

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

FRUTAROM USA,)	
)	
Employer,)	
)	
and)	Case No. 21-RC-067799
)	
TEAMSTERS, CHAUFFEURS,)	
WAREHOUSEMEN, INDUSTRIAL)	
AND ALLIED WORKERS OF)	
AMERICA, LOCAL 166,)	
INTERNATIONAL BROTHERHOOD)	
OF TEAMSTERS,)	
)	
Petitioner.)	
)	

**EMPLOYER’S REQUEST FOR REVIEW OF
THE DECISION OF THE REGIONAL DIRECTOR**

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board¹, the Employer, Frutarom USA, through undersigned counsel, hereby submits its Request for Review of the Regional Director’s Decision and Direction of Election in Case No. 21-RC-06779 (“the Decision”). This request for review is made on the grounds that a substantial question of law exists concerning whether the Board has jurisdiction to entertain the petition, and the Decision ignores well established Board precedent regarding stipulated agreements.

¹ In this request for review, Frutarom USA is referred to as the “Employer” or “Frutarom.” Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166 International Brotherhood of Teamsters is referred to as “the Petitioner” or “the Union.” Collectively, the Employer and the Union are referred to as “the Parties.” The National Labor Relations Board is referred to as the “NLRB” or the “Board.” The Decision is cited “RD ___” and is attached hereto as Exhibit A. References to the hearing record in case No. 21-RC-067799 are cited as “Tr. p. ___”; and copies of each referenced page are attached hereto as Exhibit B. Board Exhibits from the Hearing are cited as “Bd. Ex. ___” and copies of referenced exhibits are attached hereto as Exhibit C.

I. PRELIMINARY STATEMENT

During a representation hearing regarding a petition the Union filed seeking to represent certain employees of the Employer (“the Petition”), the Parties agreed to exclude the driver classification from the potential collective bargaining unit. *See* Tr. p. 61:16-18. Notwithstanding this stipulation, the Regional Director concluded that the classification of “driver” should not be specifically excluded from the description of the appropriate bargaining unit. *See* RD 2, at fn. 1. The Decision ignores established Board precedent setting forth that stipulations regarding composition of units should be honored.

Moreover, the Regional Director failed to dismiss the Petition due to a fatal jurisdictional defect. *See* RD 2, at fn. 1. This conclusion cannot be reconciled with Section 9(c)(1)(A)(i) of the Act which allows the Board to process an RC petition and find a question concerning representation only when that petition “shall have been filed” truthfully alleging both that “a substantial number of employees wish to be represented for collective bargaining *and* that their employer declines to recognize their representative[.]” 29 U.S.C. § 159(c)(1)(A)(i) (emphasis added).

Accordingly, the Decision ignores the stipulation of the Parties, and in failing to dismiss the Petition, the Decision is contrary to the plain language of the Act.

II. FACTUAL BACKGROUND

Frutarom is a corporation engaged in the sales, marketing, creation and production of food additives, flavor agents, power powders and other flavors for use in foods and beverages. *See* Tr. p. 29:16-18. Frutarom operates a facility in Corona, California. *See* Tr. p. 29: 22-23.

On October 28, 2011, the Union filed the Petition with the Board to represent certain employees of Frutarom. *See* Bd. Ex. 1. The Union subsequently filed an amended petition

on November 3, 2011. Due to a change in counsel, this petition was not received until the Hearing. *See* Tr. p. 7:24. Neither the original nor the amended petition alleged that a claim for recognition had been made on the Employer. *See* Bd. Ex. 1(a) and 1(d) at 7A.

The Region scheduled a hearing which was eventually held in Los Angeles on November 15, 2011 (“the Hearing”). At the Hearing, the Union initially asserted the following as an appropriate unit:

Included: All regular full-time and part-time hourly production employees, including quality control employees, hourly R&D employees, hourly maintenance employees, and hourly shipping and receiving employees and drivers employed by the Employer at its facility located at 790 East Harrison Street, Corona, California.

Excluded: All other employees, salaried R&D employees, sales employees, customer service employees, temporary employees, professional employees, office clerical employees, guards and supervisors as defined under the Act.

See Tr. p. 23: 13-23.

During the Hearing, Frutarom took the position that the petitioned-for unit was not an appropriate unit, and introduced testimony confirming that it presently relied upon one temporary driver to fulfill delivery services. Thereafter, on the record, the Parties agreed to exclude the driver classification from the potential collective bargaining unit. *See* Tr. p. 61:16-18. On November 28, 2011 the Regional Director correctly found that hourly R&D employees and quality control inspectors should be excluded from the unit. *See* RD 13. However, the Decision failed to honor the stipulation of the Parties regarding the driver classification. RD 2, at fn. 1.

III. BASIS FOR REVIEW

A. The Petition Should Be Dismissed For a Lack of Jurisdiction

At the Hearing and in its Post-Hearing brief, Frutarom asserted that the Board could not process the Petition, as it failed to comply with the Act, the Board's own Rules & Regulations, and the policies applied to petitions filed by employers in Board decisional law. The Regional Director rejected the argument in a footnote, asserting that he "kn[e]w of no Board law that supports the Employer's claim[.]" RD 2, at fn. 1.

One wonders whether the Regional Director considers the National Labor Relations Act to be "Board law." Section 9(c)(1)(A)(i) of the Act allows the Board to proceed only when a "petition shall have been filed" by a labor organization "alleging that ... their employer declines to recognize their representative as the representative defined in subsection (a) of this section[.]" 29 U.S.C. § 159(c)(1)(A)(i).

Under a clear reading of this statute, a labor organization must make a demand to be recognized as the majority representative of the employer's employees, and the employer must decline to recognize the labor organization *before* any petition can be filed. The Board may only process petitions that truthfully make such an assertion. *See* Box 7A on Petition. *See also NLRB Rules & Regulations*, Sec. 102.61(7) (stating that a petition for certification filed by a labor organization "shall contain" a "statement that the employer declines to recognize the petitioner as the representative within the meaning of Section 9(a) of the Act[.]"). Plainly, before a petition may be processed, the Act, the Board's own rules, and the Petition itself all require both a pre-petition demand for recognition from a labor organization, as well as the rejection of such a demand by the employer. *Id.*

Indeed, such a procedure is the only proper statutory foundation for the investigation of a question concerning representation. *Albuquerque Insulation Contractor, Inc.*, 256 NLRB 61, 63 (1981)(“Since the Union never requested ... recognition as the representative of the majority of the Employer’s unit employees, we find that *no question concerning representation under Section 9 currently exists.*”)(emphasis added).

It is undisputed that no such demand was made in the instant case. *See* Tr. p. 16:4-9 (accepting stipulation that no demand for recognition was made prior to the filing of the petition). As the Union made no demand for recognition as the majority representative, the statutory criteria have not been met, and no legitimate question concerning representation has been raised by the Petition.

Giving effect to the plain language of the Act promotes voluntary agreements, and would avoid the invocation of the government election machinery until such time as there was truly a question concerning representation. As stated recently by the Board, the language of the statute “*strongly suggests* that Congress believed Board-supervised elections were necessary *only* when an employer had declined to recognize its employees’ chosen representative.” *Lamons Gasket Co.*, 357 NLRB No. 72 at *11-12 (August 26, 2011)(emphasis added). The Board recognized thirty years ago that “*once the union seeks recognition as majority representative*, the election process – with its potential risks and rewards – may be invoked by either side.” *Albuquerque Insulation Contractor, Inc.*, 256 NLRB 61, 63 (1981)(emphasis added).

As happened here, if the proper statutory procedure is not followed, employers will be prejudiced. Initially, it is noted that in processing petitions, the Board relies on a minimal showing of interest inconsistent with the majority principle articulated by the Act. *See NLRB Statements of Procedure*, Sec. 101.18 (“in the absence of special factors the conduct of an election

serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees.”).

The thirty percent requirement long relied on by the Board and applied to RC petitions is not found in the Act; indeed, the Act’s sole reference to such a low threshold applies only to deauthorization petitions filed directly by employees. 29 U.S.C. §159(e)(1).² Presumably, then, had Congress intended for a thirty percent rule to apply to petitions other than deauthorization petitions, it knew how to say so. In any event, thirty percent does not a majority make, and any petition not supported by a demand to be recognized as the majority representative of the employees fails to comply with the unambiguous language of the Act. *See* 29 U.S.C. § 159(c)(1)(A)(i) (requiring that the labor organization make a claim to be recognized as the *majority* bargaining agent). This construction is further buttressed by the fact that Section 8(a)(2) of the Act has been held for many years to disallow an employer from recognizing a minority union.

The Employer has also been deprived of the opportunity to poll its employees, which Board case law holds is not available once a petition has been filed, but is available where a union has made a demand to be recognized as the majority bargaining agent. In addition, an employer may file its own RM petition once a claim for recognition has been made; but is prohibited from taking this step in the absence of such a demand. *See* 29 U.S.C. § 159(c)(1)(B). The Act should be read such that its plain words will be given effect, rather than ignored. *UFCW Local No. 1996*, 336 NLRB 421, 426 (2001)(“If a statute’s meaning is plain, the Board ... must give effect to the unambiguously expressed intent of Congress.”).

² Prior to certification, no presumption of majority support may be applied. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 37 (1987)(“*Upon certification* by the NLRB as the exclusive bargaining agent for a unit of employees, a union enjoys an irrebuttable presumption of majority support for one year.”)(emphasis added).

For years, the Board has dismissed employer-filed petitions that do not comply with the same statutory mandate. *See e.g. The New Otani Hotel & Garden*, 331 NLRB 1078 (2000)(dismissing employer filed petition where there was no present demand for recognition from a labor organization). The fact that the Board studiously ignores the clear language of the Act to process non-compliant petitions filed by labor organizations while strictly applying it to dismiss employer-filed petitions not only contradicts the clear intent of Congress, but it also runs afoul of the statutory requirement that the Board apply “the same regulations and rules of decision ... irrespective of the identity of the persons filing the petition” in determining whether or not a question of representation exists. *See* 29 U.S.C. § 159(c)(2).

Accordingly, despite the mature precedent which exists on this question, *see, e.g., Advance Pattern Co.*, 80 NLRB 29 (1948), Frutarom asserts that such precedent is contrary to the clear language and meaning of the statute.³ The Act contains plain, unambiguous language that means exactly what it says. Accordingly, the Petition should have been, and should be dismissed. *Chevron, USA, Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 at fn. 9 (1984)(“The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.”).

³ Even the *Advance Pattern* majority (the case was decided 3-2 on the Board’s own motion for reconsideration, reversing an earlier 5-0 decision by the same Board) acknowledged that “a strictly literal interpretation” of the language of Section 9(c)(1) would require the dismissal of noncompliant petitions. *Advance Pattern Co.*, 80 NLRB 29, 31-33 (1948). Thus, from the very genesis of its flawed and unfair policy of averting its eyes from noncompliant petitions (but only those filed by labor organizations), the Board acknowledged that such a construction was contrary to the language used by Congress.

B. The Decision’s Omission of the Driver Classification From the Excluded Positions of the Unit Description Ignores Well Settled Precedent

Assuming *arguendo* the Petition is not dismissed; Frutarom respectfully submits that the Regional Director erred in ignoring the Parties stipulation regarding the exclusion of the driver classification from the petitioned-for unit. *See* RD 2, at fn. 1.

The Board has long stressed the importance of resolving representation cases quickly, and the benefits of agreement between the parties. Stipulations are the lynchpin to achieving this goal. *See* National Labor Relations Board, Office of Public Affairs *Board Chairman Releases Details of Election Proposal for Wednesday vote* (found at <http://www.nlr.gov/news/board-chairman-releases-details-election-proposal-wednesday-vote>) (November 29, 2011) (“The vast majority of NLRB-supervised elections, about 90%, are held by agreement of the parties – employees, union and employer – in an average of 38 days from the filing of a petition”)(last visited December 12, 2011). As such, where a stipulation is clear and unambiguous and does not contravene statutory provisions or Board policy, well established Board precedent requires that the stipulation be honored. *See Hollywood Presbyterian Medical Center*, 275 NLRB 307, 308 (1985) (“It is settled Board policy to accept stipulations from the parties as to composition of the unit, unless such stipulations are contrary either to the statutory provisions of the Act, or established Board policy.”).

There is no question but that the Parties explicitly agreed to exclude the driver classification from the petitioned-for unit.

Respondent: I think we have a stipulation that there are no drivers in the classification right now. And so, the second stipulation would be that **drivers are excluded from the unit.**

Petitioner: **Correct. Correct.**

See Tr. p. 61:16-18.

As neither the Act nor Board policy mandates that drivers be included in the collective bargaining unit, the Regional Director was not at liberty to ignore the Parties' stipulation regarding the exclusion of that classification. *See e.g. Business Records Corp.*, 300 NLRB 708 (1990) (a clear stipulation to exclude certain employees from a unit must be honored). The Decision's finding to the contrary is incompatible with the prompt resolution of representation matters which stipulations are designed to foster. *See The Tribune Co.*, 198 NLRB 398, 398 (1971) ("Parties that come before the Board have a special interest in securing the speedy resolution of questions concerning representation."); and *Kalustyans*, 332 NLRB 843, 843 (2000) ("When the objective intent is clear, the Board will hold the parties to their agreement.").

In addition to facilitating the expedient resolution of representation matters, stipulations provide clarity to employers and unions regarding the composition of bargaining units. This transparency helps foster industrial stability – another core principle of the Board. Consequently, a party is prohibited from raising unit questions that were previously agreed upon as the basis for an election. *See I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921, 922 fn 7 (1997) (the bar of "re-litigation" concerning unit composition issues is designed to discourage parties from entering into a stipulation during a representation proceeding and then seeking to undue that agreement); and *In re Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1050 (2003) (unless a stipulation violates some public policy it would be illogical to permit parties to enter into an agreement while simultaneously allowing either side to withdraw from the stipulation when circumstances change).

As described herein, the Decision conflicts with long established precedent requiring the Board to adhere to lawful stipulation agreements. As the stipulation entered into by

the Parties is neither contrary to the Act, nor inconsistent with Board policy, the Regional Director must accept it.

IV. CONCLUSION

Based on the foregoing, Frutarom respectfully submits that the Petition be dismissed in its entirety. In addition, the Regional Director improperly disregarded the Parties' stipulation to exclude the driver classification from the petitioned-for bargaining unit. Accordingly, Frutarom respectfully requests that the National Labor Relations Board grant review of the Regional Director's Decision and Direction of Election.

Respectfully submitted,

EPSTEIN BECKER & GREEN, P.C.

/s/ Mark M. Trapp
Mark M. Trapp
Paul Burmeister
EPSTEIN, BECKER & GREEN
150 N. Michigan Avenue, 35th Floor
Chicago, IL 60601
(312) 499-1400

Attorneys for the Employer
Frutarom USA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2011, I caused a true and correct copy of the foregoing Employer's Request for Review of the Decision of the Regional Director to be served electronically, or via U.S. first-class mail, postage prepaid, upon the following:

Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

George A. Pappy, Esq.
Reich, Adell & Cvitan
3550 Wilshire Blvd.
Suite 2000
Los Angeles, California 90010

/s/ Mark M. Trapp
Mark M. Trapp

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region Twenty-One

Frutarom USA

Employer

and

Teamsters, Chauffeurs, Warehousemen, Industrial
and Allied Workers of America, Local 166,
International Brotherhood of Teamsters

Petitioner

Case 21-RC-067799

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time hourly production employees, including quality control employees, hourly research and development employees, hourly maintenance employees, and hourly shipping and receiving employees employed by the Employer at its 790 East Harrison Street, Corona, California facility; excluding all other employees, salaried research and development employees, customer service employees, temporary employees, professional employees, office clerical employees, guards and supervisors as defined in the Act, as amended. The Employer agrees that the unit sought by Petitioner is appropriate except that it maintains that the hourly research and development employees and quality control employees should be excluded from the unit.

Based on the record and relevant Board law, I find that the hourly research and development and quality control employees should be excluded from the unit.¹

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer, Frutarom USA, is a New Jersey corporation engaged in the marketing, sales and production of dietary supplements, functional foods and food flavors at its Corona, California facility. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Corona facility goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Accordingly, 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.

¹ Initially in dispute was the eligibility of the driver. However, the Employer argued and presented evidence that the current driver is a temporary employee, and that it did not employ a permanent employee in the classification. As the hearing progressed, Petitioner agreed that the current driver is a temporary employee. For reasons that are unclear to me, while the Employer argued that because the driver was temporary, therefore the driver classification should not be included in the unit, it also argued that the driver should be specifically excluded from the unit. Petitioner then stipulated to the exclusion of the driver. In view of the testimony, I decline to either include or exclude the driver classification because there are currently no permanent employees in the position. However, since the record clearly establishes that the current driver is a temporary employee, he is not eligible to vote.

Additionally, the Employer contends that the petition should be dismissed because before any union can file a petition it *must* request voluntary recognition from the involved employer. The Employer supports this contention by pointing to the fact that Box 7A on the Board's petition form asks whether unions have requested recognition. Further, the Employer points to the fact that Petitioner in this matter stipulated that it did not request recognition prior to filing this petition. I know of no Board law that supports the Employer's claim and I reject it.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. 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.

Board Law

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, at 723 (1996). As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. *Id.*

When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a "community of interest." *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the

Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, supra at fn. 5. With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). However, *all* relevant factors must be weighed in determining community of interest.

The Employer's Operation and Supervisory Hierarchy

The Employer's Corona operation consists of one two-story building. On the first level are its manufacturing, warehouse and laboratory functions. The Employer's administrative, office clerical and managerial functions are on the second level.

Peter McLaughlin, Vice President of Operations, is Acting Plant Manager for the Corona facility. As Vice President of Operations, McLaughlin is responsible for all manufacturing facilities of the Employer located in the Americas, as well as engineering, quality control, quality assurance and materials support groups. Corporate offices are located in New Bergen, New Jersey. As Acting Plant Manager, McLaughlin supervises the production and maintenance employees. He has been at the Corona facility every other week to every three weeks in 2011.

Reporting to McLaughlin are lead operators in power blending, spray drying, liquid flavors, warehouse and maintenance – all areas that both parties agree are in the unit. The roles of the lead operators are not further developed in the record. In

addition, the Employer employs a material manager, who sets production schedules, who ensures inventory is correct, and who orders and purchases material.

Also reporting to McLaughlin is Jay Harris. Harris supervises all research and development employees and the quality control employees. It is some of the employees supervised by Harris who are in dispute in this matter.

The Employer works closely with its customers in the development of products. The Employer's sales department brings in leads; the Employer's research and development department develops flavors and then sends the flavors to customers for further testing; when the customer approves the flavor, the Employer's production employees manufacture and provide support services for manufacturing; and the manufactured product is tested by the quality control employee prior to delivery of the product to the customer. The product is delivered to customers by common carrier, Federal Express, or the driver in the employ of the Employer.

The Employer's Production Process

The Employer's production process is not continuous. Rather production employees manufacture a batch, then clean out the equipment and start a new batch. The manufacturing area consists of a number of small manufacturing rooms, with the warehouse area in the middle. Equipment used by machine operators includes mixing kettles, homogenizers, spray dryers, blenders, roasters, extractors and milling. The warehouse employees load and unload trucks – both receiving raw materials and shipping out product. The one maintenance employee maintains and repairs equipment, runs the water treatment plants, and is involved in designing projects.

The Employer's production, warehouse and maintenance employees are hourly paid and keep track of their hours worked. All employees – including managers and the employees in dispute – use the same lunchroom. While not entirely clear, it appears that at least all employees (if not managers) share the same benefits.

The Employer's Research and Development Area

The Employer's R&D operation is physically separate from the production area. The R&D area consists of four rooms. There are a total of four R&D employees – two are salaried and two are hourly paid. Petitioner seeks to include in the unit the two hourly paid R&D employees.

Three of the four R&D employees have degrees in science or related fields, and they are "professional flavorists." Their job is to develop new flavors (or lower cost flavors) of Frutarom. In doing so they work closely with customers – in fact sometimes customers sit next to the flavorists as they experiment. On the other hand, production employees have no work-related contact with customers. These three employees are assigned desks with computers. They also utilize chromatographs and meters, and they work with chemicals. While one of the flavorists is hourly paid, her job is no different than the salaried flavorists. According to the Employer, she will eventually be promoted and made a salaried employee.

The fourth R&D employee is Isaac Cervantes. He is hourly paid. Unlike the other three R&D employees he does not have a degree. Cervantes assists Jay Harris, obtains samples, and makes flavors once they are formulated. He cannot, however, formulate flavors.

Production employees never perform the work of R&D employees, and R&D employees never perform the work of production employees. There is minimal interaction between other unit employees and R&D employees. Generally R&D employees work only in the lab area, although one of the salaried R&D employees goes to the production area to oversee the initial batches of new formulas. The Employer maintains that the R&D employees are paid significantly more than other unit employees (other than the maintenance employee) although the testimony in this regard is conclusionary.

The Employer's Quality Control Area

The Employer employs one full-time and one part-time quality control technicians. The part-time technician spends roughly 20 hours each week in the quality control area, and the other 20 hours as a warehouse employee. The full-time technician is Mari Carmen Villarreal. Her sole job is to test product to determine whether it meets the specifications of the formulas. In doing so she tastes product and runs tests on it. Samples are brought to Villarreal by production employees when batches are completed, along with a card identifying the product. Villarreal can pass or reject batches. If Villarreal rejects a batch, then Jay Harris and R&D employees get involved and attempt to salvage the product by adding ingredients. If it cannot be salvaged, the product is destroyed.

Villarreal rarely visits the production area. She never performs the work of production employees, and they never perform her work. She receives training and is required to demonstrate proficiency in her job every two years. She is evaluated and subject to discipline by Harris. Villarreal is hourly paid.

The part-time quality control technician is Fermin Mata. He tests raw material coming into the plant to ensure it meets the Employer's standards. He performs his work in the quality control lab, which is across the hallway from the R&D area. He is supervised by Harris when performing this work, and is hourly paid.

Application of Board Law to the Facts of this Case

Organization of the Plant

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all employees, of a particular department. See, *Check Printers, Inc.* 205 NLRB 33 (1973). In this case, the fact that Petitioner is seeking to represent two of the four R&D employees is arbitrary in that it does not conform to an administrative grouping. This is particularly evident insofar as Petitioner seeks to represent the hourly-paid "professional flavorist" whose job is exactly the same as the two salaried "professional flavorists." *Seaboard Marine, Ltd.*, supra.

Interchangeability and Contact Among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single

bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). In this case, the record fails to reveal *any* evidence of employee interchange.

Also relevant for consideration with regard to interchangeability is whether there are permanent transfers between employees in the unit sought by a union and employees an employer seeks to add to the unit. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp.*, *supra*. In this matter the record reveals no evidence of permanent transfers between the classifications that the parties agree are in the unit and the classifications in dispute.

Finally, also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to examine the amount of contact unit employees have with disputed employees. See, for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). There is little evidence of work-related contact between the two groups of employees. The only evidence of work-related contact between unit employees and R&D employees involves a salaried R&D employee (whom Petitioner does not seek to represent). On the other hand, it appears that the full-time quality control employee has regular contact with production employees – albeit limited to when the production employees bring batches to her for testing.

Common Supervision

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of

employees' supervisors who have the authority to hire, fire or discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn. 11. Rather, more important is the degree of interchange, contact and functional integration. *Id.* at 607.

In this case the record reveals that the employees in dispute are separately supervised from employees that the parties agree are in the unit. Significantly, all of the employees in dispute are supervised by the same person – Jay Harris.

The Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew support a finding of similarity of functions.

Evidence that disputed employees have similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same Employer training programs, and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, *supra*.

In this case the record reveals that employees in the unit agreed upon by the parties have separate job functions, duties and skills from the disputed employees. With regard to the hourly paid flavorist, the record reveals that she has a degree, that she works closely with customers and uses different equipment, and that the Employer considers her a professional or technical employee. With regard to the full-time quality control employee, the record reveals that she is subject to training and testing of skills every two years, that she uses different skills and testing in performing her job, and that her job never overlaps with unit employees.

Degree of Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when unit employees and additional disputed employees work on different phases of the same product or, as a group, provides a service.

Another example of functional integration is when the Employer's work flow involves both employees in the unit sought by a union and employees in dispute. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact between employees in the unit sought by a union and employees an employer contends must be in the unit, the existence of functional integration has less weight.

Petitioner argues that the R&D employees, production employees, and quality control employees are functionally integrated. Petitioner is correct insofar as each group of employees works on different phases of the same product. However, as noted above, that functional integration does not result in significant contact between production employees and disputed employees.

Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies, and other terms of employment that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits, or are subject to common work rules, does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly,

sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common.

American Security Corporation, 221 NLRB 1145 (1996).

In the instant case the record reveals that production employees and the disputed employees share common benefits. However, some terms and conditions of employment differ simply because they work in different locations, are separately supervised, and have different skills.

Conclusion

In determining that the unit should exclude all R&D and the quality control employees², I have carefully weighed the community-of-interest factors cited in *United Operations*, supra. Other than functional integration, which exists because all of the employees work on different phases of the same product, and some similarity in terms and conditions of employment because they share the same benefits, all other community-of-interest factors point to a conclusion that R&D employees and quality control employees do not

² I emphasize that the part-time quality control employee may be eligible to vote as a dual-function employee. His status as an eligible voter as a dual-function employee was neither litigated nor argued by the parties.

share a community of interest with production, warehouse and maintenance employees.³

DIRECTION OF ELECTION

An election by secret ballot will be conducted by Region 21 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently by Region 21, subject to the Board's Rules and Regulations. The appropriate collective-bargaining unit is:

All full-time and regular part-time hourly production employees, hourly maintenance employees, and hourly shipping and receiving employees employed by the Employer at its 790 East Harrison Street, Corona, California facility; excluding all other employees, quality control employees, research and development employees, customer service employees, temporary employees, professional employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they

³ The Employer also contends that the R&D employees are either technical or professional employees, and that the quality control employees are technical employees. Because of my conclusion that these employees do not share a community of interest with other employees sought by Petitioner, I do not reach any conclusions on their professional or technical status.

appear in person at the polls. Ineligible to vote are persons 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 commenced more than 12 months before the election date and who have been permanently replaced.⁴

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters.**

B. Employer to Submit List of Eligible Voters

To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

⁴ To ensure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with Region 21 within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). Region 21 shall make the list available to all parties to the election. In order to be timely filed, this list must be received in Region 21's Regional Office, 888 South Figueroa Street, Los Angeles, California, 90017-5449, on or before close of business **December 5, 2011**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **December 12, 2011**. *The request may be filed electronically through the Agency's website, www.nlr.gov,⁵ but may not be filed by facsimile.*

Signed at Minneapolis, Minnesota, this 28th day of November, 2011.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director⁶
Region 21
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁵ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

⁶ This case was transferred to me, pursuant to the interregional assistance program, for purposes of issuing a decision only. All further processing of this case, including scheduling and conducting an election, will be performed by Region 21.

Exhibit B

1 received.

2 MR. PAPPY: Thank you.

3 MR. TRAPP: Is there an amendment to the petition as well,
4 I mean like with the petition for a unit?

5 HEARING OFFICER ANGUIANO: Mr. Pappy?

6 MR. PAPPY: I'm sorry; I didn't understand what counsel
7 was saying. Is what?

8 HEARING OFFICER ANGUIANO: The question is whether or not
9 you wish to amend the petition at this time as well.

10 MR. PAPPY: You mean the bargaining unit?

11 HEARING OFFICER ANGUIANO: Is that what you meant, Mr.
12 Trapp?

13 MR. PAPPY: Well --

14 MR. TRAPP: Yeah, I was just --

15 MR. PAPPY: -- I can do that at the end when I see what
16 the testimony is, Mr. Hearing Officer.

17 HEARING OFFICER ANGUIANO: Very well.

18 MR. PAPPY: I'd prefer to do it that way.

19 HEARING OFFICER ANGUIANO: Very well. Let's proceed then.

20 MR. TRAPP: I'd like to make a motion if I could. I would
21 assert that the Board lacks jurisdiction over the petition.

22 HEARING OFFICER ANGUIANO: On what grounds?

23 MR. TRAPP: I'm looking at the petition and the amendment,
24 which I just got today, but in 7A it says that you have to
25 check one of these boxes to say that there's a request for

1 motion without repeating it over and over.

2 MR. TRAPP: Yeah, I'll stipulate to that I guess.

3 HEARING OFFICER ANGUIANO: Okay.

4 MR. TRAPP: If we stipulate that there was no demand for
5 recognition made prior to the petition being filed, can we
6 stipulate to that?

7 MR. PAPPY: Yeah. I'll stipulate to that.

8 MR. TRAPP: Okay. Yeah. Well, then so stipulated.

9 HEARING OFFICER ANGUIANO: Okay. Stipulation received.

10 For the Petitioner, please identify the issues for hearing
11 and your position on each.

12 MR. PAPPY: Well, they're basically the same issues raised
13 by counsel.

14 HEARING OFFICER ANGUIANO: What is your position on that?

15 MR. PAPPY: The opposite of his position.

16 HEARING OFFICER ANGUIANO: Okay. Can you elaborate a
17 little more, just for -- just to humor the reader of the
18 record?

19 MR. PAPPY: He says they should be excluded, I say they
20 should be included. That's as clear as I can be.

21 HEARING OFFICER ANGUIANO: Okay. Thank you.

22 Going back to your position, Mr. Trapp, would it be
23 accurate to say that you are seeking to exclude the categories
24 you just mentioned including driver QC and R&D because they
25 have no community of interest with the other classifications as

1 Okay. Let's move on. Are there any petitions pending in
2 other regional offices involving other facilities of the
3 Employer?

4 MR. PAPPY: Not that I'm aware of.

5 HEARING OFFICER ANGUIANO: Can it be stipulated that there
6 is no contract or other bar in existence that would preclude
7 the processing of this petition?

8 Mr. Trapp, do you so stipulate for the Employer?

9 MR. TRAPP: Yeah.

10 HEARING OFFICER ANGUIANO: Mr. Pappy?

11 MR. PAPPY: So stipulated.

12 HEARING OFFICER ANGUIANO: The stipulation is received.

13 And now we're going to discuss the appropriate unit. Can
14 it be stipulated that a bargaining unit that includes all
15 regular full-time and part-time hourly production employees
16 including hourly RD employees, hourly maintenance employees and
17 hourly shipping and receiving employees and drivers employed by
18 the Employer at its facility located at 790 East Harrison
19 Street, Corona, California. And excludes all other employees,
20 salary RD employees, sales employees, customer service
21 employees, temporary employees, professional employees, office
22 clerical employees, guards and supervisors as defined in the
23 act is appropriate for purposes of collective bargaining.

24 Mr. Trapp, do you so stipulate for the Employer?

25 MR. TRAPP: No.

1 A New Jersey, North Bergen, New Jersey.

2 Q Are you familiar with a plant of the company located at 7

3 -- I'm sorry, 790 East Harrison Street, Corona, California?

4 A I am.

5 Q And do you visit that location on occasions?

6 A More than on occasion. I'm actually the acting plant
7 manager there as I look to fill that role.

8 Q How much time do you spend there as opposed to North
9 Bergen, New Jersey?

10 A For 2011 I have probably been in Corona every other week
11 to every three weeks.

12 Q Okay. What -- briefly what is the business of the
13 company?

14 A Excuse me, Counselor, of Corona or of Frutarom

15 Q Of Corona.

16 A Corona is a facility that manufactures flavors that are
17 used in various types of food additives, beverage drinks, power
18 powders, those type of things.

19 Q And do you maintain a plant and plant equipment for that
20 purpose --

21 A Yes.

22 Q -- at Corona? And we're talking now about Corona; I'm not
23 talking about any other location.

24 A Yes, sir.

25 Q And do you maintain a facility for that, a building, or a

1 MR. TRAPP: And he should not be in the unit.

2 MR. PAPPY: -- should not be in the unit. Yeah.

3 MR. TRAPP: Is the --

4 HEARING OFFICER ANGUIANO: Okay. Stipulation is received?

5 MR. TRAPP: Yes. And can we go off the record?

6 HEARING OFFICER ANGUIANO: Okay. Let's go off the record.

7 (Off the record at 2:42 p.m.)

8 MR. PAPPY: Yeah, well, it's his stipulation what --

9 MR. TRAPP: I think we have a stipulation that there are
10 no drivers in the classification right now. And so, the second
11 stipulation would be that drivers are excluded from the
12 petitioned for unit.

13 MR. PAPPY: Correct. Correct.

14 MR. TRAPP: Okay.

15 MR. PAPPY: On that representation that there are no other
16 drivers, yeah.

17 HEARING OFFICER ANGUIANO: Okay. The stipulation is
18 received.

19 MR. TRAPP: Thank you very much.

20 MR. PAPPY: Okay.

21 Q BY MR. TRAPP: Peter, let's talk a little bit then back
22 about the other unit. Could you describe that bargaining unit
23 briefly?

24 A The bargaining unit in New Jersey represents the
25 production workers, the warehouse workers, and maintenance.

Exhibit C

Re: Frutarom USA
Case 21-RC-067799

BOARD EXHIBIT NO. 1

INDEX
AND
DESCRIPTION OF FORMAL DOCUMENTS

- Exhibit 1(a) Original Petition 21-RC-067799
filed October 28, 2011.
- Exhibit 1(b) Notice of Representation Hearing
with Form NLRB-4669 attached
dated October 28, 2011.
- Exhibit 1(c) Affidavit of Service of 1(b)
dated October 28, 2011.
- Exhibit 1(d) First Amended Petition 21-RC-067799
filed November 3, 2011.
- Exhibit 1(e) Affidavit of Service of 1(d)
dated November 3, 2011.
- Exhibit 1(f) Order Rescheduling Hearing
issued November 7, 2011.
- Exhibit 1(g) Affidavit of Service of 1(f)
dated November 7, 2011.
- Exhibit 1(h) Index and Description of Formal Documents

Bd. Exh. 1(h)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE
Case No. 21-RC-067799 Date Filed 10/28/11

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
 - RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
 - RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
 - UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
 - UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) In unit not previously certified. In unit previously certified in Case No. _____
 - AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____
Attach statement describing the specific amendment sought

2. Name of Employer: Frutarom USA
Employer Representative to contact: Denise Aranzias
Telephone Number: (951) 734-6620

3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code): 6270 Wilderness Avenue, Riverside, CA 92504
Telecopier Number (Fax): (951) 734-4214

4a. Type of Establishment (Factory, mine, wholesaler, etc.):
4b. Identify principal product or service:

5. Unit involved (In UC petition, describe present bargaining unit and attached description of proposed clarification.)
Included: All production and maintenance employees, shipping and receiving employees and drivers.
Excluded: All other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.
6a. Number of Employees in Unit:
Present: 21
Proposed (By UCAC):
6b. Is this petition supported by 30% or more of the employees in the unit? Yes No
• Not applicable in RM, UC, and AC

(If you have checked box RC in 1. above, check and complete EITHER item 7a or 7b, whichever is applicable.)
7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state.)
7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state): None
Affiliation:
Address, Telephone No. and Telecopier No. (Fax):
Date of Recognition or Certification:

9. Expiration Date of Current Contract, if any (Month, Day, Year):
10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year):

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No
11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) _____ a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations of individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state.)

Name	Affiliation	Address	Date of Claim
			Telecopier No. (Fax)

13. Full name of party filing petition (If labor organization, give full name, including local name and number): Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166

14a. Address (street and number, city, state, and ZIP code): P.O. Box 899, Bloomington, CA 92316-0899
14b. Telephone No.: 909-877-8326
14c. Telecopier No. (Fax): 909-877-2812

15. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when petition is filed by a labor organization): International Brotherhood of Teamsters

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.
Name (Print): George A. Pappy
Signature: *George A. Pappy*
Title (if any): Attorney
Address (street and number, city, state, and ZIP code): 3550 Wilshire Blvd., Suite 2000, Los Angeles, CA 90010
Telephone No.: (213) 386-3860
Telecopier No. (Fax): (213) 386-5583

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

~~FAST~~ AMENDED
UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER	
DO NOT WRITE IN THIS SPACE	
Case No. 21-RC-067799	Date Filed 11/3/11

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

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2. Name of Employer Frutarom USA	Employer Representative to contact Denise Aranzias	Telephone Number (951) 734-6620
-------------------------------------	---	------------------------------------

3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code) 6790 East Harrison Street, Corona, CA 92879	Telecopier Number (Fax) (951) 734-4214
---	---

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Identify principal product or service
---	---

5. Unit involved (In UC petition, describe present bargaining unit and attached description of proposed clarification.) Included All production and maintenance employees, shipping and receiving employees and drivers. Excluded All other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.	8a. Number of Employees in Unit Present
	Proposed (By UC/AC)
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable.)	6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No * Not applicable in RM, UC

7a. <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (if no reply received, so state.)
7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state) None	Affiliation
---	-------------

Address, Telephone No. and Telecopier No. (Fax)	Date of Recognition or Certification
---	--------------------------------------

9. Expiration Date of Current Contract. If any (Month, Day, Year)	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year)
---	--

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes _____ No <input checked="" type="checkbox"/>	11b. If so, approximately how many employees are participating?
---	---

11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a _____ organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives of organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state.)

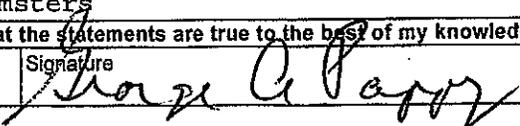
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Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166

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	14c. Telecopier No. (Fax) 909-877-2812

15. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when petition is filed by a labor organization)
International Brotherhood of Teamsters

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) George A. Pappy	Signature 	Title (if any) Attorney
Address (street and number, city, state, and ZIP code) 3550 Wilshire Blvd., Suite 2000, Los Angeles, CA 90010	Telephone No. (213) 386-38	Telecopier No. (Fax) (213) 386