

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

ADVENT ELECTRIC, INC.

Employer

and

Case 04-RC-070496

TEAMSTERS LOCAL 384 a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Advent Electric, assembles and distributes automation products and industrial control equipment at its facilities in Bridgeport and York, Pennsylvania, and Jessup, Maryland. The Petitioner seeks to represent a unit of Shipping and Receiving employees and Shop Technicians at the Bridgeport facility. The Employer asserts that Shipping and Receiving employees and Shop Technicians do not share a sufficient community of interest to be included in the same unit and that the unit should be limited to Shipping and Receiving employees. The Employer further contends that a unit limited to the Bridgeport facility is not appropriate and that Shipping and Receiving employees at its York location must also be included. Finally, the Employer contends that Bridgeport employee MaryAnne Davidson spends a significant percentage of her work time performing Shipping and Receiving work and should be included in any unit found appropriate. The Petitioner maintains that a unit limited to Bridgeport employees is appropriate, that Shipping and Receiving employees and Shop Technicians share a sufficient community of interest to be included in the same unit, and that Davidson is a clerical employee who should be excluded from the unit.

A Hearing Officer of the Board held a hearing, and the Employer submitted a brief. I have considered the evidence and the arguments presented by the parties and conclude, in agreement with the Petitioner, that a unit limited to the Bridgeport facility is appropriate, that this unit properly includes both Shipping and Receiving employees and Shop Technicians, and that Davidson does not spend a sufficient portion of her time performing Shipping and Receiving work to be included in the unit.

In this Decision, I will first provide an overview of the Employer's operations. Then, I will set forth the legal standards to be applied in resolving the various issues presented by this case. Finally, as to each of these issues, I will set forth the facts and reasoning which support my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer's primary business is the distribution of automation products, and it also fabricates some products upon customer request. The Employer's principal place of business is in Bridgeport, Pennsylvania, and it has additional facilities in York, Pennsylvania, and Jessup, Maryland. The distance between the Bridgeport and York facilities is approximately 88 miles. Jessup is about 76 miles from York and 125 miles from Bridgeport.¹

All of the Employer's highest-level managers – President Howard Korth, Controller/Human Resources Director Cathy Haas, Sales and Engineering Manager Peter Matone, and Operations Manager Ray Durning – are based in Bridgeport. Korth supervises a group of five Inside Sales Representatives. Two of them are located in Bridgeport, two work in York, and one is based in Jessup. Korth also oversees a Receptionist, a Purchaser, and a Project Manager who are located in the York facility.

Matone is responsible for six Outside Sales Representatives. The Bridgeport and York facilities each serve as the base for two Outside Sales Representatives, while one works from Jessup, and one "floats" between the facilities.

Matone is also in charge of four Engineers, who design the products fabricated by the Employer. Three of them are currently assigned to Bridgeport, and one Engineer works in York. Controller/Human Resources Director Haas has an assistant who works with her in Bridgeport.

The employees at issue in this proceeding – two Shop Technicians, four Shipping and Receiving employees, and MaryAnne Davidson – all report to Operations Manager Durning. Two Shipping and Receiving employees, one Shop Technician, and Davidson work in Bridgeport. One Shipping and Receiving employee and a Shop Technician are assigned to York. A single Shipping and Receiving employee is located in Jessup.

II. THE RELEVANT LEGAL STANDARDS

A. Community of Interest

The Act does not require that the unit for bargaining be the only or even the most appropriate unit. Rather, it requires only that the unit be an appropriate one. *Overnite*

¹ I take administrative notice of these distances, which are derived from the Google Maps website. See Federal Rule of Evidence 201.

Transportation Co., 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units which may or may not be units suggested by the parties. *Bartlett Collins Co.*, supra; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enf.d. 411 F.2d 356 (7th Cir. 1969), cert. denied 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To determine whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, employee contact and interchange, and similarities in wages, hours, and other terms and conditions of employment. *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004); *Home Depot USA*, 331 NLRB 1289 (2000); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins Co.*, supra.

In its recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip. op. at 10-13 (2011), the Board modified the framework to be applied in making certain unit determinations. The *Specialty Healthcare* framework applies when the petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest but another party seeks a broader unit. The party seeking a broader unit must demonstrate “that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit.” [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011). The Board in *Specialty Healthcare* indicated that the decision was not, except in one limited instance, intended to upset longstanding presumptions which it had developed in the course of adjudicating questions of unit appropriateness. *Specialty Healthcare*, supra, at fn. 29.² See also, *Northrop Grumman*, supra, slip op. at 4.

B. *Multi-Location Unit*

Where an employer operates multiple facilities, the Board has traditionally presumed that a petitioned-for unit limited to employees at a single facility is appropriate. *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Bowie Hall Trucking, Inc.*, 290 NLRB 41, 42 (1988). This presumption in favor of a single-location unit can be overcome by a showing of functional integration so substantial as to negate the separate identity of a single facility unit. *New Britain Transportation*

² The lone exception involves the Board’s standards concerning units in nonacute health care facilities as set forth in *Park Manor Care Center*, 305 NLRB 872 (1991).

Co., 330 NLRB 397 (1999). The burden is on the party opposing a petitioned-for single-location unit to present evidence to overcome the presumption. *J & L Plate*, supra; *Red Lobster*, 300 NLRB 908, 910-911 (1990). Factors considered in determining whether the single-facility presumption has been rebutted include: centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, supra; *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990). The Board has described the burden of overcoming the single-facility presumption as “heavy.” *Mercy Sacramento Hospital*, 344 NLRB 790 (2005).

The Board did not indicate in *Specialty Healthcare* whether the analytical framework set forth in that case is intended to apply to a multi-facility situation. Assuming *Specialty Healthcare* applies, it would transform this traditional heavy burden into a requirement that the party seeking to overturn the single-facility presumption demonstrate that employees at the facilities it seeks to add share an overwhelming community of interest with employees at the petitioned-for location. Because of the uncertainty regarding the Board’s intentions in this area, I will analyze the multi-facility issue using both the traditional and the *Specialty Healthcare* standards.

C. *Dual-Function Employees*

Dual-function employees are employees who perform both unit and non-unit work. The Board will include such employees in a bargaining unit where they perform unit work for sufficient periods of time to demonstrate that they have a substantial interest in the unit’s wages, hours, and conditions of employment. *Bredero Shaw*, 345 NLRB 782, 785-786 (2005); *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997); *Berea Publishing Co.*, 140 NLRB 516, 518-519 (1963). The Board has no bright line rule as to the amount of time required to be spent performing unit work and makes a determination based on the facts of each case. *Bredero Shaw*, supra; *Harold J. Becker Co.*, 343 NLRB 51 (2004); *Martin Enterprises, Inc.*, 325 NLRB 714, 715 (1998). However, the Board will generally decline to include employees who spend 15 percent or less of their time performing unit. See, *Arlington Masonry Supply, Inc.*, 339 NLRB, fn. 3; *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973, 974-975 (1990). In contrast, employees who spend 25 percent or more of their time on unit work have normally been included. *Medlar Electric, Inc.*, 337 NLRB 796 (2006); *Alpha School Bus Company, Inc.*, 287 NLRB 698 (1987); *Oxford Chemicals*, 286 NLRB 187, 188 (1987).

III. SHOP TECHNICIANS

Facts

The Shipping and Receiving employees at the Employer’s facilities are responsible for receiving products sent to the facilities for distribution and storing them in the appropriate places in the warehouses. They also prepare products for shipment to customers, including the products

fabricated by the Employer, and make computer entries recording which items have been received and shipped.

The Engineers design the products fabricated by the Employer and prepare blueprints describing how they are to be assembled by the Shop Technicians. The Shop Technicians handle both the mechanical assembly of the products and the electrical wiring necessary to make the products operational. They contact the Engineers if they have questions about blueprints or problems assembling products. The Shop Technicians are permitted to make minor changes in blueprints if necessary, but major changes have to be cleared through the Engineers. At least once a year, the Shop Technicians attend a meeting with the Engineers, but the record does not indicate what is discussed there.

At both the Bridgeport and York facilities, the Shipping and Receiving employees and Shop Technicians occupy separate spaces in the same warehouse buildings. The warehouses are open, and the areas occupied by the Shipping and Receiving employees and Shop Technicians are not separated by walls or partitions. In Bridgeport, the Shop Technician works in an area just 50 feet from the work space used by Shipping and Receiving employee Gary Howard. Although racks of product are located between Howard and the Shop Technician, they are able to converse while they work. The Shop Technician also has a cubicle with a computer in a nearby office area which he sometimes uses. The Shipping and Receiving and Shop Technician areas in York are located at opposite ends of the warehouse. Since the Shop Technicians must speak to Shipping and Receiving employees to secure parts they need to perform their assembly work, the two groups have regular contact.

Shipping and Receiving employee Howard often helps the Shop Technician with both the wiring and mechanical assembly of product. Howard estimated that he spends one to three hours assisting the Shop Technician three to five times per week. The Shop Technician sometimes helps Howard with shipping, but the record does not indicate how often this occurs.

The Shipping and Receiving employees and Shop Technicians all report to Operations Manager Ray Durning. The Shop Technician in Bridgeport is paid at roughly the same wage rate as Shipping and Receiving employee Howard. All of the Employer's employees receive the same benefits and are subject to the same work rules. The Employer prefers to hire Shop Technicians who have completed a one-year course of study at a technical institute, although it has on occasion hired Shop Technicians without that education, based on their experience in the assembly and wiring of products similar to those fabricated by the Employer.

Analysis

The Employer's Shop Technicians and Shipping and Receiving employees share a sufficient community of interest to warrant their inclusion in the same bargaining unit. The two groups share common supervision, with both classifications reporting to Operations Manager Durning. They work in the same area of the Employer's Bridgeport facility and have regular contact. Their work is functionally integrated; the Shipping and Receiving employees provide material for the Shop Technicians and ship the equipment produced by the Shop Technicians to

the Employer's customers. Shop Technicians and Shipping and Receiving employees interchange duties on a regular basis - Howard spends up to 15 hours per week assisting the Shop Technician who works in his facility. The Shipping and Receiving employees and Shop Technicians are also subject to the same personnel policies and make roughly equivalent wages. In short, while separate units limited to either Shipping and Receiving employees or Shop Technicians might also be appropriate, the two groups have a sufficient community of interest to allow them to be combined in a single unit.

In arguing that a combined unit is not appropriate, the Employer relies primarily on the different skills required for the Shop Technician and Shipping and Receiving employee jobs. However, where other community-of-interest factors favor a combined unit, the Board has been willing to overlook differences in the skill sets of technicians and other employees and permit them to be included in the same unit. *Hallandale Rehabilitation and Convalescent Center*, 313 NLRB 835 (1994); *Livingstone College*, 290 NLRB 304, 306 (1988); *Electronic Research Company*, 214 NLRB 587, 588 (1974). In this case, the difference in skills of the two groups of employees is almost the only community-of-interest factor supporting a finding that a combined unit is not appropriate. Further, the fact that the Shop Technicians and Shipping and Receiving employees frequently assist one another suggests that the skills used by the two groups are not as distinct as the Employer argues and undermines its claim that the Shop Technicians and Shipping and Receiving employees lack shared interests.

The cases cited by the Employer in support of its argument for excluding the Shop Technicians do not compel a different result. In both *United Operations, Inc.*, 338 NLRB 123, 125 (2002), and *Loral Electronics Systems*, 200 NLRB 1019, 1020 (1972), the Board found that additional classifications did not have to be included in petitioned-for units of technical employees. In *Windsor Industries, Inc.*, 265 NLRB 1009, 1020 (1982), the Board decided that technical employees did not need to be added to a unit of warehouse employees. The Board did not conclude in any of the cited cases that it would be inappropriate to include technicals with other employees where the two groups share a community of interest. At most, the cases cited by the Employer stand for the proposition that units limited to or excluding technicals can both be appropriate. In sum, I find that the Employer's Shipping and Receiving employees and Shop Technicians share a community of interest, and I shall not exclude the Shop Technicians from the petitioned-for unit.

IV. SINGLE-LOCATION UNIT

Facts

The Employer contends that a unit limited to employees at its Bridgeport facility is not appropriate and insists the Shop Technicians and Shipping and Receiving employees working at its York, Pennsylvania location must be added to the unit. The Employer does not, however, contend that the Shipping and Receiving employee at its Jessup, Maryland facility should be included in the unit.

There is no difference in the duties and functions performed by the employees in Bridgeport and York, and Shop Technicians and Shipping and Receiving employees at both locations all report to Operations Manager Durning - the York employees are not separately supervised. Employees in both Bridgeport and York are subject to the same personnel policies and receive the same benefits. As noted above, the Bridgeport and York facilities are about 88 miles apart.

The two facilities are to some extent functionally integrated. There is a single computer system which keeps track of orders and inventory at both locations. On occasion, items needed to fill an order received at one site are located at the other site. In these situations, Shipping and Receiving employees at the two locations will communicate about which site will fill which portions of the order. Products received by the Employer are sometimes misdirected, and Shipping and Receiving employees in one facility will speak with their counterparts at the other site about what to do with these products.

Bridgeport Shipping and Receiving employee Howard testified that he speaks with Shipping and Receiving employees in York about once a week. Operations Manager Durning, who is not directly involved in day-to-day activities in the warehouse, also estimated that such contacts take place weekly. Contact between Shipping and Receiving employees at the two facilities is entirely by telephone; nothing in the record suggests that they ever meet in person.

There is limited contact between the Shop Technician at the York facility and the Shop Technician at the Bridgeport location. The Employer prefers to have items fabricated entirely at a single location, but this is sometimes impossible and employees at the two sites occasionally work on the same project. At the time of the hearing, for instance, items which had been assembled by the York Shop Technician were being wired by the Shop Technician in Bridgeport. Such joint projects are, however, the exception not the rule. Sales and Engineering Manager Pete Matone indicated that there were "not a lot" of situations in which Shop Technicians at different facilities worked on the same item, while Durning described shared projects as not the "every day norm" but "not completely out of the realm of possibility."

For shared projects, the Shop Technician at one facility may have questions for the Shop Technician at the other location. These inquiries are normally filtered through Durning. Shop Technicians may also directly communicate, but Durning testified that such direct communication "doesn't need to happen frequently." A Shop Technician at one location may directly contact Shipping and Receiving employees at the other site when looking for a part, but Durning reported that such contacts are infrequent.

The testimony about interchange of employees between the Bridgeport and York facilities is somewhat confused and imprecise, but it is clear that transfers have been uncommon. Bridgeport employee Howard indicated that he was not aware of any interchange of employees between the facilities during the 15-month period since he was hired in October 2010. The only other witness to testify on the subject of interchange was Sales and Engineering Manager Matone, who reported that a current York Shop Technician was temporarily transferred to Bridgeport three or four years ago to start the Bridgeport shop. Matone claimed that during the

period since the Bridgeport shop became operational, employees have been temporarily transferred from one site to the other on five or six occasions to work on projects. Although it is not entirely clear from the record, it appears that Matone was referring to transfers of Shop Technicians rather than Engineers or Shipping and Receiving employees. Matone did not indicate how long the transfers lasted or identify the employees involved. The record does not indicate that any Shipping and Receiving employees have been temporarily or permanently transferred between facilities.

There is no history of collective bargaining involving the employees at issue in this case.

Analysis

Applying the standards traditionally used by the Board, I would find that the Employer has not met its heavy burden to overcome the presumption favoring the appropriateness of petitioned-for single-location units. The Employer is correct in asserting that some of the factors typically considered in evaluating whether the presumption has been overcome point to finding a combined unit of Bridgeport and York employees. Specifically, employees at the two locations have similar skills and functions and share common supervision. However, in view of the limited contact and interchange between employees at the two facilities, and the considerable distance between them, the factors favoring a combined unit are insufficient to show that the Bridgeport employees have not retained a separate identity.

Most important to this determination is the lack of significant interchange of employees. The Board has identified interchange as a critical factor in deciding whether the single-facility presumption has been rebutted. *Mercy Sacramento Hospital*, 344 NLRB 790 (2005); *First Security Services Corp.*, 329 NLRB 235, 236 (1999); *Courier Dispatch Group, Inc.*, 311 NLRB 728, 731 (1993). The regular shifting of employees between facilities tends to undermine the identity of employees at a particular site as a discrete group and indicates the merger of employees into a multi-location grouping. The absence of significant interchange, on the other hand, will necessarily have a tendency to reinforce employee identification with the other employees at their separate facilities and support a finding of separate communities of interest.

There is no evidence of regular interchange of employees between the Bridgeport and York facilities. Bridgeport employee Howard was unaware of any interchange in the 15 months prior to the hearing, and Sales and Engineering Manager Matone reported just five or six temporary transfers in the past two or three years. Further, the burden was on the Employer as the proponent of a multi-facility unit in this case to produce evidence of interchange, and the evidence it produced was exceptionally vague; Matone did not identify the transferred employees either by name or classification and failed to indicate when or for how long they moved. See *New Britain Transportation Co.*, *supra* at 398.

There is no face-to-face contact between Bridgeport and York employees, and even telephone contact appears limited. Shipping and receiving employees in the two facilities speak to each other an average of only once a week, and Shop Technicians speak with each other only when they are assigned to shared projects. The testimony of the Employer's managers indicates

that shared projects are not common and that most communications between facilities required in connection with such projects are handled through Operations Manager Durning. Direct communication between the Bridgeport and York Shop Technicians is an infrequent occurrence.

The 88-mile distance between the Bridgeport and York facilities is substantial. While not determinative, significant geographic separation can be a significant factor where, as here, there are other persuasive factors that support a single-facility unit. *New Britain Transportation*, supra; *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988).

On balance, in view of the limited interactions and contact between the two groups, and the substantial distance between the facilities, I find, applying the Board's traditional standards, that despite common supervision, skills, and responsibilities, a unit limited to Bridgeport employees is appropriate.

The same result is warranted applying the *Specialty Healthcare* standards. The initial step required under *Specialty Healthcare* is a determination of whether employees in the petitioned-for unit constitute a discrete group with a community of interest. Once this has been demonstrated, the burden is on the opposing party to show that any additional employees it seeks to add share an overwhelming community of interest with unit employees. As the Board explained in *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3, "additional employees share an overwhelming community of interest with the petitioned-for employees only when there 'is no legitimate basis on which to exclude [the] employees from' the larger unit because the traditional community-of-interest factors 'overlap almost completely.'" In other words, the Employer can succeed in its effort to require a combined unit of Bridgeport and York employees only if it has demonstrated that almost all of the community-of-interest factors normally considered by the Board in making unit determinations favor the multi-facility unit.

The Employer has failed to meet this burden because of the infrequent contact and interchange between employees in Bridgeport and York and the distance between the facilities. Pursuant to *Specialty Healthcare*, the existence of these factors favoring separate units is sufficient to defeat any claim of an overwhelming community of interest between the Bridgeport and York employees and to require a finding that a Bridgeport-only unit is appropriate.

In its brief, the Employer cites a number of cases which it claims support a finding that only a combined Bridgeport/York unit is appropriate. These cases are all distinguishable. The single-facility presumption was not at issue in *Acme Markets, Inc.*, 328 NLRB 1208 (1999), which dealt with the question of whether a union sought to carve out an inappropriate multi-facility unit. In *Cheney Bigelow Wire Works, Inc.*, 197 NLRB 1279, 1280 (1972), there was a history of multi-facility bargaining and the two facilities were located just 700 feet from one another. In all of the remaining cases cited, *Prince Telecom*, 347 NLRB 789, 793 (2006), *Trane, Inc.*, 339 NLRB 866 (2003), *Budget Rent A Car Systems*, 337 NLRB 884 (2002), and *National Telephone Company, Inc.*, 215 NLRB 176, 178 (1974), there was significant interchange and/or contact between employees at separate facilities, factors which, as I have explained above, are missing in this case.

In short, whether *Specialty Healthcare* or the Board's more traditional approach applies, I find that the Employer has not carried its burden of rebutting the appropriateness of a unit limited to Bridgeport Shop Technicians and Shipping and Receiving employees.³ I shall therefore direct an election in a Bridgeport-only unit.

V. **MaryAnne Davidson**

Facts

Davidson was hired by the Employer in the summer of 2011 and was initially assigned to handle collection of accounts receivable. In late November 2011, the Employer assigned her to spend part of the day doing Shipping and Receiving work. Like the other Shipping and Receiving employees, Davidson receives material destined for the Employer's warehouse, prepares material for shipment, and makes computer entries to record receipts and shipments. Davidson continues to handle collections and other administrative tasks when she is not doing Shipping and Receiving work.

Neither party called Davidson as a witness, and the Employer does not maintain records which show how much time she devotes to Shipping and Receiving work. The only record evidence about the amount of her workday which Davidson spends performing these functions was provided through testimony from Operations Manager Durning and Bridgeport Shipping and Receiving employee Howard.

While conceding that he was not "tailing her around all day" and could only give educated estimates, Durning claimed that Davidson spends about three-and-a-half hours per day on shipping work. He stated that Davidson is in the warehouse one to one-and-a-half hours per day physically performing the functions associated with receiving material and preparing shipments, and she spends an additional two to two-and-a-half hours per day in her office making computer entries related to Shipping and Receiving.

Howard, who works in the warehouse, indicated that in his observation, Davidson spends only 45 minutes to an hour per day on the physical labor associated with Shipping and Receiving. According to Howard, the computer entries associated with Shipping and Receiving work are limited; he estimated that only about five minutes per day would be needed for Davidson to handle the required work on the computer.

³ In this connection, the Board has stated that, "The relevant caselaw establishes that, although separate supervision is a factor to consider in determining whether a unit has lost its separate identity, it is not conclusive." *ADT Security Services, Inc.*, 355 NLRB 223, fn. 2 (2010). See also, *DTG Operations, Inc.*, 357 NLRB No. 175, slip op. at 7 (2011).

Analysis

Davidson is a dual-function employee. She spends part of her day handling Shipping and Receiving functions identical to those performed by unit employees and spends the remainder of her time doing administrative work that is not handled by unit employees.

Dual-function employees are included in a bargaining unit if they perform unit work for sufficient periods of time to demonstrate a substantial interest in the unit's conditions of employment. As noted above, dual-function employees are generally included in a unit if they spend more than 25 percent of their time on unit work and excluded if less than 15 percent of their time is devoted to unit functions.

Since neither party called Davidson as a witness and the Employer does not maintain records showing how much of her time is devoted to her different functions, any estimate of how much time she spends on unit work is necessarily imprecise. The most accurate description of Davidson's unit work was most likely provided by Shipping and Receiving employee Howard who works with her in the warehouse and makes the same types of computer entries. Operations Manager Durning also testified about Davidson, but he conceded that he is not with her throughout the work day and could only guess as to the amount of time she spends on various functions.

Howard reported that Davidson spends 45 minutes to one hour per day doing the physical labor associated with Shipping and Receiving and a few additional minutes making associated computer entries. Assuming an eight-hour work day, this means that Davidson devotes about 12 to 13 percent of her time to unit work. Under existing Board standards, this is not enough to qualify her for inclusion in the unit. I shall therefore exclude Davidson. *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003), fn. 3; *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973, 974-975 (1990).

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Shipping and Receiving employees and Shop Technicians employed by the Employer at its Bridgeport, Pennsylvania facility; **excluding** all other employees including confidential employees, guards, and supervisors as defined in the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Teamsters Local Union 384 a/w International Brotherhood of Teamsters**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **January 27, 2012**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

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

VIII. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

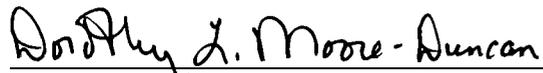
Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive

Secretary of the Board in Washington, DC by the close of business on **Friday, February 3, 2011, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁴ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Signed: January 20, 2012

at Philadelphia, PA



DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four
National Labor Relations Board

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.