

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Northrop Grumman Shipbuilding, Inc. and International Association Of Machinists And Aerospace Workers, AFL-CIO, Petitioner. Case 5-RC-16292**

December 30, 2011

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER  
AND HAYES

On May 29, 2009, the Regional Director for Region 5 issued a Decision and Direction of Election (pertinent portions are attached as an appendix), in which he found that a unit of radiological control technicians (RCTs), calibration technicians, laboratory technicians, and RCT trainees, all of whom work in the E85 radiological control (E85 RADCON) department, was appropriate because they had a community of interest sufficiently distinct from other technical employees at the shipyard operated by Northrop Grumman Shipbuilding, Inc (the Employer). Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, contending that only a unit of all technical employees at its shipyard was appropriate. On July 30, 2009, the Board granted the Employer's request for review.<sup>1</sup> The Employer and the Petitioner filed briefs on review.

The Board has carefully considered the entire record, including the briefs on review. For the reasons set forth in the Regional Director's decision and the additional reasons set forth below, we affirm the Regional Director's finding that a departmental unit of radiological control technicians (RCTs), calibration technicians, laboratory technicians, and RCT trainees in E85 RADCON is appropriate for bargaining.

Facts

The facts are fully set forth by the Regional Director. In brief, the Employer operates a shipyard in which it is principally engaged in constructing nuclear-powered submarines and aircraft carriers for the U.S. Navy and in refueling and overhauling existing Navy ships. The Employer employs approximately 18,500 people at the shipyard. Of those, approximately 2400 are employed in about 10 technical job classifications.<sup>2</sup> The unit that the

Regional Director found appropriate would contain approximately 140 RCTs, 20 laboratory technicians, 3 calibration technicians, and 60 RCT trainees.

RCTs essentially perform a safety function: providing independent radiological oversight for nuclear work areas. RCTs track radiation levels and ensure that individual employees' exposure remains within safe limits. They are also responsible for ensuring that employees meet the radiological control standards required for the Employer to maintain its license to work with nuclear 69materials. The Employer's overall radiological control philosophy is known as ALARA (As Low As Reasonably Achievable), and RCT independence is key to that approach. Under ALARA, although all nuclear workers are expected to minimize both their personal exposure and wider contamination, RCTs are responsible for maintaining protocols and achieving the required containment. Therefore, under the ALARA program, it is common for RCTs to be in a separate department from the rest of the work force—as they are here—in order to facilitate oversight that is independent of both production and quality control.

RCT oversight has two prongs: maintaining radiological control areas and performing routine radiological surveys. RCTs set up control areas to restrict access near nuclear reactors, work sites, components, and materials, both on ships and in the shops. They use Technical Work Documents (TWDs) and drawings to make a map of areas that require controls and then survey to establish the baseline radiation levels and find "hot spots," which are then marked on the maps. In monitored controlled areas, RCTs set up barriers, signs, and employee checkpoints. In less restricted control areas, RCTs simply leave an area roped off with signs designating the requirements for entry.

At monitored control areas with established checkpoints, RCTs observe and restrict employee traffic. Only employees with radiological safety training can enter, and RCTs question them about their jobs and the materials and tools they are taking in with them. Then, RCTs assign each employee a dosimeter, to record the employee's dose of radiation, and brief employees about the hot spots before allowing entry. As employees leave, RCTs collect the dosimeters, note employees' exposure, confirm that they follow control protocols (including "frisking out" to limit contamination), and screen materials that they bring out of the area. When they observe contamination or irregularity, they order that work be stopped and submit a radiological deficiency report.

<sup>1</sup> The Board affirmed the order granting review on August 27, 2010.

<sup>2</sup> Those technical classifications include quality inspectors, test technicians, designers, engineering technicians, dimensional control techni-

icians, laboratory technicians, chemical handlers, calibration technicians, planners, and RCTs.

RCTs conduct routine radiological surveys around the shipyard on rotations ranging from daily to annually, in addition to performing surveys that are required during particular tests and projects. For “contamination surveys,” RCTs wipe surfaces to test for contaminants, and in “radiation surveys,” they use a probe to take contact or ambient radiation readings. Surveys can take anywhere from 15 minutes to 2 hours, depending on the type of survey required. Initial entry surveys for setting up control areas require a team of up to five RCTs.

In addition to RCTs, the Regional Director also included in the unit other technical employees who work in E85 RADCON. E85 RADCON laboratory technicians included in the unit test the materials collected by the RCTs, help calibrate dosimetry equipment, and screen potentially contaminated materials that require Lab Services tests. E85 RADCON calibration technicians included in the unit inventory, maintain, and calibrate the instruments used by RCTs. As a result, they are qualified to operate all of the instruments that RCTs use. They interact with RCTs when they pick up and replace faulty equipment. RCT trainees, also included in the unit by the Regional Director, perform some of the routine surveys and monitor limited control points during their on-the-job training. They can set up the area and allow certain workers inside.

Occasionally, other technical employees not included in the unit found appropriate by the Regional Director perform work similar to the surveys performed by RCTs. Environmental lab techs perform radiation and contamination surveys of drainage ditches and outfalls to make sure that various contaminants do not spread to the environment, but it is unclear from the record how often they do this. Nuclear chemical handlers are qualified to do radiation and contamination surveys on their vehicles, although, again, the record does not show how often they actually do so. There are no temporary transfers into or out of E85 RADCON classifications. However, there have been permanent transfers. There is evidence that RCTs have transferred into other technical classifications, but no evidence about how many or how often this occurs.

RCTs receive highly specialized training. They attend orientation at the shipyard for their first month, and then leave for a 22-week training course run by the U.S. Navy. This training requires math and physical sciences aptitude, and only half of RCT trainees graduate. After graduation, the Employer conducts 5 weeks of training at its facility, and then administers a full-day oral examination. RCTs must take requalification training every 30 months and attend “spill drills” to practice responding to emergencies on a quarterly basis. Other technical em-

ployees receive, at most, only a few days of radiological safety training. Like most other employees, RCTs are required to possess government security clearance of “confidential” or higher.

RCTs use specialized tools, including approximately 27 radiation detection instruments. They receive orange kit bags and additional supplies such as “wipes, laws, tweezers, [and] bags.”<sup>3</sup> Only RCTs receive the orange bags. A few other technical classifications are qualified to use some of these tools, including environmental lab techs and nuclear chemical handlers who perform occasional surveys.<sup>4</sup>

RCTs have daily, work-related contact with all employees who enter radiological control areas. Most of these are trades employees (painters, machinists, pipefitters, etc.), supervisors, and other non-technical employees. At certain stages during refueling overhauls and during the final months of new ship construction, RCTs have increased contact at control points with other technical employees, mostly quality inspectors and test techs, but also designers and engineering techs. Contact with employees at the control points is brief and involves monitoring them as described above, not working together to perform technical or production-oriented jobs. During new construction, there is a period of 5 or more years of planning before RCTs are present on the ships. Even during refueling overhauls, which require radiological oversight from the beginning, RCTs’ contact with other techs varies substantially throughout the period of the ship’s availability depending on the phase of production, and whether RCTs are assigned to the ship or the shops.<sup>5</sup>

#### Discussion

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. See, e.g., *Overnite Transportation Co.*, 322 NLRB 723 (1996).<sup>6</sup> The Board

<sup>3</sup> Tr. 43.

<sup>4</sup> There is testimony that employees other than RCTs who work in radiological areas are allowed to “self frisk out” by using some of the RCTs’ instruments. However, RCTs set the “alarm point” on the instruments, monitor the employees as they “frisk out,” and respond if the instrument alarms. There is also some evidence that employees other than RCTs occasionally collect data by taking swipes or using probes while they are in controlled areas. But again, this is performed at the RCTs’ direction and with their oversight, and there is no evidence that these employees are otherwise qualified to use RCT equipment.

<sup>5</sup> Given these facts, our dissenting colleague’s reference to “the high degree of functional integration” in the technical work force is puzzling.

<sup>6</sup> For this reason, the dissent’s suggestion that the history of collective bargaining in a plantwide production and maintenance unit somehow “supports a finding that the narrower unit sought here [among technical employees] is not appropriate” is incorrect and the case cited

determines whether a proposed unit is appropriate by examining whether employees in the unit share a community of interest.

The Employer here does not contend that employees in the petitioned-for unit do not share a community of interest. Rather, the Employer contends that the smallest appropriate unit includes the petitioned-for employees plus all of its other technical employees. The Board's recent decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), set forth the principles that apply in this type of case.

As explained in *Specialty Healthcare*, we begin our analysis with the petitioned-for unit. *Id.*, slip op. at 4.

[W]hen employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit.

*Id.*, slip op. at 12 (footnotes omitted).<sup>7</sup> Additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude [the] employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11–13, and

---

to support the proposition, *North American Rockwell Corp.*, 193 NLRB 985, 986 (1971), does not do so. In that case, the petitioner sought to represent the professional employees in a single division of the employer, and the employer and intervenor contended that only a unit including all five Los Angeles-area divisions was appropriate. The employer's production and maintenance employees were already represented in a multidivisional unit. The Board declared, “It is long established that a multiplant . . . bargaining history respecting certain categories of employees does not control the unit disposition of other classifications as to whom there is no bargaining history where the unrepresented classifications have an internal homogeneity and cohesiveness which permits them to stand alone as an appropriate unit apart from production and maintenance employees.” *Id.* at 985.

<sup>7</sup> The dissent characterizes the standard articulated in *Specialty Healthcare* as a “nearly insurmountable burden,” but that standard is drawn from prior Board and court of appeals decisions. 357 NLRB No. 83, slip op. at 14. Moreover, in the first case decided by the Board after *Specialty*, the Board found that the employer had carried its burden. See *Odwalla, Inc.*, 357 NLRB No. 132 (2011).

fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008)).<sup>8</sup>

As is plain from the facts set forth above, the employees in the petitioned-for unit are “readily identifiable as a group.” They are all in the E85 RADCON Department and they share a unique function – to provide independent oversight of radiation exposure. Moreover, they share a community of interest under the Board's traditional criteria. They all work in the same department under common supervision. Their work has a shared purpose and it is functionally integrated. RCTs monitor employees and collect samples when appropriate; they rely on lab techs to analyze the samples they collect; and calibration techs keep the RCTs' instruments in proper working order. RCT trainees assist RCTs and operate limited control checkpoints as they learn the job. Many of the E85 lab techs used to be RCTs.

As stated above, the Employer does not contend that the E85 RADCON technicians do not share a community of interest. Rather, it contends that it demonstrated that the technical employees outside the E85 RADCON Department share an overwhelming community of interest with the E85 RADCON technical employees. But the facts the Employer relies on—that all of the Employer's technicians operate under the same salary structure and

---

<sup>8</sup> The Regional Director's decision issued before *Specialty Healthcare*, which clarified that it is the Employer who bears the burden of demonstrating the existence of an overwhelming community of interest extending beyond an otherwise appropriate petitioned-for unit. *Id.*, slip op. at 12–13 fn. 28. Here, it is not clear whether the Regional Director allocated the burden of proof to the Employer. In sustaining the Regional Director's conclusion that an overwhelming community of interest did not exist, we expressly place the burden of proof on the Employer. But even assuming that *Specialty Healthcare* changed the assignment of this burden, rather than simply clarifying the existing burden, we find that imposing the burden of proof on the Employer is not a retroactive change that “work[s] a ‘manifest injustice.’” See *SNE Enterprises*, 344 NLRB 673, 673 (2005) (citations omitted). As in *SNE Enterprises*, there is no evidence that the Employer relied on any precedent relieving it of the burden of proof; indeed, the Employer presented extensive evidence aimed at demonstrating the extent of the community of interest between the E85 RADCON technical employees and the Employer's other technical employees. *Id.* Moreover, like *SNE Enterprises*, this is a representation case where the Board's ordinary rule is to apply its decisions retroactively, including to all pending cases. *Id.* at 673–674. In addition, imposing the burden on employers in the limited circumstances specified in *Specialty Healthcare* “d[oes] not otherwise represent a significant departure from a well-settled area of the law.” *SNE Enterprises*, 344 NLRB at 674. Finally, the Employer argued primarily that the petitioned-for unit was inappropriate because it did not include all of the Employer's technical employees, relying on cases specifically addressing technical units, as well as *Westinghouse Electric Corp.*, 137 NLRB 332 (1962) (*Westinghouse I*) and *Westinghouse Electric Corp.*, 300 NLRB 834 (1990) (*Westinghouse II*). Because we address the Employer's arguments below and reach the same conclusion under those cases as under *Specialty Healthcare*, the Employer has not been prejudiced by our application of *Specialty Healthcare*.

personnel policies, share break facilities, and enjoy the same benefits--are outweighed by the facts distinguishing the E85 RADCON technicians from the other technicians. Most notably, the RCTs' job function is to ensure workplace safety and control radioactive contamination at the shipyard, a task distinct from the production-oriented jobs of technical employees outside of E85 RADCON. RCTs are therefore not functionally integrated into the production work flow of the shipyard, but instead have an independent oversight role. Indeed, at times, RCTs' role is actually in conflict with the production and quality control goals of other technical employees, as when they order work stopped due to radioactive contamination or other worksite irregularities.

In keeping with the RCTs' independent oversight role, the Employer has placed all RCTs in a separate department, under separate supervision from its production employees. In addition, work contacts between RCTs and other technical employees are brief, and limited to the same radioactive screening at safety checkpoints that thousands of trades employees receive, with only a few exceptions during particular projects. As shown, to do their job, RCTs receive extensive and highly-specialized radiological training and use 27 radiation detection instruments specific to their job; as a result they possess unique skills. Based on this evidence, we are satisfied that the technical employees in the E85 RADCON Department share a community of interest sufficiently distinct from that which they share with the Employer's production-oriented technical employees at the shipyard such that we cannot find that the two groups share an overwhelming community of interest. Therefore, under *Specialty Healthcare*, we agree with the Regional Director that the E85 RADCON technical employees constitute an appropriate unit.<sup>9</sup>

Nevertheless, the Employer argues that special rules apply to technical employees and, in particular, technical employees in nuclear facilities. In *Specialty Healthcare*, the Board recognized that it "has developed various presumptions and special industry and occupation rules in the course of adjudication" and made clear that the holding in *Specialty* was "not intended to disturb any rules applicable only in specific industries" other than in the non-acute care healthcare industry. 357 NLRB No. 83, slip op. at 13 fn. 29. Thus, to the extent that the Board

has developed special rules applicable to technical employees, as suggested by the Employer, those rules remain applicable.

The Board has held that "[w]hen technical employees work in similar jobs and have similar working conditions and benefits, the only appropriate unit for a group of technicals must include all such employees similarly employed." *TRW Carr Division*, 266 NLRB 326, 326 (1983). See also *Pratt & Whitney*, 327 NLRB 1213, 1215-1216 (1999); *Western Electric*, 268 NLRB 351, 352 (1983); *Bendix Corp.*, 150 NLRB 718 (1964); *Aerojet General Corp.*, 131 NLRB 1094 (1961).

On the other hand, the Board has stated that, even with respect to technical employees, "the Act does not compel . . . representation in the most comprehensive grouping of employees unless such grouping constitutes the only appropriate unit." *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966). Thus, the Board has stated that if a subset of an employer's technical employees share a community of interest that is "sufficiently distinct" from that of other technicals, separate representation may be appropriate. *TRW Carr*, 266 NLRB at 326 fn. 4. Applying that standard, the Board has found units consisting of only a subset of an employer's technical employees to be appropriate. See, e.g., *Federal Electric*, supra; see also *McDonnell Aircraft*, 207 NLRB 684, 685 (1973); *Martin Co.*, 162 NLRB 319, 322 (1966) (technicians with specialized function, separate supervision, and separate work location were an "identifiable group with distinct interests" and thus constituted an appropriate unit). In determining whether a distinct community of interest exists, the Board considers a variety of community-of-interest factors, including bargaining history, functional integration, contact with other technical employees, skills, training, job functions, common supervision, interchange, and terms and conditions of employment.

As shown by the above cited cases, the Board has arguably developed a different standard for determining whether a technical unit is appropriate, finding a requested unit consisting of only a subset of an employer's technical employees to be appropriate "only when the employees in the requested unit possess a *sufficiently distinct community of interest apart from other technicals* to warrant their establishment as a separate appropriate unit." *TRW Carr*, 266 NLRB at 326 fn. 4 (emphasis added). While we question whether a general preference for combining all technical employees into a single unit can be justified given the enormous diversity of technical classifications, as well as the diversity of industries employing technical employees, we need not reach the questions of whether a distinct test exists for technical employees or whether such a test constitutes a "spe-

<sup>9</sup> The dissent contends that the analysis under *Specialty Healthcare* has "elevated the extent of organizing as the definitive factor" and gives the petitioner's view "nearly dispositive weight." But as clearly shown above, the analysis in no way considers the extent of organizing. It begins with the petitioned-for unit, as the Board has always done, but then turns to a set of factors solely within the control of the employer, including departmental structure, assignment of functions, extent of training, skills required, instruments used, and extent of interaction.

cial . . . occupation rule” as contemplated in *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 13 fn. 29, because we reach the same result even under the technical employee line of cases.

In the instant case, the Regional Director found, analyzing the traditional community-of-interest factors, that an E85 RADCON departmental unit of technical employees constituted “a functionally distinct grouping with a sufficiently distinct community of interest as to warrant a separate unit appropriate for the purposes of collective bargaining.” We agree with the Regional Director’s analysis of the community-of-interest factors. For the reasons set forth above in our *Specialty Healthcare* analysis, as well as those set forth by the Regional Director, we find that the technical employees in the Employer’s E85 RADCON Department share a community of interest distinct from that which they share with the production-oriented technical employees in the Employer’s shipyard. Here, as we found above, the RCTs are alone tasked with independent safety oversight. Thus, this case is distinguishable from *TRW Carr*, where the Board found that the proposed unit, which did not include all technical employees “similarly employed,” was inappropriate in part because the work of the excluded technicals was “closely related” to the functions of the included technicals. 266 NLRB at 326. This case is also unlike *Western Electric*, where the technical employees found to have been improperly excluded from the petitioned-for unit “exercise[d] the same skills and perform[ed] the same functions” as employees in the proposed unit. 268 NLRB at 352.<sup>10</sup>

In support of its contention that the only appropriate unit must include all of the Employer’s technical employees, the Employer relies on two *Westinghouse Electric Corp.* cases<sup>11</sup> in which the Board found that units not including all of the employer’s technical employees were

<sup>10</sup> The dissent cites *North American Rockwell Corp.*, 193 NLRB 983 (1971), and suggests that in it the Board “rejected departmental units” of employees of defense contractors. But our holding does not rest solely on all the employees at issue being in a separate department from other technical employees. In *North American*, the Board found that all the technical employees had similar skills, worked in similar classifications, performed “much the same tasks,” and were “freely transferable for short and long terms or permanently” across divisions. Id. at 984. None of those facts are present here.

The dissent also cites *PECO Energy Co.*, 322 NLRB 1074, 1085 (1997), but the one employee at issue in the discussion quoted in the dissent was actually added to a unit the Board described not as a technical unit, but as a “production and maintenance” unit “with some technical employees included.” Id. at 1081 fn. 2, 1085. Moreover, the evidence revealed that the employee worked closely with maintenance technicians, providing them with drawings and technical assistance in diagnosing equipment problems.

<sup>11</sup> *Westinghouse I*, supra, 137 NLRB 332 and *Westinghouse II*, supra, 300 NLRB 834.

not appropriate. The Employer asserts that the *Westinghouse* cases are controlling here because the Employer’s RCTs perform similar, if not identical, safety support duties at its facility as did the employees at issue in *Westinghouse*. We agree with the Regional Director that the *Westinghouse* cases are distinguishable, and we find that they do not compel a conclusion that an all-technical unit is the only unit appropriate in the instant case.

Both *Westinghouse* cases involved petitioned-for units of some, but not all, of the technical employees at the Naval Reactors Facility (NRF) at the National Reactor Testing Station in Idaho Falls, Idaho. In *Westinghouse I*, the union sought two units of technical employees, excluding “industrial hygiene technicians” among others. 137 NLRB at 336.<sup>12</sup> We found that the petitioned-for units were not “functionally distinct or homogenous groups of employees, [or] administrative or departmental units.” Id. at 337. In so finding, we explained that NRF was “one big scientific laboratory for the development and simulation of scientific problems, and the analysis and discovery of answers to those problems.” Id. at 334. We therefore found that “the technical functions of NRF [were] thoroughly integrated,” that the skills of all the technical employees were “quite similar,” that technical employees all “receive the same training course,” and that the petitioned-for employees were not a “departmental unit.” We thus concluded that all of the NRF’s technical employees “must be taken together as constituting an appropriate unit.” Id. at 337.

In *Westinghouse II*, the acting regional director found a unit of RCTs and chemistry technicians, excluding other technical employees, to be appropriate. On review, the Board found that that unit was not appropriate. We relied heavily on the Board’s earlier finding of functional integration among technical employees in *Westinghouse I*. Id. Thus, we found that radiological control was not a task “discrete from the [e]mployer’s major service” of handling and processing nuclear material and operating reactors. Id. at 835. Moreover, this function required RCTs to have “close contact with other technical employees” and provide them with “direct support services.” Id. at 835.<sup>13</sup> We further noted that the factual

<sup>12</sup> The industrial hygiene technicians in *Westinghouse I* are similar to the RCTs at issue here.

<sup>13</sup> In *Westinghouse II*, we distinguished *New Orleans Public Services*, 215 NLRB 834 (1974), in which the Board had excluded from a technical unit other technicals who had little contact with the other unit employees and provided discrete services for the employer. In the instant case, the Regional Director relied on *New Orleans* in support of his finding that a separate E85 RADCON unit was appropriate. The Employer on review challenges the Regional Director’s reliance on *New Orleans* on the ground that the Board in *Westinghouse II* had found it inapposite. Our refusal to rely on *New Orleans* in our *West-*

record concerning the working conditions of RCTs and other technical employees was “strikingly similar” to the facts presented decades before. *Id.* at 835. Thus, we found no grounds for departing from our earlier holding and concluded that only a comprehensive unit of technical employees was appropriate at the NRF. *Id.* at 835.

The *Westinghouse* cases are distinguishable from the present case. Although both the Westinghouse and the Employer’s facilities employ RCTs, who perform similar functions, the similarity ends there. The overall technical work force at the two employers is quite different, owing to the substantial differences between running a nuclear research and training lab, as in the *Westinghouse* cases, and operating a shipyard that builds and refurbishes carriers and submarines, as here. For example, in the *Westinghouse* cases, RCTs provided radiological safety for a relatively small complement of technical employees, all working near nuclear reactors and materials. In contrast, a large proportion of the Employer’s sprawling shipyard is engaged in non-nuclear construction, so hundreds of its technical employees require no radiological oversight, and many are not even qualified to enter nuclear work areas.<sup>14</sup> Further, the amount of radiological oversight that is required varies substantially over the course of work on any given ship, and there is a period of several years at the beginning of new ship construction where no oversight is necessary at all.<sup>15</sup> In contrast, in *Westinghouse*, the RCTs’ “presence is an absolute necessity at all stages of some functions of [the] facilities.” 137 NLRB at 336 (emphasis added). Unlike the RCTs in *Westinghouse*, the Employer’s RCTs do not provide “direct support” to or have “close contact” with the other technical classifications. To the contrary, the Employer’s RCTs have little or no regular working contact with a majority of the other technical employees. Therefore, the Employer’s RCTs’ radiological safety tasks are more appropriately viewed as “discrete from the [e]mployer’s major service” of shipbuilding and refurbishing. *See Westing-*

*house II* decision is irrelevant because we find *Westinghouse II* distinguishable from this case. We thus see no reason not to rely on *New Orleans* here.

<sup>14</sup> The dissent discounts this distinction via citation to *TRW Carr Division*, 266 NLRB 326, 326 fn. 3 (1983), suggesting that *TRW* stands for the proposition that the fact the technical employees work “in another phase” of the operation is not sufficient to justify excluding them from a unit of technicals. But in *TRW*, the Board held that that was true when “the work of the excluded classification is very similar to the functions of the included classification.” *Id.* That crucial fact is not present here.

<sup>15</sup> The dissent’s statement that “the RCTs have daily work-related contact with all employees – including technical employees – who enter radiological control areas” thus says very little because many technical employees never enter such areas and others do not do so for long periods of time.

*house II*, 300 NLRB at 835. Moreover, unlike in the *Westinghouse* cases, in which there was temporary interchange between RCTs and other technical classifications, the absence of such interchange here attests to the unique role of the RCTs at the Employer’s shipyard. *See Westinghouse I*, 137 NLRB at 337. Finally, here, unlike in *Westinghouse I*, the Employer’s RCTs are in a separate department from the other technical employees. In short, the facts of the *Westinghouse* cases are clearly distinguishable from this case, and their holdings do not apply here. Accordingly, we find, in agreement with the Regional Director, that the technical employees in the E85 RADCON department share a community of interest “sufficiently distinct” from that which they share with the other technical employees at the Employer’s shipyard such that separate representation is appropriate. *TRW Carr*, 266 NLRB at 326 fn. 4.

For all these reasons, we conclude that under either the framework established in *Specialty Healthcare*, or the “sufficiently distinct community of interest” standard applied in *TRW Carr*, et al., a unit of RCTs and other E85 RADCON technical employees is an appropriate unit for bargaining.<sup>16</sup>

#### ORDER

The Regional Director’s Decision and Direction of Election is affirmed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

Dated, Washington, D.C. December 30, 2011

---

Mark Gaston Pearce, Chairman

---

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

<sup>16</sup> Our colleague’s description of the petitioned-for unit of approximately 225 employees as a “micro-unit” is puzzling given that the median bargaining unit size in Board-supervised elections during the last decade has ranged from 23 to 26 and the unit here is approximately twice the size of that approved in the original *Westinghouse* case. 137 NLRB at 334. Moreover, the very case cited at the start of the dissent, *Wheeling Island Gaming*, 355 NLRB No. 127, slip op. at 1 fn. 2 (2010), makes clear that the issue “is not whether there are too few or too many employees in the unit.” Our colleague’s further speculation about the impact of unit size on collective bargaining and labor relations stability is exactly that, wholly unsupported by evidence of any kind.

The Petitioner seeks a unit limited solely to a small subset of technical employees working in the Radiological Control department of the Employer's Newport News Shipbuilding facility. The proposed unit excludes thousands of other technical employees working at the same facility. In spite of departmental homogeneity, this fragmented technical employee unit is clearly inappropriate, particularly in light of the high degree of functional integration of their duties with those of other technical employees in this defense contractor Employer's workforce. The petition for such a unit would properly have been dismissed prior to the misguided analysis of appropriate units set forth in *Specialty Healthcare and Rehabilitation Center of Mobile*.<sup>1</sup> My colleagues' application of that analysis to this case, and their unpersuasive attempts to distinguish previously controlling precedent, illustrate the degree to which *Specialty Healthcare* has elevated the extent of organizing as the definitive factor in determining the appropriateness of units. I respectfully dissent.

As more fully set forth in the Regional Director's decision, the Employer builds and services Navy vessels, including nuclear ones. During the construction and refitting process, government safety requirements mandate strict controls over nuclear material and employee exposure thereto. Radiological Control technicians (RCTs) enforce those rules by controlling access to areas where nuclear material is present both on the vessel as it is constructed and on shore work areas, monitoring radiation levels, and checking employee dosimeters. The Employer has 150 RCTs, 60 RCT trainees, 20 radiation lab techs, and 3 calibration techs whom the Petitioner seeks to represent in a unit excluding technical employees assigned to other departments. There are 2400 total employees in all technical classifications. No bargaining history exists for the technical employees at this facility. The Employer's production and maintenance employees, however, have been represented by the Steelworkers in a single, plantwide unit for more than 30 years despite their assignment to different departments.

I readily agree with my colleagues that the Act does not require that a petitioned-for unit be the most appropriate unit. Until quite recently, however, the Board has consistently held that a petitioned-for unit will be found appropriate only if the employees in question have interests in common with one another and the "interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit." See, e.g., *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127, slip op. at 1 fn. 2 (2010) (internal quota-

<sup>1</sup> 357 NLRB No. 83 (2011).

tion omitted).<sup>2</sup> In the case of technical employees, the Board's longstanding policy has been that "an appropriate unit should include all technical employees who share a community of interest and carry out functionally related duties." *PECO Energy Co.*, 322 NLRB 1074, 1085 (1997).<sup>3</sup> Moreover, the Board repeatedly has rejected departmental units, such as that sought by petitioner, in cases involving defense contractors with highly-integrated and centralized operations like those at issue here. *North American Rockwell*, 193 NLRB 983 (1971) (petitioned-for unit of technical employees in Autonetics Division inappropriate where technical employees in four other divisions in same area excluded).<sup>4</sup>

Applying these principles, the petitioned-for unit is inappropriate. It is a partial technical unit, and there is no dispute that the RCTs share a community of interest with technical employees the Petitioner seeks to exclude: all work at the same facility, share the same salary structure and personnel policies, enjoy the same benefits, share break facilities, and their duties are functionally integrated with those of other, excluded technical employees. Indeed, the RCTs have daily work-related contact with all employees – including technical employees – who enter radiological control areas.<sup>5</sup> As part of their regular duties, RCTs control access to these areas, check employees into the area and issue dosimeters, survey the area during work shifts including checking radiation levels, and collect dosimeters and monitor materials as employees leave the control areas to check for radiation exposure and contamination. These functions are required for compliance with Federal regulations governing the handling of nuclear materials. See *Westinghouse II*, supra at 834 (functional integration found where RCTs "work with other technicians at many locations to ensure the safety of the employees and the worksite . . . tasks essential to enable other technicians to perform

<sup>2</sup> Member Becker, contrary to Chairman Liebman and Member Schaumber, expressed the sole dissenting view in *Wheeling*.

<sup>3</sup> The majority argues that *PECO* is distinguishable on its facts, but does not dispute the proposition for which it is cited here. See also *Westinghouse Electric Corp. (Westinghouse II)*, 300 NLRB 834 (1990) (same); *Westinghouse Electric Corp. (Westinghouse I)*, 137 NLRB 332 (1962) (same).

<sup>4</sup> See also *North American Rockwell*, 193 NLRB 985 (1971) (petitioned-for unit of professional employees limited to Los Angeles Division inappropriate where professional employees at other area divisions excluded); *Airsearch*, 137 NLRB 632 (1962) (petitioned-for production and maintenance unit inappropriate where technical employees in engineering and laboratory division excluded).

<sup>5</sup> The majority contends that this fact "says very little" because some technical employees do not enter radiological areas while others do not do so for long periods of time. To the contrary, this undisputed fact demonstrates the close functional integration of the RCTs and excluded technical employees, which buttresses the inappropriateness of the petitioned-for unit.

their work and to fulfill the Employer's mission."); *Westinghouse I*, supra at 336 (functional integration found where "industrial hygiene technicians" check on contamination levels, instruct technicians assigned to reactors in safety techniques, and their presence is required "at all stages of some functions of..." the facility).<sup>6</sup>

In *Specialty Healthcare*, the majority specifically stated that its holding was "not intended to disturb any rules applicable only in specific industries" other than in the non-acute care healthcare industry. 357 NLRB No. 83, slip op. at 13 fn. 29. Accordingly, it would seem that the aforementioned precedent mandates finding that the petitioned-for unit is inappropriate. To avoid this result, my colleagues simply question whether this precedent is "justified," then distinguish apparently controlling precedent governing appropriate technical units in defense industries, including those where nuclear materials are present, as limited to a narrow subset of this industrial sector. Here, the majority acknowledges that *Westinghouse I* and *II* involved RCTs who performed functions "similar" to those of the Employer's RCTs,<sup>7</sup> but they assert that the *Westinghouse* cases do not apply because they involved a nuclear research and training lab while the Employer operates a shipyard, many of its technical employees do not require radiological oversight, RCTs here work in a separate department from other technical employee classifications, and there is no temporary interchange with other technical classifications. As discussed below, these purported distinctions are unpersuasive. Indeed, the majority fails to identify even a single case in "the technical employee line of cases" in which a unit remotely like the one sought here has been found appropriate.

The majority's effort to limit the *Westinghouse* holdings to the research and reactor industry involved there is unavailing. The Board did not reject the petitioner's attempt to represent portions of the technical workforce in those cases because the facility at issue was "one big scientific laboratory." *Westinghouse I*, supra at 334. Nor did the Board find or require that the *Westinghouse*

<sup>6</sup> Further, the history of plantwide bargaining in the production and maintenance unit, while not controlling, supports a finding that the narrower unit sought here is not appropriate. *North American Rockwell*, supra, 193 NLRB at 986. There, the Board held that the petitioned-for departmental unit of professional employees was not appropriate primarily because they were not a homogeneous, cohesive group with separate interests warranting a separate unit. The Board further stated that "in view of the [multidivisional] character of the bargaining history affecting a large proportion of the Employer's [production and maintenance] employees, [] stability in a collective-bargaining relationship for the professional employees can only be achieved on a multidivisional basis. . . ."

<sup>7</sup> Indeed, an RCT who had worked for both the Employer and at the *Westinghouse* facility testified the RCT duties were identical.

RCTs interact with all of the other technical employees, or that the interaction take place at all times and places. Instead, the Board relied on the fact that the technical functions "are thoroughly integrated and interdependent," *Westinghouse I*, supra at 337, and that the RCTs in particular "work[ed] with other technicians at many locations to ensure the safety of the employees at the work-site," a function "essential to enable other technicians to perform their work and to fulfill the Employer's mission." *Westinghouse II*, supra at 834 (emphasis added). Of course, these facts are present in this case as well. The RCTs' work is, at a minimum, functionally integrated with that of the many technical employees who access the radiological controlled areas and essential to enable those employees to perform their work. My colleagues utterly fail to justify their view that under *Westinghouse I* and *II* more must be shown.<sup>8</sup>

In essence, this case represents simply another unwarranted extension of the misguided "overwhelming community of interests" standard fashioned by the majority in *Specialty Healthcare*, supra, which held, in the context of non-acute care nursing facilities, that a petitioned-for unit will be found appropriate if the employees in it share an internal community of interest, unless the party opposing it can carry the nearly insurmountable burden of proving that excluded employees have an "overwhelming" community of interests with those in the unit. As I stated in my dissent in *Specialty Healthcare*, the proper standard was articulated in *Newton-Wellesley Hospital*, reaffirmed only last year in *Wheeling*, supra. As the Board explained, the appropriate unit inquiry

<sup>8</sup> The majority is simply wrong insofar as it relies on the fact that there are periods of time when no radiological oversight of a given vessel is required as a basis for finding this unit appropriate. "Showing that some technical employees perform their duties in another phase of the Employer's operations is not enough to establish affirmatively why the segmented group of technical employees should be represented separately." *TRW Carr Division*, 266 NLRB 326 fn. 3 (1983). Contrary to the majority, this principle was not limited in *TRW* to those situations where the work of the excluded and included classifications is similar, and there is no justification for so limiting it now.

The Board in *TRW* also specifically rejected the contention that a partial technical unit like that sought here could be justified by evidence that a group of technical employees have the same supervisor, work in the same area, perform similar jobs, and do not have a high degree of interchange with other groups of employees. *Id.* at fn. 4. My colleagues thus additionally err insofar as they rely on these factors to support their unit determination.

The majority's reliance on the departmental placement of the RCTs is similarly unpersuasive, as the RCTs in *Westinghouse*, like those in this case, did not work in the same department as most of the other technical employees. While there was a greater level of temporary interchange in *Westinghouse* than is the case here, this factor was not relied upon by the Board as a basis for its unit determination. As such, there is no warrant for the majority to rely on it here. *Westinghouse II*, supra, 300 NLRB at 834 fn. 6.

never addresses, solely and in isolation, the question whether the employees in the unit sought have interests in common with one another. Numerous groups of employees fairly can be said to possess employment conditions or interests ‘in common.’ Our inquiry – though perhaps not articulated in every case – necessarily proceeds to a further determination whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.

250 NLRB 409, 411–412 (1980).

This historic standard accords due deference to the organizing choice of the petitioner and the Act’s direction that a unit need not be the “most appropriate” one. *Wheeling*, supra, slip op. at 1 fn. 2. At the same time, however, this standard recognizes that Congress vested the authority to make unit determinations with the Board, not union organizers. Congress specifically and clearly stated that the extent of organization shall not be controlling in unit determinations. In making those determinations, it is entirely appropriate – if not required – for the Board to take into account the adverse impact of a potential multiplicity of small bargaining units in fulfilling its statutory mandate to prevent disruptions of commerce resulting from industrial strife. This standard also fulfills the Act’s directive that the unit found appropriate will “assure to employees the fullest freedom in exercising the rights guaranteed by this Act. . . .” A unit meets this standard, and accomplishes this purpose, when it includes all of the employees who are sufficiently connected by their function, job duties, location, and terms and conditions of employment, even if the degree of that connection is something less than “overwhelming.”

The newly-fashioned *Specialty Healthcare* standard, in contrast, gives the petitioner’s views on unit scope nearly dispositive weight, thereby abnegating the role Congress envisioned for the Board in determining appropriate bargaining units. In many, if not most instances, this new standard will encourage petitioning for small, single-classification and/or single department groups of employees. Union electoral success, even if at the same rate as in the recent past, will lead to the balkanization of an employer’s unionized workforce, creating an environment of constant negotiation and tension resulting from competing demands of the representatives of numerous micro-units. Such an outcome cannot be reconciled with the statutory goal of facilitating labor relations stability.

Consider the Employer in this case. Its 8500 production and maintenance employees, despite placement in different departments, have been represented by the

Steelworkers in a single plantwide unit for more than 30 years. How many separate units would have existed, and with what consequences for productive collective-bargaining relations, had the *Specialty Healthcare* standard been in effect? Further, in the wake of this decision, how many separate technical bargaining units will eventuate among 2400 employees?

In sum, a unit limited to RCTs, trainees, calibration technicians, and a few laboratory technicians is not appropriate, and my colleagues’ contrary view sets the stage for a broader fragmentation of and disruption to the Employer’s workforce. Unlike them, I would dismiss the petition.

Dated, Washington, D.C. December 30, 2011

---

Brian E. Hayes,

Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

.....

The issue in this proceeding is whether the petitioned-for unit of radiological control technicians (monitors I, II, III, and IV, or “RCTs”) employed by the Employer at its Newport News facility is appropriate for the purposes of collective bargaining. The Employer contends that the unit must include all technicians employed at the facility.<sup>1</sup>

The Employer has two unincorporated divisions, the Newport News Division operating out of its Newport News shipyard, and the Gulf Coast Division operating out of its Gulf Coast shipyards.<sup>2</sup> Its Newport News Division is principally engaged in the construction of nuclear-powered ships, both aircraft carriers and submarines, for the United States Navy, and the overhaul, maintenance and repair of existing Navy ships at its Newport News facility.<sup>3</sup> The Employer’s Gulf Coast Division builds non-nuclear ships for the Navy at various shipyards in Louisiana and Mississippi.

The Petitioner seeks to represent all full-time and regular part-time monitors I, II, III, and IV in Department E85 located

---

<sup>1</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings on the petition were held on March 17–18, 2009, and on April 14–16, 2009, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.

<sup>2</sup> The Employer is a subsidiary of Northrop Grumman Corporation, which prior to December 2008, operated its Newport News facility under the name Newport News Shipbuilding and Dry Dock Company. In December 2008, Northrop Grumman Corporation merged its Gulf Coast operations, operating as subsidiary Northrop Grumman Ship Systems, Inc., with the Employer.

<sup>3</sup> The Newport News “facility” is comprised of the various buildings, shops, docks, ships, warehouses, and other structures located at the Newport News shipyard.

at the Newport News facility, excluding all office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.<sup>4</sup> The Petitioner contends that the Employer's approximately 140 RCTs constitute a craft unit, with distinct skills and specialized training, separate supervision, unique work functions and duties, and limited contact and little, if any, interchange with the Employer's technical employees (or "techs"). The Employer takes the position that the RCTs are not craft employees, but rather, are technical employees who must be included in a unit of all technicals at the facility. Relying on *Westinghouse Corp.*, 300 NLRB 834 (1990), the Employer argues that the smallest appropriate unit must include all 2400 technical employees encompassing 10 classifications because the Petitioner has failed to establish that the RCTs share a community of interest sufficiently distinct as to warrant finding the petitioned-for unit appropriate, excluding other technicals.

I have carefully considered the evidence and arguments presented by the parties at the hearings and in both their briefs and supplemental briefs. As discussed below, I conclude that a unit of RCTs, with the addition of all other technicals (RCT trainees, calibration techs, and E85 lab techs) in the E85 radiological control department, is appropriate for the purposes of collective bargaining.

#### I. FACTS

##### A. Background

The Employer employs approximately 18,500 employees at its Newport News shipyard, which stretches over two miles of waterfront. The construction of nuclear powered aircraft carriers and submarines generally takes between 5 and 6 years, and entails a detailed and extensive design and manufacturing process. The need for radiological oversight begins approximately 2 months before delivery for submarines and 5 or 6 months before delivery for aircraft carriers. Existing aircraft carriers periodically require refueling of their nuclear core; when brought back in, the Employer overhauls the carriers, a process which may take 3-1/2 years and involves the updating of computer systems, electronic and combat systems, and refurbishing of the ship, during which time there is a need for radiological control measures.

The Employer administratively divides its workforce into five categories — professional, administrative, production and maintenance, and technical employees. The largest group, production and maintenance employees, includes 8500 electricians, welders, machinists, janitors, and riggers, among others, who primarily perform manual work, are represented by the United Steelworkers Union. Except for the guards and firefighters, who are separately represented by other unions, the remaining employees are unrepresented. There are approximately 2000 professionals, mostly engineers, and 2400 technical employees, such as designers, laboratory technicians, chemical handlers, quality inspectors, among others, working in various divisions. There are about 1500 administrative employees performing office and clerical work, and

<sup>4</sup> The Petitioner would exclude RCT trainees from the unit and in the alternative indicated a willingness to proceed to an election in a departmental unit of technical employees. Assuming all the other technicals are not included in the unit found appropriate, the Employer would include RCT trainees.

2500 supervisory employees, including foremen, managers, superintendents, supervisors, directors, and vice presidents.

There is no bargaining history as to the petitioned-for employees. The Petitioner asserts that from the 1930s until 1975, the designers at the Newport News facility were represented by the Peninsula Shipbuilders Association in a separate unit apart from other technicals. The Petitioner currently represents two bargaining units in the Employer's Gulf Coast Division. One bargaining unit, certified in 1962, consists of technical test and inspection employees in Department 29 (Hydraulics Pre-Test), and Department 33 (Non-Destructive Test) in Pascagoula, Mississippi. The other is a unit certified pursuant to a stipulated election in August 2008, consisting of inspectors (quality and assurance as well as technical) in the quality assurance department in Pascagoula.

The Employer's organization is headed by General Manager Matt Mulherin, who heads six operating divisions:

1. Navy Programs Division, whose departments provide overall management and oversight over aircraft carrier and submarine construction and aircraft carrier overhaul.

2. Operations and Manufacturing Division, which handles the manufacture of ship components in the first phase of production for assembly on the ships.

3. Quality and Process Excellence Division, which audits and inspects production work and provides record reviews and ensures that contract specifications are met. Process Excellence is a performance improvement group aimed at ascertaining better methods for performing work.

4. Waterfront Nuclear Engineering and Test Services Division ("Nuclear Services Division"), which provides oversight of the nuclear aspects of the Employer's operations. This division has several operating departments, including the Nuclear Engineering and Radiological Control department, under which the petitioned-for RCTs work, and which administers and controls all radiological work at the facility. Some of the other departments are Test Engineering, which performs tests on all ship systems except those connected with the nuclear reactors; Nuclear Engineering Test, which performs tests on the reactor plants areas; Production Refueling and Nuclear Support, which defuels and refuels the ships; Nuclear Overhaul Engineering, which provides engineering and technical support for overhauling ships; Nuclear Engineering Reactor Services, which provides engineering support for the fueling and refueling in overhauling ships; Nuclear Engineering and Radiological Audit, which oversees and audits all nuclear work done at the facility, and Nuclear Construction and Material, providing technical instructions and drawings for new construction of nuclear systems for the ships.

5. Commercial Nuclear Programs Department, which is involved in the construction of commercial nuclear plant equipment and systems.

6. Department of Energy Programs Office, is involved with various programs offered by the Department of Energy.

##### B. Technical Employees employed at Newport News

There are 10 classifications designated by the Employer as "technical" — designers, test technicians, engineering technicians, dimension control technicians, planners, quality inspec-

tors, chemical handlers, laboratory technicians, calibration technicians, and RCTs. The employees in almost all of these classifications work in various divisions and departments and work at various locations within the shipyard. The RCTs and calibration techs are only assigned to one department, Department E85. Technical employees are salaried, have their own labor and salary grades separate from all other employees and are paid under the same biweekly payroll system. They are covered by the same personnel policies and are eligible for the same pension, 401(k), medical, dental, insurance, and sick leave plans and other benefits programs, as are all unrepresented salaried employees. They all perform non-manual work of a technical nature, requiring the exercise of specialized training, some on-the-job and others requiring additional extensive coursework. Seven of the ten technical classifications have some limited radiation worker training.<sup>5</sup>

1. Technical classifications sought to be added by the Employer:

*a. Quality inspector*

Twenty-four quality inspectors are in the Operations and Manufacturing Division, overseeing the work done in the shops, and about 150 to 200 inspectors are in the Quality and Process Excellence Division. They take specialized mechanical, structural and electrical inspection courses. Their responsibilities are to ensure the quality and accuracy of the work performed to meet the expected standards once the product components and/or assembly have been completed. They do various types of visual inspections to perform their work. They rely on designer drawings in performing their inspections, sign off that processes that are specified in the Technical Work Document (TWD) have been followed, and if there is a problem, the quality inspector will write a discrepancy report. When encountering design problems, they often work directly with designers to resolve problems. They often need to coordinate inspections with test technicians. Those in the Quality and Process Excellence Division spend 50 percent of their time on the ship and 50 percent in the office.

*b. Test technicians*

In the Nuclear Services Division, the Test Engineering Department has about 100 test technicians who are responsible for testing the various components on the ship other than the reactor portion, including propulsion and combat systems, using electrical and mechanical knowledge of the systems; there are about 80 test techs who work in Nuclear Engineering Test performing the same type of testing, but on the nuclear systems, using the same type of knowledge. They run proof-of-product testing, e.g., on mechanical systems to make sure the system is not leaking, or on electrical systems, including initial energization and calibration. They use information from drawings by the designers to write up their test procedures and deal with

<sup>5</sup> Aside from the RCTs, who have extensive radiological control training, designers, test technicians, quality inspectors, laboratory technicians, calibration technicians, and chemical handlers all are given dosimetry training of two to five days because their duties require that they enter radiological controlled areas.

designers frequently when they encounter problems with drawings or diagrams. The Director of Test Engineering (non-nuclear testing) James O'Brien stated that the test techs spend on average 50 percent of their time on the ship, and 50 percent off the ship.

*c. Designers*

These technicals are located in several different departments, including the technical, aircraft carrier construction, carrier overhaul, and submarine construction departments of the Navy Programs Division, and the nuclear overhaul and nuclear engineering reactor services of the Nuclear Services Division. Most designers are in the Navy Programs Division, where they number at least 1,400. There are about 40 designers in Nuclear Engineering Reactor Services and 9 designers in the Nuclear Overhaul Engineering Department, among others, on the Nuclear Services side. Designers in some departments may move between other departments, depending on need.

The designers create drawings and blueprints that are used in the manufacture of ship components, such as valves, and the assembly of the ship. The Employer recruits designers from other companies and graduates of associate degree programs, either mechanical or electrical engineering technology or nuclear design. They typically undergo a one-year training program involving classroom and on-the-job training and employment as a trainee. There is also a four-year apprentice program during which those interested in design spend their last year doing design work.

Designers generally work about 80 to 90 percent of the time in their offices and 10 to 20 percent in the field doing site checks, although this may vary depending on the program and stage of production. They often work with engineering techs side-by-side resolving technical issues, and as stated above, regularly work with quality inspectors and test techs.

*d. Engineering technician*

They are dispersed in different departments, often with designers. In the Navy Programs Division, the ratio of designers to engineering techs is 10 to 1; in Nuclear Services, there are 40 engineering techs. O'Brien, Director of Test Engineering (non-nuclear), states that the engineering techs spend 80 percent of their time in trailers, and 20 percent routing documentation through checkpoints. Director of Nuclear Overhaul Engineering William Fletcher testified that the engineering techs spend 80 to 90 percent of their time at offices and 10 to 20 percent on the waterfront. The engineering techs serve as the interface between the engineers and designers and the trades employees in building systems and components. They perform engineering calculations and write technical procedures. They typically have a highly skilled technical background from prior Navy experience and Navy schools, and the Employer requires that they take specialized coursework to, inter alia, acquaint them with shipyard work and how it works with the Employer's procedures and to acquaint them with design tools.

*e. Dimensional control technicians*

There are about between 60 and 80 dimensional control techs in the Operations and Manufacturing Division. Their duties are to measure spaces and material in connection with components.

They map material using photogrammetry cameras and laser trackers, and receive extensive apprenticeship training of 22 weeks. They spend about 75 percent of their time at their desk. They work side-by-side with designers and engineers, and have frequent contact with quality inspectors who sometimes back-check their work with manual methods, and when the dimensional control techs perform surveys for them. They also have some limited work-related contact with the lab techs and even less with test techs. Only 8 techs in the Dimensional Control department (of 125 employees) are radiological control (“radcon”) qualified.

*f. Laboratory technicians*

Twenty laboratory techs work in the Nuclear Services Division in the Nuclear Engineering and Radiological Control department while other laboratory techs work in the Quality and Process Excellence Division sampling and testing materials and performing calibrations. Most laboratory techs performing radiological control lab work have a background as an RCT. The other non-radcon lab techs mostly have fairly extensive backgrounds in environmental and corporate responsibility with respect to, inter alia, the legal limits on the release of various chemicals into the atmosphere. The vast majority of lab techs’ time, 90 percent, is spent in labs. Some of the lab techs go to the ships to collect samples, occasionally going to receiving areas for pick up, and sometimes the non-radcon lab techs would go to the RSF to test samples that needed to be tested in a controlled environment. Murdock testified that his lab techs have the same instrument qualifications as the RCTs and may take radiation and contamination surveys. Quality inspectors and others may bring samples to the lab techs.

*g. Chemical handlers*

Several chemical handlers work in Nuclear Services as part of the production refueling and nuclear support department.<sup>6</sup> They handle radioactive waste or other hazardous materials which need to be moved or disposed. They perform some surveys on the trailers they use to transport their materials. Other chemical handlers in other department(s) handle non-nuclear hazardous waste material.

*h. Calibration technicians*

Approximately three calibration techs work in Nuclear Engineering and Radiological Control maintaining the equipment used by RCTs. They work in the calibration lab.

*i. Planners*

Numerous planners are dispersed among different departments, including 20 to 25 planners in Nuclear Services in Nuclear Overhaul Engineering, 4 to 5 in the Test Engineering department, 8 to 10 in Engineering Reactor Services, and about a couple dozen located in various Navy Programs departments. They review ship designs and drawings to determine the sequence of work and what material will be needed for each phase, and when materials must be ordered and delivered.

<sup>6</sup> Robert Lee, a human resources manager, testified that there are also about a dozen chemical handlers handling non-nuclear waste, and about 18 to 20 handling nuclear waste.

They take specialized coursework dealing with how the material system works. They spend almost all of their time in their offices, with the rest of the time spent going to the warehouse or purchasing.

2. The petitioned-for radiological control technicians

The RCTs all work in Department E85-Engineering which is under the Nuclear Engineering and Radiological Control Department in the Nuclear Services Division. Department E85 also employs employees in other technical classifications. According to the Director of Radiological Control Joe Murdock, 20 lab techs and 3 calibration (or instrument) techs work in the department. They essentially provide support for the RCTs’ work. Additionally, there are approximately 60 RCT trainees. There are also 15 dosimetry techs (classified as administrative employees), and approximately 18 health physics techs, who neither party seeks to include in the unit.<sup>7</sup>

*a. Supervision*

Director Murdock reports to Rolf Bartschi, the vice president of the Nuclear Services Division. Murdock has a deputy manager, 7 managers, 8 section supervisors, and 26 supervisors under him. Twenty-one of the 26 supervisors supervise RCTs. The remaining supervisors supervise other technicals and employees in the department.

*b. Specialized training*

RCTs are required to have extensive specialized training. They first undergo one month of preliminary training at the shipyard and then must attend a 22-week training course at the U.S. Navy’s Radiological Control Technician Qualification School in Norfolk, Virginia, in order to comply with the U.S. Department of Energy regulations. Their training requires an aptitude in math and physical sciences. After they graduate, they must have at least 5 weeks of on-the-job training at the Employer’s facility and then pass a full-day oral examination. In addition, they must undergo requalification training and testing every 30 months. No other employees have this type of intensive radiological control (“radcon”) training. Some other technicals must be requalified periodically, such as quality inspectors, designers, and test technicians to maintain their particular certifications. Like most other employees, RCTs are required to possess government security clearances at a confidential level or higher.

*c. Work locations*

The RCTs report to various locations throughout the shipyard, depending on what projects they are working on. For

<sup>7</sup> According to the Petitioner’s witness, Department E85 includes 11 dosimetry techs, about 28 health physics techs, and 59 monitor trainees. Although Director of Compensation Benefits and HR Information Systems Gary Lewis testified that the health physics techs are currently classified as lab techs, Murdock testified that they are not the same as lab techs. The health physics techs work in the main RADCON building working on radiation health issues (reviewing the readings from the dosimetry tests and radiation surveys), performing mostly paperwork. The dosimetry techs also work in the main RADCON building, where they process the dosimetry, which measures how much radiation exposure each individual receives.

example, Murdock testified that at the time of the hearings, 50 RCTs were working out of a trailer near the Enterprise (where they perform most of their work), 20 were at the Radiological Support Facility (RSF), 30 were at the consolidated refueling facility (CRF), and others at various trailers and buildings spread over more than a one-mile stretch. The lab techs work out of the RSF, at the radiological lab at Pier 6, and at the calibration facility with the calibration techs. At the labs, the rad-con lab techs test and analyze water samples and solid samples to determine the constituency of the material being used or produced as waste. At the RSF, the Employer stores radiological equipment and components that have been removed from ships and that are worked on in the RSF during repair or overhaul. Those items are subject to radiological controls. At the CRF, similar work is done except it is in connection with refueling equipment. The radiological control office at the CRF is next to a quality inspector's office.

#### *d. Job duties*

The RCTs' basic job duties are to ensure that the requirements of the radiological control program are followed by employees working in radiological areas. This is necessary to protect all employees who work in such areas because work on nuclear reactors and related components can generate contaminated material or radiation. The RCTs usually report to their supervisors at the beginning of their varying shifts to ascertain what problems might be happening in the shipyard, what happened during previous shifts, and what work needs to be done, and then proceed to their worksite onboard a ship or in a shop. Based on Technical Work Documents (TWDs), which detail instructions prepared by engineers, engineering techs, and test technicians, and drawings prepared by the designers, RCTs may prepare survey maps and may set up radiological control areas. On most day-to-day jobs when they set up such restricted areas, they perform "control watches" monitoring the nuclear reactor area. No employee in such instances may enter or leave the area without the permission of the RCT. The RCT will issue employees a device (dosimeter) to monitor how much radiation they pick up and record that dose, question employees as to what work will be done and what materials will be taken into the area, inform them of what areas to stay away from, and then assist them on exiting in assuring that the radiological control requirements are met, including monitoring all materials that leave the area to be sure they are free of contamination. On other jobs, they may leave roped off areas with signs that designate what the requirements are for entry into that area. When performing their various surveys on a daily basis, they may conduct contamination surveys, where they use a swipe to wipe a surface, or radiation surveys, where they may hold a probe and take contact readings, or air sample surveys.<sup>8</sup> Surveys take between 15 minutes to 2 hours, depending on the job. Some jobs, e.g., initial entry into a compartment, may require a survey using a team of three to five RCTs. Most of the RCTs' time is spent in or around the reactor on the ship. At the RSF

<sup>8</sup> From time to time, when swipes are needed on contamination surveys, the trades may take a swipe in particular areas since they are already in the area, in the presence of the RCTs.

and CRF, they may set up radiological control areas around the storage of radioactive materials and monitor work performed on nuclear equipment and components. They can order work stopped if control procedures require it. These duties are essentially performed solely by the RCTs; only some of their work may be performed by others, and only on a very limited basis. For example, environmental lab techs may occasionally perform environmental surveys and air monitoring, and take contamination and radiation surveys of drainage ditches and outfalls to ensure contamination is not spread to the environment, although how often this occurs is not clear. Chemical handlers (over a dozen) also are qualified to do radiation and contamination surveys on their vehicles, but their primary duties are to transport materials and there is no evidence as to how much of their time is spent surveying.<sup>9</sup> RCT trainees, as set forth more fully below, may also perform some routine surveys while they are receiving on-the-job training. However, the duties of performing surveys and setting and monitoring control points in controlling contamination and radiation in the shipyard are the primary functions of RCTs and no other technical employees. They wear hard hats with "E85 RADCON" on them.

#### *e. Specialized equipment and tools*

In order to perform their work, the RCTs use specialized tools which they obtain from the calibration lab.<sup>10</sup> The lab verifies the equipment is working properly and then has it delivered to the RCTs' trailers or office areas. RCTs also wear a special kit bag containing certain supplies, e.g., wipes, laws, tweezers, and bags, used in their work. Other employees do not have such bags. A few other classifications are qualified to use some or all of the equipment utilized by the RCTs, for example, some of the lab techs and chemical handlers who occasionally may perform surveys, as discussed above. Calibration techs are qualified on and operate all of the instruments; trainees have qualifications to operate several of the instruments.<sup>11</sup>

f. Permanent and temporary interchange: RCTs do not interchange on a temporary basis with other employees. As for permanent transfers, there are several lab techs, designers, test techs, engineering techs and others who were formerly RCTs. There was no evidence as to the exact number of these transfers, except as to the RCT lab techs, the majority of whom previously were RCTs.

#### *g. Contact with other employees*

The RCTs have daily work-related contact with employees

<sup>9</sup> Remote survey teams (employees not at issue here) who work outside of the shipyard gates are qualified to take air samples, radiation and contamination surveys, although it is unclear how often this occurs. It appears that this occurs when there is a casualty outside the shipyard.

<sup>10</sup> According to the testimony of an RCT II, there are 27 radiation detection instruments and sensors used by RCTs, including teletector, E-140, AN/PDR-70, and E530, among other detection equipment.

<sup>11</sup> There is record testimony that some employees who work in radiological areas are qualified to "self-frisk out," reading the instruments used by the RCTs. There is no evidence, however, that these same employees are qualified to use all of the specialized tools of the RCTs. There is also testimony that there are certain limited control work performed by production employees, e.g., taking swipes while RCTs are present, or using a probe.

in other classifications, primarily with production employees such as painters, machinists, and pipefitters, inasmuch most of the employees entering the control point areas are trade employees or other non-technical employees and supervisors. At certain stages during the overhauling of ships and during the final months of new construction on carriers and submarines,<sup>12</sup> the RCTs have more contact with employees in some of the technical classifications, mostly with quality inspectors and test techs, with no showing of any substantial contact with such technicals as lab techs, dimensional control techs, calibration techs, chemical handlers, or planners.

Thus, lab techs,<sup>13</sup> calibration techs, and planners have little or no contact with the RCTs as they spend almost all of their time in their own offices/labs. Occasionally, lab techs may test samples in radiological control areas under the monitoring of RCTs, although it does not appear that this occupies a significant amount of time. As stated above, dimensional control techs spend 75 percent of their time at the desk (and the rest in radcon and non-radcon areas) and only 8 techs out of the department of 125 employees are radcon-qualified. RCT Taylor stated that calibration techs pick up faulty instruments from RCTs about twice a week. RCT Lawrence stated that he did not have frequent contact with lab techs or calibration techs, and when he did have contact, it was only in passing.

Contact with chemical handlers may vary; at the time of the hearing, RCT Section Supervisor Doug Wolkowich testified that there was not much contact; but at other times, it might be as much as two or three times a day, depending on the type or stage of work. RCT Taylor testified that his contacts with respect to handling waste for transport twice a week for pickup was usually with the trade employees rather than the chemical handlers.

David Pickwick, manager for the Dimensional Control Department, stated that RCT contact with the dimensional control techs is not very frequent, with only one percent of their work requiring regular interface with them during rehaul work when they are required to do surveys of the reactor compartment space envelope for the refueling equipment, which is in a radcon-controlled area. RCT Michael Taylor stated that he never had contact with dimensional control techs. RCT Section Supervisor Doug Wolkowich testified that at the beginning of availability of the ship, the dimensional control techs are working onboard for two or three weeks, and then unless there were an issue, they might not see them for awhile.

The amount of RCT contact with quality inspectors, test

techs, designers, and engineering techs is more regular, but the frequency varies, depending on the stage and type of work being conducted at the time, and the particular responsibilities of the different departments. For the most part, the nature of these contacts involves the RCTs' brief interaction at control point areas in monitoring employees and permitting entrance to and exit from those areas, rather than working together with other techs in the actual performance of those employees' functions.

For new construction projects, there is a long period of planning and construction (5 years or more) before nuclear components are involved requiring control measures. In rehauling and refueling projects, there is more extensive contact with designers, engineering techs, test techs, and quality inspectors throughout the period of availability of the ship, although the frequency of such contacts varies depending on the particular stage of production. Monitor III Aaron Lawrence testified that while he interfaces with the trades on a daily basis, he has no interface with planners (or designers). He testified that he hasn't seen too many engineering techs, quality inspectors, test techs—perhaps once a week or once every 2 months, depending on the job, and he interfaced only “rarely” or “from time to time” with the quality inspectors (maybe once a month or quarter). When working at the facilities, he deals mostly with the trade employees, e.g., the insulators, painters, electricians, and pipefitters. He stated that if there were questions regarding any drawings, he goes to his supervisor rather than to the designer. RCT Michael Taylor testified that he had no contact with designers, engineering techs, or planners and that he viewed his job as supporting the production trades. Edward Guteski, Director of Aircraft Carrier Engineering in the Navy Programs Division, testified that there was not much RCT contact early in the design phase, but there were going to be more once the plant became operational and the RCTs were going to be required to do shield surveys (the shielding is required to be designed around the propulsion plant.) He estimated that the designers would be in the yard 10 percent of the time but that it would increase to 40 percent as the production progressed, and then lessen again. They go aboard ships to perform ship checks when they analyze systems which they are designing and to investigate problems with the trades, or attending production meetings. According to Glenn Morgan, Director of Nuclear Engineering Reactive Services, among the 40 designers in his department, there is one designer who is out daily in the shipyard doing site checks. Some, not all designers, receive radiation worker training because those who are assigned to do the ship checks may be required to examine systems in and around radiological control areas.

Quality inspectors generally do not interact with the RCT once they enter the controlled area, although they might work behind an RCT conducting surveys when work is done on controlled materials in the storage facilities. The amount of work contact between RCTs and quality inspectors varies according to the phase and type of operations; there is daily contact when the systems are returned to normal and put back on line in a rehaul operation. There was also testimony that the RCTs monitor the trade employees and also inspections by quality inspectors when valves are cut out during certain phases of the ship's availability. Their oversight would be needed for about

<sup>12</sup> It is unclear how much of the Employer's labor force is used for overhauling ships and how much is used for new construction. Bartschi testified that 3000 employees are working on one ship construction at peak times, with 1000 of those working in radiological areas. He did not know how many of these would be technical employees. He also testified that the volume of submarine and carrier new construction business is greater than the volume of business of overhauling a carrier at the facility, but overhaul work is more “labor-intensive.”

<sup>13</sup> Wolkowich testified that the frequency with which samples are sent for testing by the lab techs varies; it appears samples may be taken by trade employees, RCTs (once or twice a week), or others and may be picked up by chemical handlers for delivery to the lab. The results normally come back to the supervisors, not to the RCTs.

10 to 15 minutes to an hour per valve (with 130 valves cut on one of the refueling projects (the U.S.S. Enterprise)). Monitor II Michael Taylor testified that he would occasionally provide monitoring in valve repairs, during which time he would have contact with quality inspectors twice a week, but that at other stages of production, contacts were infrequent.

RCTs' contacts with designers appear to be of a limited nature, inasmuch as the designers generally spend 80 to 90 percent of their time in their offices, but at times there is regular contact. The engineering director for CVN-78 class aircraft carrier, Craig Byrum, testified that the designers were not interacting with the RCTs at the time of the hearing but that in the future there would be daily contact for a year, as they would be entering controlled areas. Other Employer witnesses stated that RCTs have more frequent interface with designers when they are developing the refueling complex for the ship at the beginning of availability, when they build a complex to keep people out of certain areas, and provide input when the designers needed to resolve what type of curtains or shields were needed. It is unclear how often this occurs or how much time this takes.<sup>14</sup>

Kent Williams, Director of Nuclear Engineering Test, testified that his test techs have day-to-day contact with the RCTs on overhauls during busy periods, up to 25 to 30 percent of the time, but very little contact on new construction. Director of Test Engineering James O'Brien testified that only 6 of his over 100 techs (non-nuclear) are radcon qualified and interface with the RCTs. RCT Section Supervisor Doug Wolkowich stated that the amount of contact between the RCTs and test techs varies on the stage of availability (on rehaults and refueling), e.g., on a daily basis when temporary systems are first hooked up and at the end of availability, but less contact, perhaps two to three times a week, at other times.

#### *h. RCT trainees*

After their hiring, the RCT trainees spend about a month or so in a training course in the training building, brushing up on their math skills, and spending time on the ships and at the various buildings to become familiarized with the facilities and how they operate. They sometimes are allowed to work on the deck plates but their duties are limited. For example, they perform routine type surveys with oversight by qualified RCTs, using some of the same equipment. Some of the RCT trainees have the qualification to be a limited control point, which means they could set the point and allow certain jobs to go on inside. Above a certain level, they have to have an RCT present. Trainees are qualified to become RCTs when they graduate from their coursework and pass

<sup>14</sup> Director of Aircraft Carrier Engineering Edward Guteski stated that at the end of production, RCTs go through drawings with engineers and designers, but he did not specify how much time this entailed. Guteski stated that at the time of the hearing, there was not much interface between designers and RCTs, but that once the plant becomes operational, the RCTs would be doing shield surveys for the shielding required around the propulsion plant, and if there are any shielding questions or shield survey issues, they would pull in the engineers and designers to go through drawing issues. There is no indication how much time this would take.

the oral board. If they fail to pass the board, they may be permitted to take it again. If they fail again, they may be able to find trade employment in production and maintenance. It is not clear how many trainees fail to become RCTs and their progression is not guaranteed by the Employer.<sup>15</sup>

## II. ANALYSIS

Technical employees are defined as employees who do not meet the strict requirements of the term "professional employees" but whose work is of a technical nature, involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools, or through special courses. *Folger Coffee Co.*, 250 NLRB 1 (1980); *Augusta Chemical Co.*, 124 NLRB 1021 (1959). The evidence establishes that the RCTs are technical employees, based on their specialized training in a 22-week program of courses and on-the-job training, the nature of their skills, and their use of independent judgment in performing their radiological control functions.<sup>16</sup> As to the remaining nine classifications alleged by the Employer to be technical employees, the Petitioner does not dispute they are technical employees as the Board defines that term, and there is evidence to support a finding that most, if not all, are technicals. I therefore shall assume that the nine classifications are technical employees.

The Board has held that when technical employees work in similar jobs and have similar working conditions and benefits,

<sup>15</sup> There was testimony that many trainees do not succeed in becoming RCTs; in the Employer's monthly publication, an article about the RCTs asserts that 50 percent do not pass the U.S. Navy's 22-week RCT training course.

<sup>16</sup> The Petitioner claims that the RCTs are craft employees. I find that the RCTs are not a craft unit, as they are not a homogeneous group of skilled journeymen who, together, with helpers or apprentices, are primarily engaged in the performance of tasks which require the use of substantial "craft" skills. *MGM Mirage*, 338 NLRB 529, 532 (2002); *Reynolds Electrical & Engineering*, 133 NLRB 113 (1961). Generally, employees found by the Board to be "craft" employees are "the type ordinarily associated with journeymen craftsmen or other manual workers" (see *Reynolds Electrical & Engineering*, supra at 114), such as sheet metal workers, tool & die workers, printing pressmen, etc. See, e.g., *Anheuser-Busch*, 170 NLRB 46 (1968) (electricians found to have craft status were required to be licensed with 3 to 4 years of electrical experience); *Kennecott Copper Corp.*, 138 NLRB 118 (1962) (machinists found to be craft employees underwent 4-year apprenticeship program; painters were craft employees who had to prove journeyman status). Cf. *Union Fishermen's Co-Op Packing Co.*, 52 NLRB 541 (1943) (watchmen who maintain and monitor the temperature of cold storage equipment are not craft employees); *Reynolds Electrical*, supra (first aid attendants found not to be craft employees); *Proctor & Gamble*, 251 NLRB 492 (1980) (electrical support techs found not to be craft employees); *Timber Products Co.*, 164 NLRB 1060 (1967) (maintenance electricians were essentially no more than specialized workmen with limited skills and training adapted to the particular processes of the Employer's operation); In re *Bartlett Collins Co.*, 334 NLRB 484 (2001) (2001) (mold repair employees did not perform functions traditionally associated with either the mold craft or any other "craft"). The Petitioner cites no cases to persuade me that employees performing the type of work using the particular skills and training of the RCTs are akin to journeymen or manual workers who have achieved craft status.

the smallest appropriate unit for a group of technicals must include all technicals similarly employed. *Western Electric*, 268 NLRB 351 (1983); *TRW Carr Division*, 266 NLRB 326, (1983); *Aerojet General Corp.*, 131 NLRB 1094 (1961). While the Board has therefore found units of some, but not all, “similarly situated” technical employees to be inappropriate, it has also found a smaller unit to be appropriate when the petitioned-for technical classification possesses a sufficiently distinct community of interest apart from other technicals to warrant their establishment as a separate appropriate unit. See *Pratt & Whitney*, 327 NLRB 1213 (1999). The Board therefore examines traditional community of interest factors such as bargaining history, supervision, interchange, functional integration, contact with other employees, skills, training, job functions, and terms and conditions of employment to determine the appropriateness of such units.

The evidence establishes that the RCTs possess a distinct community of interest from all other technicals outside of the radiological control department. As set forth more fully below, the RCTs, *inter alia*, possess unique skills, undergo intensive, lengthy, and strikingly specialized training, have distinct job functions, utilize special tools and equipment, do not temporarily interchange with other technicals, and have separate supervision. Further, the level of functional integration and contact with non-radiological control technicals is not so substantial as to negate their separate and distinct community of interest. See *New Orleans Public Service*, 215 NLRB 834 (1974) (less than all-technical department unit found appropriate where functions were sufficiently distinct); *Ochsner Clinic*, 192 NLRB 1059 (1971) (radiological technologists, or x-ray techs, found to constitute a separate appropriate unit apart from other technicals).

Thus, the RCTs are administratively grouped in only one department, the Nuclear Engineering and Radiological Control department, which solely administers and controls all radiological work at the facility. By contrast, the other technical classifications – the designers, engineering techs, planners, quality inspectors, dimensional control techs, test techs, and the non-radiological control lab techs – are not in the same department, but rather are dispersed among different departments performing different functions, under separate supervision, e.g., designers work in many different departments, with different supervisors.

Further, it is undisputed that the RCTs receive specialized radiological control training, and have skills and job functions using specialized tools generally not shared by other technicals outside of the department. They must undergo extensive on-the-job radiological control training, complete a 22-week course of instruction from the U.S. Navy in order to comply with U.S. Department of Energy regulations, and pass an oral board. The other technicals (aside from most of the radiological control lab techs) have not had such training. Most of the other technicals receive only limited radiation worker training of a few days, as do other non-technical employees. The RCTs use specialized tools and equipment, which except in certain limited circumstances, are not used by other technicals. RCTs are the only techs responsible for assuring that radiological control procedures are followed, including monitoring and

securing radiological areas where radioactive materials are used or stored, and they perform work solely in areas involving radioactive materials. The duties and functions of the RCTs are essentially unique to them, with only limited survey work performed by others.

While there is some voluntary permanent interchange with other techs, the frequency with which this occurs is not clear (except that the majority of radiological control lab techs were previously RCTs). It is evident that there is no temporary interchange between the RCTs and other techs. See *Bashas, Inc.*, 337 NLRB 710, 711 fn. 7 (2002) (permanent interchange is a less significant indicator of community of interest, and thus is given less weight by the Board in deciding unit scope issues); *Red Lobster*, 300 NLRB 908, 911 (1990).

The Employer contends that the unit must include all other technicals because all technicals receive the same benefits, are classified with the same salary structure, and are subject to the same personnel policies, and because there is extensive contact and functional integration among the technical employees. Notwithstanding that the RCTs do share such terms and conditions of employment in common with other technicals, I find that the RCTs’ level of contact with other technicals and the amount of functional integration, at least with respect to those techs outside of their department, are not so substantial as to require that they be included with all other technicals. By contrast, many of the excluded techs exhibit a greater functional integration in their related job duties with other excluded, non-RCT techs.

Thus, although the RCTs have daily work-related contact with other employees, most of this contact is with the trade employees, rather than other technicals. Further, certain technical classifications, e.g., planners, dimensional control techs, lab techs, among others, spend most of their time in their offices and have very little regular contact with the RCTs. Contacts with other classifications, such as designers, engineering techs, test techs, and quality inspectors are somewhat more regular, but only at certain times and only involving a portion of these techs, as many do not work on nuclear components. Specifically, such contact varies according to the stage and type of work performed, and the department in which the employee works. Thus, with regard to new construction on carriers and submarines, the RCTs do not have significant contact with technical employees until the final months of the five to six years’ duration of these projects, when radiological areas need monitoring. On overhaul and refueling projects, some test techs may have daily contact with the RCTs, but only during certain busy periods; the designers and engineering techs may occasionally have more frequent contact with the RCTs, such as when they are developing the refueling complex for a ship at the beginning of availability, but the fact remains that such technicals overall spend 80 to 90 percent of their time in their offices. Further, significant numbers of technicals are in non-nuclear related departments, and therefore may have little or no contact with the RCTs, e.g., only 6 of over 100 test techs in the Test Engineering department are radcon qualified and interact with RCTs. The vast majority of the test techs (including all types of test techs) are not assigned to test components of the nuclear portion of the ships. According to Director of

Nuclear Engineering Reactive Services Morgan, among the 40 designers in his department, there is only one designer who is out daily in the shipyard doing site checks; designers also work on non-nuclear components, and indeed, only some of the designers receive radiation worker training. Additionally, not all nuclear areas require on-site monitoring by RCTs, depending on the nature of work performed and the level of radiation or contamination control needed. Finally, for the most part, the nature of the contacts when other techs are required to go into radiological control areas involves the RCTs' brief and incidental interaction with employees entering and exiting a control point area, rather than their working with other technicals in the performance of their job functions. By comparison, for example, the work of designers, quality inspectors, and test techs are much more directly related to the production processes and are correspondingly more functionally integrated, e.g., test techs use drawings of designers to write their test procedures and must work with them when encountering problems with the drawings/diagrams.

The Employer argues that the Board's decision in *Westinghouse Electric Corp.*, 300 NLRB 834 (1990),<sup>17</sup> is controlling. There, the petitioner sought a unit of radiological control technicians, and the Board found that the unit was not appropriate because it did not include other technicals.<sup>18</sup> The Board reasoned that the petitioned-for technicians provided direct support services for and had close contact with other technicals, and their tasks were "not discrete from the Employer's major service." 300 NLRB at 835. Thus, the Board found that the technicals' functions, including the RCTs' functions, at the nuclear reactor facility were "thoroughly integrated and interdependent." Id.<sup>19</sup> The Employer contends that the RCTs here perform a very similar radiological safety and oversight function as the radiological control technicians in *Westinghouse*, and that the RCTs' integration with other techs in the Newport News' business operations is at least as strong as that shown in the nuclear reactor facility involved in *Westinghouse*.

Contrary to the Employer, I find *Westinghouse* to be distinguishable. Unlike here, the employer operated nuclear reactor plants and a material handling facility, receiving expended nuclear fuel from naval ships and other material to be processed

<sup>17</sup> See also, *Westinghouse Electric Corp.*, 137 NLRB 332 (1962).

<sup>18</sup> The Board included inspectors, instrument specialists and instrument technicians, irradiated components examination technicians and irradiated components controllers, chemistry technicians, operations technicians, technical designers, refueling equipment technicians, reactor test technicians, and technical specialists in the unit found appropriate.

<sup>19</sup> The Board relied on this finding from a prior *Westinghouse* case, 137 NLRB 332 (1962), involving the same facilities, and presenting facts which the Board found "strikingly similar" to the facts in the subsequent case thirty years later. The units at issue in the prior *Westinghouse* case were different than the petitioned-for unit of radiological control techs in the 1990 case, or the unit at issue in the present case, inasmuch as the petitioner had sought to represent, inter alia, several technical classifications assigned to only certain groups, to the exclusion of others in the same classifications assigned to other groups. The Board found that the units petitioned for did not constitute "functionally distinct or homogeneous groups of employees, nor administrative or departmental units, such as the Board might recognize."

for disposal, and two prototype nuclear reactor plants for training civilian and navy personnel. As such, the "major service" of the Employer's operations in *Westinghouse* was almost exclusively directed at handling and processing nuclear material and operating the nuclear plants. By contrast, as set forth above, the primary purpose of the Employer's operations involves new carrier and submarine construction that does not require radiological control work until the last months of several years of production. Even during these final months, a significant part of the Employer's overall operations are not directly involved in working on nuclear components, and the RCTs' tasks are discrete from these functions. In the Employer's rehaul and refueling operations, while there are some stages during which there are regular, though brief, contacts with certain other techs, there are significant stages during which there is little need for other techs to interact with RCTs. In addition, the radiological control techs in *Westinghouse* constituted a much larger percentage of the technical employees at the facility (51 out of 217 technicals); by contrast, there are over 2000 technicals that the Employer seeks to include, the vast majority of whom do not interact with the RCTs on a significant, regular basis. Finally, assuming the facts of both *Westinghouse* cases are "strikingly similar", as found by the Board, it is significant that, unlike here, the industrial hygiene techs/radiological control techs in the *Westinghouse* cases temporarily interchanged with another technical classification (inspectors). Therefore, I conclude that the nature of operations and the level of functional integration and RCT contact with other techs are distinct in meaningful respects from the facts in *Westinghouse*.<sup>20</sup>

Accordingly, and in the absence of any significant bargaining history,<sup>21</sup> I find that the RCTs have a distinct community of

<sup>20</sup> *Woodland Park Hospital*, 205 NLRB 888 (1973), cited by the Employer, is likewise distinguishable. There, the Board found that a separate unit of X-ray technicians in a general hospital was not appropriate. The technicians at issue were required at times to work with other classifications to accomplish the x-rays, and sometimes worked in the same operating room with other employees in coordination with procedures performed by others. The Board found that this type of frequent contact and functional integration (the degree to which is not found here) was sufficient to require the inclusion of other classifications, and noted in particular that to do otherwise would "lead to severe fragmentation of units in the health care industry," a consideration not present in this case.

<sup>21</sup> Contrary to the Petitioner's position, the fact that the designers may have been separately represented more than 30 years ago is not controlling. See *Macy's San Francisco*, 120 NLRB 69, 71 (1958). Further, bargaining history of one group of organized employees in a plant does not control the unit determination of another group. *Big Y Foods*, 238 NLRB 855 (1978); *Miller & Miller Motor Freight Lines*, 101 NLRB 581 (1953). As to the less-than-all-technical units in the Gulf Coast division, such bargaining history does not govern the instant petition inasmuch as it involves a different facility, different classifications, and different type of operations, and the Board does not consider itself in any event bound by a collective-bargaining history resulting from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined by the Board. *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004); *Mid-West Abrasive Co.*, 145 NLRB 1665 (1964); *Macy's San Francisco*, 120 NLRB 69, 71 (1958).

interest separate and apart from those technicals outside of the radiological control department. The record further establishes that the RCTs share a community of interest with the trainees, calibration techs and radcon lab techs in the department sufficient to require their inclusion. Thus, these techs are in the same department, have job duties functionally related and integrated in that all are responsible for radiological control at the facility, are trained to use the same specialized equipment, work out of radcon facilities, and are under the same departmental supervision hierarchy. In addition, most of the lab techs in the department have progressed from the RCT classification. The radcon lab techs generally do not interact with those lab techs outside of the department. Therefore, the radcon lab techs possess a community of interest with the RCTs not shared by the lab techs outside of the department. The calibration techs, while not required to possess the same training or perform the same duties as the RCTs, work on and operate the instruments and equipment used by the RCTs, and are responsible for ensuring that these instruments and equipment are in working order.

As for the trainees, it is undisputed that they receive the same training as the RCTs in order for them to become monitors in the next step of their job progression; they perform some

of the same duties using some of the same equipment and tools; and the Employer does not dispute their inclusion in a departmental unit. The fact that employees may be given a classification such as beginner, trainee, or probationary employee, and that permanent tenure is subject to a satisfactory completion of an initial trial period, has been held by the Board not to warrant their exclusion from the unit. See *Johnson's Auto Springs Service*, 221 NLRB 809 (1975). The proportion of trainees who succeed in their training requirements does not contravene their inclusion. *Id.* at 810.

Accordingly, I find a departmental unit of technical employees – RCTs, RCT trainees, E85 lab techs, and calibration techs, excluding all other technicals to constitute a functionally distinct grouping with a sufficiently distinct community of interest as to warrant a separate unit appropriate for the purposes of collective bargaining. See *Bally's Park Place*, 255 NLRB 63 (1981) (slot machine department found appropriate); *Herron Testing Laboratories, Inc.*, 182 NLRB 508 (1970) (departmental unit of drillers found appropriate, excluding inspectors and soil sample lab testers); *Rayonier, Inc.*, 110 NLRB 1191 (1954) (powerhouse employees found not to be craftsmen, but constituted an appropriate departmental unit).