists assigned to the VMT who administer the Employer's human resource policies at the VMT. Additionally, local supervisors, both at the VMT and on the pipeline, have independent authority to grant overtime, sick leave, and vacation. With respect to discipline, local supervisors independently handle lower levels of discipline such as counselings and written warnings. A joint committee, made up of local-level and corporate-level managers, administers more formal discipline like suspensions and terminations. Hiring decisions are ultimately made at a corporate level. However, local management has significant input in the process and is involved in both interviewing and making recommendations about the candidates. Orientation and training for newly hired employees are done through a combination of centralized and local-level training programs. The corporate

<sup>8</sup> The North Pole Metering Station is located on the pipeline, in between pump stations 7 and 8.

<sup>9</sup> Employees at both the VMT and on the pipeline work 26 weeks per year. They either work a 2-week-on, 2-week-off schedule or a 1-week-on, 1-week-off schedule.

level training programs tend to cover those things common to all employees such as benefit plans, employerwide policies and employerwide safety and operations procedures. The final part of training and orientation is usually done at a local level by local management and covers site-specific and job-specific training.

#### *E. Skills and Geographic Locations of Work*

The essential function of a pump station is to help move the crude oil down the pipeline. The essential functions of the VMT are to accept the oil from the pipeline and to load it onto tankers. Despite that distinction, there are some common equipment and some common skills necessary to operate both the VMT and the pump stations.

All technicians working at the VMT and on the pipeline share some common skills, training, and functions. For example, the maintenance technicians at the VMT perform many of the same tasks as the maintenance technicians on the pipeline, with the exception of the occasional work on certain valves or pumps that are unique to the pump stations.

Several types of VMT technicians, however, have no functional equivalent on the pipeline. For example, technicians who work in the berthing area of VMT or on the Ballast Water Treatment facility at VMT have no functional equivalent on the pipeline and perform work unique to the VMT. Likewise, several pump station technicians work on jet engines that run a reaction turbine on the pump station, work which is exclusive to pump stations and which has no functional equivalent at the VMT.

With respect to promotion, all technicians, employerwide, are promoted via a six-step skilled progression unique to each type of technician. The skilled progression is tied to the technician's pay scale and is evaluated by his or her local supervisor. Each technician must "prove up" to next skill level in order to progress on the pay scale. The early steps of the skilled progressions tend to have skills common to most types of technicians. The higher-level skills sets, i.e., levels 4, 5, and 6, tend to be specific to the type of technician and the location of his or her work. These skill sets are developed at a corporate level, with input from the field, and administered by local supervisors. The local supervisor is responsible for evaluating each technician working under him or her. Likewise, the local supervisor is responsible for promoting a technician through the skill levels.

As described above, six of the seven pump stations along the pipeline are located in remote areas.<sup>10</sup> As such, the Employer transports the employees in and out of the pump station areas and houses and feeds the employees working at these six pump stations during their workweek(s) at the pump stations' personal living quarters. However, the VMT has no personal living quarters. All employees at the VMT get to and from work on

<sup>10</sup> The exception to this is pump station 9, which is located near Delta Junction, Alaska. Most employees who work at pump station 9 live in Delta Junction. Unlike the other pump stations, employees who live in Delta Junction and work at pump station 9 are not transported to work by the Employer or provided living quarters during their workweek(s).

their own and are not provided housing or meals during their workweek(s).

#### F. Interchange of Employees

There is little evidence to suggest that employees regularly transfer between VMT and the pipeline. In the past 5 years, an estimated three to five employees have transferred between the VMT and pump stations on the pipeline out of a group of over 320 employees. When employees do transfer, they retain their pay and skill level but they must, over a 1 to 2 year period, essentially prove that they are qualified to perform at that level in the position at the location into which they transferred. Regardless, there is no evidence to suggest that transfers are frequent or regular.

Most VMT technicians have little or no contact with technicians working on the pipeline during their day-to-day work routine. Each technician group, either at the VMT or at a pump station, generally has its own tools, technicians, and supervisors. The day-to-day work of a particular technician is usually confined to his or her particular work location and his or her particular area of expertise. There are instances of contact between VMT and pipeline technicians. However, evidence of these contacts is usually brief and confined to special projects like updating procedural manuals or line-wide equipment upgrades and maintenance. In short, most VMT technicians do not come in contact with pipeline technicians on a day-to-day basis.

#### G. Bargaining History

The record reveals no evidence of bargaining history with this Employer and any union.

#### H. Public Regulation of TAPS and the Employer

TAPS, as a common carrier of crude oil, is subject to regulatory oversight by both the State of Alaska's Regulatory Commission of Alaska (RCA) and the Federal Government's Federal Energy Regulatory Commission (FERC). The five owners of TAPS each have Certificates of Public Necessity and Convenience issued by the RCA. These Certificates allow the five owners of TAPS to build and operate the sole common carrier pipeline from Alaska's North Slope to Valdez, which travels a patchwork of State and Federal lands. The Employer, Alyeska, does not have a Certificate of Public Necessity and Convenience, but rather operates the pipeline under the five owners' Certificates.

By State and Federal law, the owners of TAPS, as well as Alyeska, cannot own the crude oil flowing through pipeline. Rather, the oil is owned by the entities that purchased the oil from the North Slope supplier, usually individual shipping companies. The pipeline is open to anyone holding title to the oil.

Any entity wishing to move crude oil through the pipeline pays a tariff to the five owners of the TAPS.<sup>11</sup> The tariff rates are approved by the RCA and FERC. The vast majority of tariffs collected go to the operating costs of the Employer.

<sup>11</sup> The Employer has no involvement in the collection of these tariffs or setting the tariff rates.

#### I. End Users of TAPS

TAPS moves approximately 935,000 barrels of crude oil a day through its system. There are several end users of this oil, but none of these users, at least directly, are retail consumers. The primary recipients of TAPS' oil are tankers in the Valdez port who pick up the oil and ship the crude oil to refineries at various west coast ports.<sup>12</sup> Some of these tanker ships and refineries have corporate ownership affiliations with the five owners of TAPS; many do not.

Additionally, approximately 150,000 barrels a day are diverted from TAPS to supply three nearby refineries. These refineries have no affiliation with TAPS or Alyeska. Two of the refineries are located near the midpoint of the pipeline near North Pole, Alaska. The other refinery is located near Valdez, Alaska. These refineries produce different types of oil products for various commercial, residential and governmental applications in the area.<sup>13</sup>

#### J. National Security Interest in TAPS

The Government considers TAPS to be a possible terrorist threat. As such, several State and Federal agencies monitor TAPS for suspicious activity and coordinate their efforts to protect the pipeline. To effectuate this, Alyeska's security chief is in frequent contact with such agencies as the FBI and Homeland Security.

## II. ANALYSIS

The Union seeks to represent technicians at the Employer's VMT location. The Employer contends that the single facility VMT is inappropriate and the smallest appropriate unit would be a systemwide unit. The Employer's position is based on its assertion that TAPS is a public utility and, thus, falls under the Board's presumption of systemwide units for public utilities.

#### A. The Board's Unit Presumption Standards

With respect to most industries, save the public utility industry, it is well established that a single-facility unit is presumptively appropriate. Therefore, 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, the single-facility unit is an appropriate unit. See *J & L Plate*, 310 NLRB 429 (1993); *Dixie Belle Mills, Inc.*, 138 NLRB 629, 631 (1962). 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

<sup>12</sup> The refineries are primarily located in three areas, the Puget Sound (Washington), San Francisco and Los Angeles, California. Approximately 830,000 barrels a day are shipped out of Valdez.

<sup>13</sup> The two refineries near North Pole, Alaska, produce three types of oil products: jet fuel, which is sold to the nearby military bases; home heating oil, which is sold to a delivery company, who in turn sells to residential and small commercial customers in the area; and diesel, which is sold to a large mining operation in the area and is also sold to electric company who uses the diesel as a fuel source in one of its power generation plants. The refinery near Valdez primarily produces jet fuel for commercial customers in Anchorage, Alaska.

location; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990), *R&D Trucking*, 327 NLRB 531 (1999).

In contrast, the Board has long held that a systemwide unit is the optimum bargaining unit in the public utility industry due to the essential service rendered to the public by this industry and the integrated and interdependent nature of their operations. See *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Deposit Telephone Co.*, 328 NLRB 1029 (1999); *Montana-Dakota Utilities Co.*, 115 NLRB 1396 (1956). The Board's rationale for a systemwide presumption for public utilities is largely a matter of public policy; namely that the public has an "immediate and direct interest in the uninterrupted maintenance of the essential services that the public utility industry alone can adequately provide." *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973). This is, ultimately, a balancing test between employees' Section 7 rights and the public's interest in uninterrupted utility service that only a single entity provides. Generally, the Board is reluctant to limit employee's Section 7 rights unless the countervailing public interest is substantial. The Board's public utility presumption is not absolute; rather the Board has found less than systemwide units appropriate in certain circumstances. See *PECO Energy Co.*, 322 NLRB 1074 (1997) (establishing a three-part test for rebutting the systemwide public utility presumption).

The Board most recently dealt with the public utility presumption in *Verizon Wireless*, 341 NLRB 483 (2004). In *Verizon*, the employer provided, among other things, wireless telephone service. The petitioner sought to represent the retail sales clerks at the Employer's Bakersfield, California retail stores. The employer argued that wireless telephone service is a public utility and therefore the Board should apply its public utility presumption of a systemwide unit. The Board declined to rule on the broader issue of whether wireless telephone service is a public utility. Instead, the Board refused to extend the presumption to a group of retail employees who were far removed from the operation of the employer's wireless network.

While the Board has applied the public utility presumption to a handful of industries such as electrical, water and the natural gas industry, it has never clearly defined "public utility."<sup>14</sup> However, the Board has never extended the public utility presumption to a crude oil pipeline. Essentially, the Employer is arguing that I should break new legal precedent and extend the public utility presumption to a service company that maintains and operates a common carrier crude oil pipeline.

<sup>14</sup> *Black's Law Dictionary* (6th Ed. 1990) defines "public utility" as "a privately owned and operated business whose service are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination. It is always a virtual monopoly." Additionally, the Internal Revenue Code, 26 U.S.C. § 247(b)(1) defines a "public utility" as "a corporation engaged in the furnishing of telephone services or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission."

### B. Single-Facility Unit Appropriate

Applying the Board's single-facility presumption and general community-of-interest standards, I find the VMT technicians to be an appropriate unit for purposes of collective bargaining. Although a pipelinewide unit would arguably be an appropriate unit, it would not be the only appropriate unit. See *Triangle Building Product*, 338 NLRB 257, 264 (2002) ("It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit.").

I recognize that there are facts that militate for a systemwide unit. TAPS, at an operational level, is a functionally integrated system designed to move crude oil from one area to another. It has several systemwide programs to facilitate that purpose such as systemwide maintenance, safety, and communications systems. There is some evidence of limited employee interchange between the VMT and the pipeline as well as minimal work-related contact between the two groups. Additionally, all employees share the same work schedules, rates of pay, benefits, and many of the same procedural manuals.

Despite these commonalities, the record as a whole supports a conclusion that the VMT technicians enjoy a community of interest separate and distinct from the technicians on the pipeline. The Employer separates the two groups of technicians into two distinct administrative subdivisions of its operations, the VMT and the Pipeline. These two administrative subdivisions have their own respective manager, with two more levels of supervision below each of them. Additionally, local supervisors maintain significant local autonomy with respect to such things as directing the day-to-day work of technicians; promoting technicians to the next pay level; granting overtime, time off for vacation and sick leave; and issuing lower level discipline.

Further, the essential function of the pipeline pump stations, where pipeline technicians work, is markedly different than the essential functions of the VMT, where VMT technicians work. The essential function of a pipeline pump station is to force the crude oil down the pipeline, whereas the essential functions of the VMT are to store the crude oil coming off the pipeline and to load the oil onto tanker ships. As such, the VMT has several facilities that pipeline pump stations do not, such as extensive tank farms, biological water treatment facilities and berthing ports.

Additionally, most pipeline technicians perform their work under very different conditions than VMT technicians. While VMT technicians go home at the end of each shift and are not paid for travel time, most pipeline technicians remain at the remote pump stations for the duration of their workweek(s). Additionally, most pipeline technicians are provided transportation to and from their remote work locations and are also provided housing and meals during their workweek(s), all at Employer expense.

With respect to the factor of employee interchange, the record revealed minimal interchange and relatively few transfers over the years. Regarding the factor of geographical location, the pump stations are relatively distance from the VMT as those distances range from 60 to 800 miles. As for the factor of bargaining history, the lack thereof fails to support the Employer's efforts to rebut the single-facility presumption. Indeed,

no other labor organization seeks to represent a unit similar to and/or different from that sought by Petitioner.

In sum, I find that the Employer has failed to rebut the single-facility unit presumption. Indeed, the existence of significant local autonomy; distinctive functions and working conditions; minimal employee interchange; significant distances between the VMT and the pump stations, and an absence of bargaining history in a larger unit, support finding that VMT technicians share a distinct community of interest separate from the pipeline technicians such that the VMT employees constitute a separate and appropriate unit for purposes of collective bargaining. See *Standard Oil Co.*, 230 NLRB 967 (1977), and 241 NLRB 1248 (1979); *BP Alaska, Inc.*, 230 NLRB 986 (1977); supplemented in 234 NLRB 125 (1978); enfd. *Sohio Petroleum Co. v. NLRB*, 625 F.2d 223 (9th Cir. 1980).

### C. Public Utility Presumption Not Applicable

The Employer argues that the Board's single-facility presumption is inappropriate here. Instead, the Employer argues that TAPS is a "public utility" and therefore should be analyzed under the Board's public utility presumption of a systemwide unit. Although I recognize the Board's systemwide presumption for public utilities, I find its analysis inapposite to this case.

The Employer failed to cite and I am not aware of any case in which the Board has recognized a crude oil company or a crude oil pipeline as a "public utility."<sup>15</sup> The Employer is asking me to extend the public utility presumption beyond the current state of Board law to a common carrier crude oil pipeline.

Although the Board has never clearly defined what constitutes a "public utility," the Board, in its public policy analysis of the presumption, instructs that public utilities provide an "essential service that the public utility industry alone can adequately provide." *Baltimore Gas & Electric*, 206 NLRB at 201. They are, by definition, a monopoly.

As its authority for this presumption, the Employer cites several Board cases finding a systemwide unit to be appropriate in the public utility industry. See *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986) (telephone service); *Tennessee Gas Pipeline*, 254 NLRB 1031 (1981) (natural gas service); *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973)

<sup>15</sup> See, e.g., *Standard Oil Co.*, supra, and 241 NLRB 1248 (1979). There, Petitioner sought a unit of truckdrivers. The Employer argued that the smallest appropriate unit was a divisionwide unit. The Board found the petitioned-for unit appropriate, analyzing the facts under the general community of interest factors, with no mention of a public utility presumption for this Employer who is clearly engaged in the business of transporting crude oil. Further, see *BP Alaska, Inc.*, supra; decision supplemented by 234 NLRB 125 (1978); related, *Sohio Petroleum Co.* (formerly *BP Alaska, Inc.*), 239 NLRB 281 (1978); enfd. *Sohio Petroleum Co. v. NLRB*, 625 F.2d 223 (9th Cir. 1980), in which the Board overturned the Regional Director's Decision finding only a systemwide unit appropriate, instead finding the lesser included unit of the employees working in the Employer's power generation department to be an appropriate unit. Interestingly, the Board found the power-generating department to be a "de facto public utility" unlike the rest of the Employer's drilling and oil production operations. In light of the foregoing, the Board does not appear to find that an oil company's operations fall within the public utility industry.

(natural gas and electric services).<sup>16</sup> While I recognize the Board's public utility presumption as set forth in these cases, Board law appears to confine this presumption to traditional public utilities such as electricity, natural gas service, telephone service and cable television service. More specifically, the Board appears to confine the presumption to those employers that are the only providers of their essential service to the public.

I do not find the traditional public utility presumption applies to a crude oil pipeline where the users and direct benefactors of the pipeline are commercial entities and not the general public in any direct manner. In cases where the Board has extended the presumption, those employers exclusively provided a vital or essential service directly to the public. Here, however, TAPS only moves crude oil from one place to another for the benefit of a few commercial customers. Moreover, the Employer in this case is not the owner of the pipeline, but rather the service company charged with operating and maintaining TAPS. Unlike the cases in which the Board applied the presumption, TAPS' product is at least three steps removed from the general public.<sup>17</sup> At best, TAPS has an indirect, aggregate effect on the public's consumption of oil as a fuel source. TAPS only transports about 20 percent of the Nation's domestic oil and presumably far less than 20 percent of the nation's overall oil consumption.

In its brief, the Employer essentially proffered four arguments as to why I should extend the public utility presumption to this Employer and to this industry.

First, the Employer argues that TAPS is regulated as a public utility by the State of Alaska's RCA. The RCA issued Certificates of Public Convenience and Necessity (to the five companies that formed the Employer to operate TAPS), wherein TAPS is referenced to as a "utility service." As such, the Employer argues that TAPS should also be considered a "public utility" under Board law. I find this argument unpersuasive. While public regulation is surely an element of being a "public utility," it is not dispositive of the issue. There are several industries that are regulated by the RCA,<sup>18</sup> but have not been

<sup>16</sup> In its brief, the Employer cited *Texas Pipeline Co.*, 129 NLRB 705 (1960) as support for its position in this matter. However, that case involved an unfair labor practice proceeding arising in part from a related representation proceeding in *Texas Pipeline Co.*, 125 NLRB 837 (1959). In the representation proceeding, the Union sought a bargaining unit broader than that thought appropriate by the Employer. Ultimately, the Board directed an election in a unit that was broader than that sought by the Employer but smaller than that sought by Petitioner. Regardless, in either case, the Board did not address the Employer's status as a public utility.

<sup>17</sup> The majority of the crude oil coming off the pipeline at the VMT is loaded onto a tanker (transaction #1). It is then shipped to a refinery (transaction #2). After the crude oil is refined at the refinery, it is shipped to a retail outlet like a gas station (transaction #3), where it is finally sold to the general public (transaction #4).

<sup>18</sup> I am taking judicial notice of the existence of the Regulatory Commission of Alaska, the various industries and businesses that it regulates and the Certificates of Public Convenience and Necessity it issues. A variety of information about the RCA, including lists of the businesses it regulates, can be found on the Internet at <http://www.state.ak.us/rca/cpcn.html>.

recognized as public utilities under Board law, such as the long distance telephone service,<sup>19</sup> Internet service providers<sup>20</sup> and cellular telephone service.<sup>21</sup>

Second, the Employer also argues that because TAPS is a functionally integrated and interdependent operation, it must therefore be considered a public utility. Again, I find this argument unconvincing. Simply because an employer's operation is integrated and interdependent, does not make it a public utility. If this were the case, every functionally integrated operation would be a public utility under Board law. That clearly is not the state of Board law. In any event, here, the Employer failed to produce sufficient to rebut the single-facility presumption. As described earlier, the employees at the VMT constitute an appropriate unit for purposes of collective bargaining despite the fact that TAPS itself is a functionally integrated pipeline.

Third, the Employer argues that TAPS provides an "essential service" to both the United States and the State of Alaska. Specifically, the Employer notes that TAPS moves about 20 percent of the domestic crude oil production, 56 percent of the West Coast's production, 98 percent of the crude oil produced in Alaska and is the only means of moving North Slope crude oil to market. Additionally, the Employer notes that the TAPS also supplies crude oil directly to three of Alaska's four in-state refineries, which in turn produce refined oil that ultimately either ends up in the production of power and heat for eventual use by residents of Alaska or as jet fuel sold to the U.S. military. In sum, the Employer argues that large areas of Alaska, as well as the United States as a whole, have an immediate and direct interest in the uninterrupted supply of North Slope oil that only TAPS supplies. Even accepting these assertions however, does not negate the fact that TAPS itself is only a common carrier pipeline, moving crude oil from one point to another. It does not own the oil; it does not sell the oil; it does not refine the oil; and it does provide a single drop of North Slope crude oil directly to the public. In fact, the crude oil moving

through TAPS is at least three steps removed from the public. TAPS' continued operation, at best, only has an indirect, aggregate impact on the general public. Moreover, as the Employer's cited statistics illustrate, North Slope oil is not the sole source of crude oil, for the United States, the West Coast, or even all of Alaska's crude refineries.

Finally, the Employer argues that TAPS should be treated as a public utility because the public's interest in TAPS is so significant that it should outweigh the Section 7 rights of its employees. As mentioned above and as admitted by the Employer, the Board has never extended the public utility presumption to a crude oil pipeline company. Thus, any balancing here should continue to favor the statutorily mandated Section 7 rights of employees to freely organize under existing Board law.

In sum, I am declining to extend the public utility presumption to a crude oil pipeline for the reasons stated above and particularly because the Board has never extended the presumption to such an industry.<sup>22</sup>

### III. CONCLUSION

Based on the foregoing and the record evidence, I find that the following employees of Alyeska Pipeline Service Co. constitute a unit appropriate (unit) for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time operations, maintenance and laboratory technicians working at the Employer's Valdez Marine Terminal in Valdez, Alaska; excluding all office clerical employees, guards and supervisors as defined by the Act.

There are approximately 163 employees in the unit.

<sup>19</sup> The RCA regulates businesses providing long-distance telephone service in Alaska, including Bell South Long Distance, Inc. and Sprint Communications, Inc. long-distance telephone service is a highly competitive industry and not indicative of a traditional public utility, where a single entity exclusively provides its essential service to the public.

<sup>20</sup> For example, see DSLnet Communications, LLC.

<sup>21</sup> For example, see Pacific Telecom Cellular of Alaska and Bristol Bay Cellular Partnership. Like long distance telephone service, the cellular telephone industry is highly competitive and not indicative of a traditional public utility industry.

<sup>22</sup> My decision that the VMT technicians constitute an appropriate unit is based upon a rejection of the argument that TAPS is a public utility under Board law. There is sufficient evidence to support a conclusion that the VMT technicians constitute an appropriate unit under the Board's single-facility presumption. However, if TAPS were a public utility under Board law, I would conclude differently; namely that a systemwide unit of technicians would be the only appropriate unit under the Board's systemwide unit presumption for public utilities. While there are limited exceptions to the systemwide presumption, the facts here would not be sufficiently compelling to overcome the Board's strong presumption for a systemwide unit if TAPS were a public utility.