

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

**PREVOST CAR U.S.
d/b/a NOVA BUS**

Employer

and

Case 03-RC-071843

**TEAMSTERS LOCAL 687,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that Prevost Car U.S. d/b/a Nova Bus, hereinafter referred to as the Employer, is a Delaware corporation with a place of business at 260 Banker Road, Plattsburgh, New York, where it manufactures transit buses. During the past twelve months, the Employer purchased and received at its Plattsburgh, New York location goods and services valued in excess of \$50,000 directly from points outside the

State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Teamsters Local 687, International Brotherhood of Teamsters, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act.

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.

This proceeding presents issues of unit composition. The Petitioner seeks a unit of full-time assemblers. There are approximately 89 employees in the unit proposed by Petitioner.¹ The Employer contends that the only appropriate unit must also include, 8 material handlers, 7 maintenance mechanics, 6 inventory control technicians, 3 electrical technicians, 3 mechanical technicians, 10 quality monitors, 3 quality technicians and 4 technical trainers.² The Employer asserts that the employees in these classifications share an overwhelming community of interest with the assemblers, and it is therefore inappropriate to exclude them. There are approximately 44 employees in the additional classifications that the Employer would include, and approximately 133 employees in the unit proposed by the Employer. The Petitioner would proceed to an election if a unit

¹ The parties stipulated at the hearing that external trainers, the production clerk, temporary employees, guards and professional employees and supervisors as defined in the Act, should be excluded from the unit. The parties also stipulated that the production managers, the maintenance coordinator, the New York City production coordinator and the production group leaders are supervisors within the meaning of Section 2(11) of the Act.

² The numbers are approximate. The job titles are those that appear on the job descriptions in evidence.

larger than the petitioned-for unit is found appropriate. Based on the evidence adduced during the hearing and the relevant case law,³ I conclude that the petitioned-for unit is appropriate. I also conclude that, under Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83 (August 26, 2011), the Employer has not demonstrated that employees in the classifications in the broader unit it proposes share an overwhelming community of interest with the petitioned-for assemblers. Thus, I will direct an election in the petitioned-for unit.

FACTS

The Employer's Operation

The Employer, under contracts with public transportation authorities and private transit companies, assembles transit buses at its Plattsburgh, New York facility. Volvo is the Employer's parent company. The Plattsburgh facility opened in March 2009, and has been in full production since June 2009.

The facility covers approximately 14,000 square feet, most of which is the production area. There is a warehouse area at one end of the facility, separated from the production area by 30 or 40 feet.⁴ There is a training lab, several conference rooms, an office area, locker rooms, a cafeteria that also serves as a break area,⁵ a maintenance shop, a customer bay, offices for meeting with customers and a customer lounge.

The production area is organized into five "loops."⁶ Within loops 1 through 4 are four or five work stations that are identified by number.⁷ At each work station, different

³ Both parties filed post-hearing briefs, which have been considered.

⁴ The warehouse is part of the same facility that houses production.

⁵ The locker rooms and the cafeteria are available to all employees.

⁶ The diagram of the plant layout shows that the buses move along a path, or "loop," that is more linear than circular as they are assembled.

⁷ In what is called either loop 5 or "final," there are seven work stations. Final testing and inspection is conducted at loop 5.

parts and systems are installed on the shell, or structure of the bus as it moves from station to station and loop to loop. At various points in the production process, operating systems are tested before the finished bus is road tested.

The plant manager is James Tooley. Two production managers, John Minukas and Jim Postlethwait, report to Tooley. Minukas is responsible for loops 1, 2 and 3; Postlethwait is responsible for loops 4 and 5. A production coordinator is responsible for each of the five loops. The coordinators report to either Minukas or Postlethwait. There are between two and four production group leaders in each loop. They report to the coordinators and are responsible for one or two (and in one case, three) work stations. The production group leaders are the assemblers' immediate supervisors. The number of assemblers in each loop varies, as does the number of assemblers assigned to any given work station.

Also reporting directly to plant manager Tooley are the manufacturing engineering manager, the logistics manager, the quality assurance manager and the human capital director. The maintenance mechanics, maintenance technicians and the electrical technicians are in the line of supervision that culminates in the manufacturing engineering manager. The material handlers and inventory control technicians are under the ultimate supervision of the logistics manager, and the quality monitors and quality technicians are under the ultimate supervision of the quality assurance manager. The technical trainers are supervised by the human capital director.

Five of the maintenance mechanics perform their work within an assigned loop; the other two have plantwide responsibilities. Material handlers deliver parts from the warehouse area to the loops and work stations twice each day. Quality monitors,

mechanical technicians, and electrical technicians are assigned to one or more of the loops, and they perform their day-to-day work in the loops. Inventory control technicians are assigned to a loop (in one case, two loops). They perform their work in both the loops and the warehouse area, and have their desks in the loops. Technical trainers are assigned responsibility for a varying number of work stations within one or more loops. They have desks in the office area and smaller, desk-like work stations in the loops. Technical trainers spend about half of their time in the office area and the other half in the loops. Finally, the quality technicians have plantwide responsibility and are not assigned to particular loops. They also have space in the office area, and spend approximately half of their time in the office area and the other half in the loops.

Tooley testified that production is arranged so that support personnel can address maintenance and quality issues during the production process, instead of addressing them the end. Each work station is set up with the resources and skills needed to complete its job within a four-hour time frame. Assemblers are expected to complete their work within that time frame in order that the bus can move to the next work station. To the extent that they work directly on the buses, mechanical technicians, electrical technicians, maintenance mechanics, quality monitors, and quality technicians are also subject to this expectation. Inventory control technicians, material handlers and technical trainers are not strictly held to the same time frame, if at all.

There are times when the job is not completed at a particular work station within four hours. The bus nevertheless moves to the next station, and employees are, in that event, “chasing the bus” to the next work station, to complete the unfinished work and

make up for lost time on the next bus. Tooley described the Employer's operation as "low volume" manufacturing; typically, two new buses are finished each day.

The Employer has a problem-solving process to address recurring problems or problems that cannot be easily solved. A team is assembled to address the problem. According to Tooley, 30 or 35 such teams have been assembled since production began in 2009. The composition of the team depends on the nature of the problem. The record reveals that assemblers have been part of problem solving teams, but Tooley was unable to quantify how many of these teams included assemblers.

Assemblers

Eighty-nine assemblers perform the assembly of the various component parts of a bus. As noted above, assemblers work in the production area or loops, and are directly supervised by production group leaders.

According to the assembler job description, the Employer requires experience in mechanical, electrical and pneumatic assembly processes, along with manual dexterity, good problem solving skills, and the ability to read detailed plans. The Employer requires that assemblers possess a high school diploma or the equivalent.

Assembly is done primarily by hand, but assemblers use such tools as drills, manual or electric torque wrenches, mallets, hammers and saws. The work of the assembler varies from loop to loop and from one work station to another, because a different stage of the assembly process occurs at each work station. Upon hire, assemblers receive classroom instruction from trainers, and thereafter trainers coach assemblers on how to perform their current jobs better, or how to perform a new job if they change work stations.

Assemblers' starting wage is \$16.63 per hour. The wage and salary scale reflects that assemblers receive a wage increase to \$17.09 per hour after a six-month probation period. All employee classifications are subject to a 120-day probationary period. The six-month probation period for assemblers that is referred to on the wage and salary scale does not mean that there is a shorter probation period for assemblers. Rather, six months represents the period of time within which the Employer expects assemblers to acquire skills and abilities that will justify the higher wage. There is no evidence in the record that any assembler has been denied the increase after six months.⁸

The same medical, dental, vision, and disability benefits, and the same 401(k) plan and flexible spending accounts are available to all employees. The same personnel policies apply to assemblers as apply to all other employees at the Plattsburgh facility.

There is a second shift at the facility consisting of a group leader and seven assemblers (six of whom are temporary employees and, as such, are excluded by the parties' stipulation). Assemblers on the day shift have the same work hours, (7:00 a.m. to 3:30 p.m.), lunch period and breaks as all other employees at the Plattsburgh facility.

There are two paid 15-minute breaks during the day shift and a half-hour unpaid lunch. A bell rings at the beginning and the end of the lunch period and at the beginning and the end of each break. Assemblers swipe their badges to record their time in and out at the beginning and the end of the day, and their time out for lunch and back in again. They are not expected to swipe out for breaks. When swiping in, assemblers also enter a numerical code on a keypad, to indicate the specific bus that they are going to work on. Tooley testified that it was his belief that material handlers and maintenance mechanics

⁸ After six months, all assemblers receive the same wage.

are the only additional classifications who swipe in and out.⁹ Assemblers do not have desks, personal computers or company-issued cell phones.¹⁰ Three days each week, group leaders hold 30-minute operational development (OD) meetings at the beginning of the shift. The purpose of these meetings is to discuss production issues and ways of solving problems or improving production. OD meetings are generally attended by assemblers and their group leaders.¹¹

Human capital business partner Tracy Fasking testified that assemblers have been hired through an employment agency. She explained that there was a period of time when extra manpower was needed, and a number of assemblers were hired through the agency. Since then, the Employer has filled permanent assembler positions from the temporary employees who had gained experience in the job. There is no evidence in the record that employees in any other classification have been hired in this manner. All job openings, except openings for assembler, are posted and employees may apply on line at Volvo's internet site. A selection committee, including the direct supervisor of the vacant position, makes the hiring decision.

Some assemblers have permanently transferred to other classifications. In the two and one-half years that the Employer has been assembling buses, one assembler has transferred to a mechanical technician position, two became electrical technicians and two became technical trainers. In 2010, assembler Justin Reandean became a quality monitor, but requested and received a transfer back to assembly after approximately five

⁹ The other six classifications at issue use a self-reporting, on-line time and attendance system called CATS. They submit their time and attendance weekly to their supervisors for review. The record does not reveal what CATS stands for.

¹⁰ As discussed below, some of the other classifications at issue are provided some or all such equipment.

¹¹ Assembler Ricardo Hernandez testified that a quality monitor has attended an OD meeting, and assembler Andre Duquesnay testified that the plant manager's secretary attends OD meetings in Loop 1.

months. Assemblers Curtis Puopore and Trent Trombley have transferred to quality monitor positions on a temporary basis, and have received wage adjustments for time worked as quality monitors. Assemblers and all other employee classifications at the Plattsburgh facility are evaluated twice each year, using an evaluation instrument developed by Volvo. The same instrument is used for all classifications. Assemblers are evaluated by their production group leaders.¹² Overall ratings of 1 through 5 are given, with 5 being the highest rating one can receive. Fasking testified that the consequence of a poor rating would depend upon previous evaluations and any prior disciplinary history. A performance improvement plan may result from a poor evaluation. There are no monetary incentives or awards for assemblers who receive excellent evaluations.

Material Handlers

The eight material handlers unload, stock, load and move material within the plant, with the priority of supporting the production line. A high school degree or equivalent is required for the job.

Material handlers, like assemblers and maintenance mechanics, are hourly employees.¹³ They swipe in and out, as do assemblers and maintenance technicians, but unlike assemblers, they do not enter a bus code. Material handlers' wage rate is \$16.25 per hour. Their compensation is not tied to productivity or performance, and all material handlers receive the same wage rate. Unlike assemblers, they do not receive a wage increase after six months. Fasking testified that this is because the material handler position requires less skill than does the assembler position.

¹² In cases of temporary transfer, like Puopore's and Trombley's, their production group leader would still be responsible for their evaluations, but may seek input from one of the quality assurance group leaders, who directly supervise quality monitors.

¹³ The employees in the other six classifications at issue are salaried.

Part of the material handlers' work is delivering bus components to the various loops and work stations. Most of their work, however, is performed in the warehouse area. Deliveries to the work stations are generally twice each day, as a bus moves from one work station to the next every four hours. Loop 1 production coordinator Richard Houghton testified that material handlers are in his loop for approximately 5 percent of the day. Assemblers may help material handlers unload parts from their delivery carts, and may converse with a material handler if, for example, a part is missing. Material handlers do not perform assembly work. There is no evidence in the record that assemblers have temporarily transferred to material handler positions, or vice versa.

Material handlers report to and are evaluated by the material control coordinator. The production coordinators may be asked to provide input for the evaluation of material handlers.

Material handlers, like assemblers, are not issued company cell phones. With the exception of trainers, employees in each of the other classifications at issue do have company cellular telephones. The reason for issuing cell phones is that employees in those classifications have plantwide responsibility, or move around the plant, and the cell phones may be used to locate them quickly. Material handlers do not attend the assemblers' OD meetings.

Maintenance Mechanics

The seven maintenance mechanics (MMs)¹⁴ repair and maintain machinery and equipment, perform welding tasks, and operate a variety of metalworking tools (for e.g.

¹⁴ Throughout the record, "maintenance mechanic" and "maintenance technician" are used interchangeably. Herein, "maintenance mechanic" or "MM" will be used.

grinders and drill presses). They troubleshoot equipment problems and perform preventive maintenance.

A high school diploma and three to five years of mechanical, electrical, welding and machining experience, and basic computer skills are listed as requirements in the job description for MM.

MMs are hourly employees, as are assemblers and material handlers. Like the assemblers and material handlers, they swipe in and out. Unlike the assemblers, however, they do not enter a code for the bus they are going to work on when they swipe in. MMs all earn the same wage, \$19.91 per hour. Unlike the assemblers, there is no wage increase after a probation period, Fasking testified, because MMs are expected to have the required skills and abilities for the job when they are hired.

MMs report to and are evaluated by the maintenance coordinator. As is the case with material handlers, MMs' compensation is not affected by their productivity or performance.

Five of the MMs are assigned to a loop; the other two work throughout the plant, maintaining cranes, inspecting tanks and fire extinguishers, clearing snow, and performing general plant maintenance.

MMs support the assembly process, but they do not perform assembly work. Tooley testified that in the loop process, MMs work on the structure of the bus, making necessary modifications if things do not fit together as they should. Where a stud is missing or in the wrong place, or if a bracket is mis-located, or bent, the MM may be called upon to fix it. MMs may also grind a part down to fit properly.

Tooley testified that these activities occur multiple times each day, and that they lead to interactions between assemblers and MMs. However, there is no dispute that where an assembler needs the assistance of a MM -- or an electrical technician or a mechanical technician -- the usual procedure is to go to the group leader, who calls for the mechanic or the technician. There are times when assemblers “skip the chain.” For example, assembler Ricardo Hernandez testified that if he needed a part cut to fit properly and the MM was nearby, he would go directly to the mechanic. Andre Duquesnay, an assembler in loop 1, testified that there have been such problems with the studs on the incoming structures that a MM comes to his work station every day to correct them. If it were an intermittent problem, Duquesnay testified, he would go to his group leader.¹⁵

The Employer has a detailed procedure for what is called “hot work,” which typically involves welding. Steps are taken to ensure that there are no combustibles in the area where the hot work is to take place, and that no components will be damaged. A MM does the welding and completes the checklist on a “hot work permit.” Afterward, someone, most commonly an assembler, stands fire watch for an hour and then signs off on the hot work permit.

MMs are responsible for tool calibration. There is a database that indicates when recalibration of tools is due. Assembler Randall Cumm testified that the only other instance in which a tool might need to be recalibrated would be if it were dropped or somehow damaged. In that instance, he would take the tool to his group leader.¹⁶

¹⁵ Duquesnay also testified that he would “skip the chain” and go directly to a MM or a technician if his group leader and production coordinator were unavailable.

¹⁶ Tooley testified that assemblers do not calibrate tools.

MMs do not attend OD meetings. Employer cell phones are issued to MMs.¹⁷ Tooley testified that when they are not engaged directly in maintenance tasks, MMs work on “development tasks,” in an effort to improve the production process. There is no evidence that assemblers have filled in as MMs, or that MMs have filled in as assemblers.

Mechanical Technicians

Mechanical technicians (MTs) use software to develop tools and templates used in production, write and update “production documentation” and generally support the assembly process by troubleshooting when issues arise. MTs ordinarily spend more than half of their time, and as much as 80 percent, writing work documentation.¹⁸ The three MTs report to the manufacturing engineering manager. Two of them support two loops each, and the third supports one loop.

According to the MT job description, a college degree in mechanical or electrical technology or in engineering and one to two years experience in manufacturing are required. In lieu of a college degree, the Employer considers “substantial relevant experience” and a willingness to obtain a degree within two years. The record reveals that for MT, and for other positions that nominally require a college degree, the Employer has not held strictly to the degree requirement.

MTs are salaried positions. For each salaried position at the Plattsburgh facility, there is a designated salary class (ranging from class 8 to class 20) and a minimum, medium and maximum salary within each class.¹⁹ At hire, an employee’s salary may be

¹⁷ As noted above, some of them do not have loop assignments and move about the plant more than MMs who do have loop assignments.

¹⁸ As discussed below, the MT spends more of his time working directly on the buses when there are persistent or recurring assembly problems.

¹⁹ On the chart, median salaries are also converted to an hourly wage, based on 40 hours. The salaried classifications at issue herein, like the hourly classifications, are non-exempt employees for the purposes of the Fair Labor Standards Act.

set at or above the minimum, but somewhere below the median, depending upon experience. A collaborative management decision is made in that regard. Unlike the hourly classifications, performance has an effect on the compensation of salaried employees from year to year. Fasking testified that, following a salaried employee's evaluation, a matrix is created. The evaluative rating (1 through 5), the employee's "saturation into the salary class,"²⁰ and the overall budget for the facility are all factored into the decision whether a salary increase will be given.

Salaries for MTs range from \$40,616.40 (the minimum in class 11) to \$65,361.60 (the maximum in class 12). The median salaries for class 11 and 12 MTs convert to hourly rates of \$24.41 and \$26.19, respectively.

MTs write step-by-step instructions or modifications called DSTs for assemblers to follow.²¹ Their work on the structure of the bus occurs most often when there are recurring problems, such as the dashboard components and the "five-seater" (the seat that goes across the rear of the bus). MTs, sometimes with the assistance of another support employee, have worked with the assemblers to make these components fit properly, sometimes using tools that assemblers use, such as wrenches. Dashboards often must be trimmed to fit correctly. In loop 5, where water testing is done, an MT may be called upon when a leak is discovered, to fix the leak.²²

In the two and one-half years that the Employer has been assembling buses, one assembler has transferred to the MT position. The record does not reflect that employees in either classification regularly fill in for employees in the other.

²⁰ The median salary is used as a reference point, and is deemed to be "100 percent." The percentage of the median salary the employee currently receives (90 percent, for example) represents the degree of saturation. (Since the median salary is 100 percent, it is possible to be more than 100 percent saturated).

²¹ A DST is "the bridge between the original design and the engineer change that is taking place."

²² In the absence of any problem, assemblers conduct the water tests without any assistance from a MT.

MTs each have a desk and a computer, located on the assembly floor. They are issued company cell phones. MTs do not attend the assemblers' OD meetings.

Electrical Technicians

The job of the electrical technician (ET) is similar to that of the MT, except that the ET's area of expertise is the electrical systems of the bus. ETs write assembly instructions and DSTs, troubleshoot electrical problems and "prove out" electrical systems (test and ensure that they are routed and working correctly). Two of the three ETs support two loops and the third supports one.

A college diploma in electrical technology or engineering and one to two years manufacturing experience are listed in the ET job description as requirements.²³ ETs report to the manufacturing engineering manager. ETs, like MTs, are hired into salary class 11 or 12.

Perhaps more so than in the other loops, the ET in loop 3 works directly with assemblers, because loop 3 is where the bus is "run up," i.e., the electrical systems are turned on for the first time. However, the ET troubleshoots the problem and the assemblers fix it. The ET does not do assembly work, and the assemblers do not perform electrical work.

The record reveals that two assemblers have progressed to the ET position in the two and one-half years that the Employer has been assembling buses. There is no evidence of any temporary transfers between these classifications.

²³ As noted above, however, the Employer will consider "substantial relevant experience" in lieu of a degree. Only one of the three ETs has a degree.

ETs have desks and computers, and are issued company cell phones. Assembler Ricardo Hernandez testified that the loop 2 ET attends OD meetings less than half the time. The evidence does not show that ETs regularly attend such meetings.

Inventory Control Technician

Inventory control technicians (ITs) count warehouse inventory, analyze and resolve discrepancies, take corrective action to avoid repeat discrepancies and perform audits on parts that are not delivered to the work stations daily by material handlers. ITs report to the Employer's logistics manager.

A college degree in administration, logistics management, supply management, or a related field, and three years of relevant experience is required for the IT position. On the salary scale, ITs are in class 10. Their minimum salary is \$32,668.56, the median is \$40,835.70 (\$19.63 when converted to an hourly rate) and the maximum salary is \$49,002.84.

There are six ITs. One is assigned to each of the first three loops and another is assigned to loops 4 and 5. The remaining two ITs do not have loop assignments. ITs have desks and computers on the shop floor, and have company cell phones. They work in close proximity to the assemblers, and there is contact between assemblers and ITs if, for example, a part is defective, or if parts could be staged in a different place to make the assemblers' job easier. There is no evidence that assemblers have filled in for ITs, and the record reveals only two occasions when IT Chris LeClair stepped in to help install engines when there was a shortage of assemblers.

There is no evidence that ITs regularly attend the OD meetings with assemblers. Assembler Ricardo Hernandez testified that an IT who has since left the Employer attended OD meetings at his work station “sporadically.”

Quality Monitor

The ten quality monitors (QMs) monitor supplies to ensure that quality requirements are met, monitor employee activity to ensure that the requirements of the quality manual are met, perform inspections and tests, inform employees of performance criteria that affect quality, produce data and reports on quality, and address the needs of the production supervisors in regard to the quality of products and supplies. QMs are expected to have good knowledge of bus mechanics and electrical systems, the ability to read plans and understand specifications, and the ability to use tools or to learn how to use them.

A high school diploma is required for the position. A diploma or certificate in auto mechanics is preferred, and a candidate for the job must have or be willing to obtain a commercial driver’s license.²⁴ Relevant experience in assembly methods and inspection is required.

Some QMs have previously worked in the assembler classification, and then progressed to the QM classification permanently. As noted above, assemblers Curtis Pourpore and Trent Trombley have temporarily transferred to the position, and one employee, Justin Reandeu, transferred back to assembly from QM at his own request.

²⁴ Part of the QM job is to test drive finished buses.

QMs are in salary class 9 (minimum salary of \$28,915.78, median salary \$36,144.72.²⁵ QMs are directly supervised by one of the quality assurance group leaders. They in turn report to the quality assurance manager.

One QM is assigned to each of the first four loops and three to the final loop. The remaining three QMs do not have loop assignments. In the course of performing inspections and tests, QMs may have direct contact with assemblers, by way of pointing out to the assemblers problems or defects that they (the QMs) have noted. Assemblers have accompanied QMs on test drives, though not necessarily on every test drive.

QMs have desks on the shop floor, with computers. They are assigned company cell phones. The record reveals that QMs have attended some OD meetings with assemblers, but this appears to be infrequent and ad hoc.

Quality Technicians

Quality technicians (QTs) write inspection and test plans (ITPs),²⁶ contribute to assembly problem-solving and the creation of quality criteria documentation, deal with rejects and nonconformities, follow up with suppliers and participate in projects aimed at improving the manufacturing process.

QTs are required to possess a certificate in quality assurance or a college degree in mechanical or industrial technology, quality control or a related area. Five years of experience in quality assurance in a manufacturing environment, including one year of

²⁵ Expressed as an hourly wage, the QM's salary converts to \$17.38 per hour.

²⁶ The ITPs are signed off by an assembler when a particular function or part of a job has been completed, and a quality monitor then signs off to indicate that the work is of acceptable quality.

experience in writing assembly line procedures is also required. In addition, QTs must have knowledge of the ISO 9000 standard²⁷ and knowledge of metrology.²⁸

QTs may be hired into salary class 10 (same minimum, median and maximum salaries as inventory technicians) or salary class 11, where the minimum salary is \$40,616.40 and the median salary \$50,770.50.²⁹ QTs, like QMs, are in the line of supervision that culminates with the quality assurance manager.

QTs have desk space in the office area where they have computers. QTs spend about half of their time in the office area, following up with suppliers or performing other tasks. They are issued company cell phones. There are three QTs, none of whom are assigned to a specific loop.

QTs do not perform assembly work. In certain cases, QTs have worked side-by-side with assemblers and mechanical technicians (MTs). Primarily, this has been on five-seaters and dashboards, which have been persistent problems. Specifically, a QT has worked with an assembler and a MT in loop 1, where the five-seater is installed, and the components have not fit properly. In that instance, the QT, the MT and the assembler may spend anywhere from one to two and one half hours, making it fit. This could occur twice daily, as a bus moves from one work station to another every four hours.

Dashboard components that do not fit properly have also been a persistent problem. The record does not disclose the length of time this problem has persisted, or how often it occurs. However, the record reveals that if the components fit properly, an assembler would install them without the assistance of a QT or an MT.

²⁷ ISO standards are standards published by the International Organization for Standardization. The 9000 series of standards is designed to assist manufacturers in meeting the quality expectations of their customers.

²⁸ The science of measurement.

²⁹ Expressed as an hourly wage, the median salary for a class 11 QT converts to \$24.41 per hour.

QTs may become involved with an assembler and a MT in the water testing process that takes place in loop 5, (final), but only where problems, such as a leak, arise.³⁰

There is no evidence of temporary transfers between the assembler and QT classifications. QTs do not attend OD meetings with the assemblers.

Technical Trainers

Only the four “internal” trainers are at issue as the parties stipulated that external trainers are excluded from the unit. Technical trainers provide basic classroom training for new hires. They also coach employees to ensure that work is done correctly, when there are engineering changes or when an employee changes work stations or moves from one loop to another. Technical trainers develop training courses and materials, and provide maintenance training and technical support to customers.

A college degree or vocational school diploma in electrical technology, electrodynamics, or the equivalent is required, though substantial relevant experience is considered in lieu of those credentials. Technical trainers are required to have a thorough knowledge of electrical and mechanical systems, assembly logic skills, and the ability to read plans and understand specifications. Unlike any of the other classifications at issue, the technical trainer must be able to travel, including travel outside the United States, for up to 30 percent of the time.

³⁰ Although all buses are water tested, and two buses are completed each day, the record does not reveal how frequently leaks occur, the number of assemblers involved in the water testing process, the amount of time water tests take in the ordinary case, or how much time assemblers would spend working with a QT and MT to repair leaks that may be discovered in the process.

Technical trainers, like quality technicians, may be in salary classes 10 or 11. They report to the human capital director. Like quality technicians, technical trainers have their desks and computers in the office area.

In some cases, assemblers have progressed to the technical trainer position. There is no evidence that assemblers have served temporarily as technical trainers. However, technical trainer Paul Zelinsky recently filled in for an assembler for three or four days, installing door headers because the assembler who normally performed that function was absent and no other assemblers with the needed skill were available. Technical trainer Jon Strack recently filled in for an absent assembler on one day. Both Zelinsky and Strack are former assemblers.

ANALYSIS

Section 9(b) of the Act provides that the Board “shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” The Board has broad discretion in deciding whether a petitioned-for unit is “appropriate” under Section 9(b). It is well established that a certifiable unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Overnite Transportation Co., 322 NLRB 723 (1996); Bartlett Collins Co., 334 NLRB 484 (2001). The Board does not compel a petitioner to seek the most appropriate or most comprehensive unit. Overnite Transportation, *supra*, citing Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964).

The Board’s recent decision in Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83 (August 26, 2011), set forth the principles that apply where,

as here, an employer contends that the smallest appropriate bargaining unit must include employees or employee classifications beyond those in the petitioned-for unit. Under Specialty Healthcare, the Board first decides whether the petitioned-for unit is an appropriate bargaining unit, applying traditional community of interest principles.

In determining whether employees in a proposed unit share a community of interest, the Board examines:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, *supra*, slip op. at 9 (quoting United Operations, Inc., 338 NLRB 123, 123 (2002)).

If the petitioned-for unit is appropriate under a community of interest analysis, the burden is then on the employer to demonstrate that the additional employees it seeks to include share an overwhelming community of interest with the petitioned-for employees, such that there is “no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11 – 13, and fn. 28 (quoting Blue Man Vegas, LLC v. NLRB, 529 F. 3d 417, 421, 422 (D.C. Cir. (2008))).

The Board has, since Specialty Healthcare, applied its analysis in that case to industries other than health care. See Odwalla, Inc., 357 NLRB No. 132 (December 9, 2011) (Board found that the petitioned-for units excluding merchandisers, was a

“fractured unit”; merchandisers shared an overwhelming community of interest with the included employees); DTG Operations, Inc., 357 NLRB No. 175 (December 30, 2011). (petitioned-for unit appropriate; employer failed to show that other employees it sought to include shared an overwhelming community of interest with the petitioned-for employees).

Assemblers, who by far comprise the largest employee classification at the Plattsburgh facility, have uniform wages and hours.³¹ They are supervised separately from the other classifications at issue herein, and they are all directly supervised by group leaders who in turn report to loop production coordinators and ultimately to one of two production managers. The job requirements are the same for all assemblers. Specific tasks vary from loop to loop and from work station to work station, (as might be expected in any assembly-line operation), but assemblers all perform the same kind of work: assembly.

Unlike the other classifications, assemblers receive classroom training when they begin their employment, have a six-month probation period which they must pass to receive a raise from \$16.63 to \$17.09 per hour, and are (or have been) hired through an employment agency. The OD meetings are attended primarily by assemblers and their group leaders.

The assemblers are “readily identifiable as a group” and share a community of interest with one another, using the traditional criteria. *Id.*, slip op. at 4. Apart from its contention that the unit must include other classifications, the Employer does not argue otherwise. I find that the petitioned-for unit is an appropriate unit.

³¹ Except for the one assembler on the second shift.

Given that the petitioned-for unit is an appropriate bargaining unit, the burden shifts to the Employer to demonstrate that the additional employees it seeks to include share an “overwhelming community of interest” with the assemblers. I find that the Employer has failed to sustain its burden.

Initially, I note that the Employer seeks what is in essence a “wall to wall” unit. As in DTG Operations, *supra*, the Employer argues that the smallest appropriate unit must include the assemblers and all eight of the additional classifications, because they all share an overwhelming community of interest with the assemblers. As discussed below, the record evidence does not establish an overwhelming community of interest among employees in all those classifications and the assemblers. The Employer does not seek an alternative unit consisting of, for example, assemblers and the two other hourly paid classifications, material handler and maintenance mechanic.

The record reveals that the Employer’s Plattsburgh facility is organized along departmental lines. The petitioned-for unit tracks lines drawn by the Employer. Cf. Odwalla, *supra*, slip op. at 5.³² Responsibility for production is divided between production managers Minukas (loops 1 – 3) and Postlethwait (loops 4 and 5). Based on the testimony at the hearing and the organizational chart that is in evidence, production coordinators, group leaders and assemblers are in a departmental line and, ultimately, under the supervision of either Minukas or Postlethwait. None of the other classifications the Employer seeks to include are in either of these lines. Departmentally, technical trainers are under human capital, inventory technicians and material handlers are under logistics, quality monitors and quality technicians are under quality assurance, and the

³² The Board found that the unit petitioned for in Odwalla was a “fractured unit,” in part because it did not track any lines drawn by the employer, such as department, function or classification.

remaining classifications (maintenance mechanics, mechanical technicians and electrical technicians) are under manufacturing engineering. Thus, none of the eight classifications the Employer would include are within the same department as the assemblers, and those eight classifications fall within four separate departments. Thus, the assemblers are organized into a department separate from the other employees that the Employer would include in any appropriate unit.

As noted above, the assemblers are also separately supervised. Their immediate supervisors are the group leaders, who the parties have stipulated are statutory supervisors. The group leaders do not supervise any of the other classifications at issue. Plant manager Tooley testified that he has instructed production coordinators and group leaders to provide input to “functional leader(s)” -- the supervisors of employees who support production, such as material handlers -- for their evaluations.³³ Tooley also testified that the production coordinators have authority to set priorities for the support personnel, because the bus needs to move within the four-hour time.³⁴ But this evidence does not establish common supervision with the assemblers.

In this regard, the Employer’s reliance upon Buckhorn, Inc., 343 NLRB 201 (2004), is misplaced. In that case, a separate unit of maintenance employees was found inappropriate, in part because the employees in the petitioned-for unit were not commonly supervised. Five skilled maintenance employees reported to the maintenance supervisor, while 14 general maintenance employees reported to the production

³³ Beyond this general testimony, there is no evidence in the record as to the weight such input is given in the evaluations of support personnel by their own immediate supervisors. An exemplar of the “personal business plan” (evaluation form) is in evidence, but no completed evaluations were introduced.

³⁴ No employees in any of the eight classifications the Employer would include testified at the hearing.

supervisor. The assemblers herein are commonly supervised by their group leaders, production coordinators and ultimately one of the production managers.

As is the case with almost any manufacturing facility, particularly assembly-line operations, the Employer's operation is functionally integrated. Everyone works to the same end: producing a finished bus that meets customer specifications and standards of quality. Nevertheless, the assemblers and the other classifications have separate roles and distinct functions within the process. Assemblers are the only classification in which employees perform assembly tasks every day. To the extent that other classifications work together with assemblers to resolve persistent problems such as missing or misplaced studs, or nonconforming five-seaters or dashboards, there is arguably some overlap of functions. But the record evidence presents a situation quite different from that in United Rentals, 341 NLRB 540 (2004), cited by the Employer in its brief. In United Rentals, the employer, notwithstanding a nominal division of responsibilities, "relie(d) on everyone to 'pitch in' to do various types of jobs, despite their designated classification. Employees therefore perform(ed) the duties of different classifications every day." In addition, the fact that there is a level of functional integration is not dispositive and does not outweigh the other factors demonstrating that assemblers do not share an overwhelming community of interest with the other employees. See DTG Operations, Inc., 357 NLRB 175, slip op. at 6, 7 (December 30, 2011), (Board found the petitioned-for unit of rental service agents appropriate; although the employer's operation was functionally integrated, the Board noted that the rental service agents performed "distinct functions," and each classification had a separate role in the process).

Other factors distinguish the assemblers and the other classifications of employees the Employer seeks to include. The skills and training required for each of the classifications at issue varies considerably from classification to classification. With one exception -- material handler, the other entry-level position -- more is required in terms of education, skills and training than is required of the assembler at hire. After hire, more is required of assemblers than is required of material handlers. Assemblers are expected to acquire the skills and proficiencies to justify a wage increase after six months. There is no such probation period” or raise for material handlers, because the job is “less technical” than that of assembler.³⁵

The degree of contact that assemblers have with the other classifications at issue varies considerably. Technical trainers, quality technicians and inventory control technicians are likely to have less contact with assemblers than are material handlers, mechanical technicians, electrical technicians or quality monitors.

The Employer argues in its brief that there is significant interchange among the assemblers and the other classifications at issue herein. But the record reveals few instances of temporary interchange: i.e., the temporary assignment of assemblers Poupore and Trombley to the quality monitor position, and the transfer of assembler Justin Reandeanu to quality monitor and back to assembler. Given the size of the Employer’s workforce and the number of assemblers in the proposed unit (89), the evidence does not establish temporary interchange that is regular or is so frequent as to compel a finding that only a larger unit is appropriate. See Hilander Foods, 348 NLRB 1200, 1203 (2006) (three instances of temporary transfer from among 150 employees over a three year

³⁵ There is also no probation period or wage increase for the other hourly position, maintenance mechanic. As the Employer’s human capital business partner testified, the maintenance mechanics are expected to possess the requisite job skills when they are hired.

period was not significant interchange); Red Lobster, 300 NLRB 908, 911 (1990) (19 of 85 employees affected by temporary assignments during one year not considered significant).

The record reveals that several employees in various classifications started out as assemblers and progressed to their current positions. As the Employer points out in its brief, the Board has considered permanent transfers as a factor in the community of interest analysis. Buckhorn, Inc., *supra* at 203. However, permanent transfers are less significant as an indicator of community of interest than temporary interchange. Milwaukee City Center, LLC, 354 NLRB No. 77, slip op. at 3 (September 21, 2009), *citing* Bashas', Inc., 337 NLRB 710, 711, fn. 7 (2002); Red Lobster, *supra* at 908, 911. In any event, the permanent transfer of approximately five assemblers over a two and one-half year period is insignificant, given the large number of employees in the assembler classification.

Finally, although all employees share many of the same employment terms and conditions, (e.g., hours, benefits), the assemblers' working conditions differ from those of the other classifications in important respects. Technical trainers, inventory control technicians and material handlers do not perform their work within the constraints of the four-hour time frames. Assemblers are not issued company cell phones,³⁶ as are most of the salaried classifications, because assemblers do not have plantwide responsibilities. Moreover, assemblers do not have desks or computers, as do several of the other classifications. Like material handlers and maintenance mechanics, assemblers swipe a magnetic badge to record their time in and out, while the six salaried classifications record their time online and submit it to their supervisors at the end of the week.

³⁶ Nor are material handlers or trainers.

Most telling of all, assemblers' hourly wage is greater than that of only one other classification, the material handlers, by 84 cents per hour (after six months). The assemblers make less, in most cases significantly less, than employees in other classifications.

In Specialty Healthcare, slip op. at 13, the Board stressed its disapproval of "fractured units," i.e., "combinations of employees...that have no rational basis." The petitioned-for unit herein would be a "fractured unit" if there were no rational basis for excluding the classifications the Employer would include. But there is a rational basis here for finding the petitioned-for unit appropriate. The community-of-interest factors clearly do not "overlap almost completely." Id., slip op. at 11-13 and fn. 28. Petitioner has not proposed a "fractured" unit, or sought an "arbitrary segment of what would be an appropriate unit. To the contrary, a unit consisting only of assemblers, by far the largest group of employees, is rational. Assemblers perform their work under separate supervision. Only the assemblers regularly attend OD meetings with the production group leaders. Only the assemblers are hired through an employment agency, undergo classroom training upon hire, and only the assemblers must satisfactorily complete a unique six-month probation period in order to receive the full wage for the classification.

The Employer, in its brief, cites two cases in support of its argument for a broader unit: Avon Products, 250 NLRB 1479 (1980) and Lily-Tulip Division of Owens-Illinois, 181 NLRB 713 (1970). These cases are either distinguishable on their facts or are of questionable precedential value after Specialty Healthcare. There are similarities in the assembly-line nature of the Employer's operation and the employer's operation in Avon, where the Board found appropriate a unit broader than that petitioned for. But Avon does

not compel the same result in this case. In Avon, the Board found that a Regional Director had inappropriately excluded several classifications analogous to some of those that the Employer urges be included here. But with respect to the material handling department, the inventory control analysts, and the production department, the Board found that each of those groups shared common wages and working conditions with included employees, with whom they came into contact on a daily basis.³⁷ The assemblers herein have different wages than all of the other classifications, and do not have daily contact with all of the employees in those classifications.³⁸ The Board in Avon also noted that, unlike this case, the record there revealed a high degree of employee interchange:

“Thus, many employees often move from one job classification to another pursuant to temporary transfers. Also, on a daily or hourly basis, employees may move from one classification to another under what is termed the “add rate” program.”

250 NLRB at 482.

In Lily-Tulip Division of Owens-Illinois, *supra*, the Board dismissed a petition for a unit of machine attendants. While the Employer is correct that the Board relied upon the functionally integrated nature of the employer’s operation, the machine attendants in Lily-Tulip also shared a greater community of interest with the production employees than do the assemblers herein with the classifications the Employer proposes to include. The petitioner in Lily-Tulip already represented the maintenance employees. Moreover, the petitioned-for machine attendants spent as much as 85 percent of their time

³⁷ In Avon, the Board agreed with the Regional Director that several maintenance classifications should be included. Unlike the Petitioner herein, however, the union in Avon petitioned for those employees.

³⁸ Even where they do, such contact might be brief. For example, assemblers come into contact with material handlers twice each day, but the record reveals that material handlers spend only about five percent of their time in the loops.

making adjustments on machines and were part of a machine crew consisting of multiple job classifications. Machine attendants were hired and jointly supervised by a production foreman and the superintendent of the maintenance department. Vacancies for positions were filled based on seniority among all production employees and all production employees were required to have the same skills. Thus, unlike the instant case, the community-of-interest factors in Lily-Tulip did overlap to such an extent that a stand-alone unit of machine attendants was found inappropriate.

Notably, in both Avon and Lily-Tulip, the employer was not required to demonstrate that an overwhelming community of interest existed between the petitioned-for employees and the other groups, as an employer arguing for a broader unit must under Specialty Healthcare, supra.

The Employer has not carried its burden of demonstrating that the classifications of material handler, maintenance mechanic, quality monitor, quality technician, mechanical technician, electrical technician, inventory control technician and technical trainer share an “overwhelming community of interest” with the assemblers. As noted above, the Employer has not sought an alternative unit narrower than a “wall to wall” unit, such as a unit of assemblers, material handlers and maintenance mechanics. The petitioned-for unit is an appropriate unit. I shall therefore direct an election in the unit petitioned for.

CONCLUSION

I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time assemblers employed by the Employer at its

260 Banker Road, Plattsburgh, New York facility, excluding: material handlers, maintenance mechanics, inventory control technicians, electrical technicians, mechanical technicians, quality monitors, quality technicians, technical trainers, temporary employees, external trainers, production clerks, production managers, maintenance coordinators, the New York City production coordinator, group leaders, guards, and professional employees and supervisors as defined in the Act.

These are 89 employees in the unit found appropriate herein.

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 purposes of collective bargaining by:

TEAMSTERS LOCAL 687, 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. Voting Eligibility

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

employees 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 since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and 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 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.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before

February 24, 2012. No extension of time to file this list will 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 to the Regional Office by electronic filing through the Agency's website www.nlr.gov,³⁹ by mail, by hand or courier delivery, or by facsimile transmission at (716) 551-4972. 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** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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 at least 3 working days prior to 12:01 a.m. of the day 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 5 full working days prior to 12:01 a.m. of the day of the election if it has not received

³⁹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

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.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT on **March 2, 2012**. The request may be filed electronically through the Agency's web site, www.nlr.gov,⁴⁰ but may not be filed by facsimile.

DATED at Buffalo, New York this 17th day of February, 2012.

/s/Rhonda P. Ley

RHONDA P. LEY, Regional Director
National Labor Relations Board, Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

⁴⁰ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.