

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

MONONGAHELA POWER COMPANY¹

Employer

and

Case 06-RC-075606

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 2357,
AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Monongahela Power Company, (herein referred to as “Mon Power” or “Employer”) operates a public utility which generates, transmits, and distributes electrical service in various parts of the State of West Virginia. Solely at issue herein is the Employer’s Gassaway Customer Service Center (herein referred to as the “facility”). The Petitioner, International Brotherhood of Electrical Workers, Local 2357, AFL-CIO, CLC (herein referred to as “Union” or “Petitioner”), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of certain employees employed by the Employer at the facility. The petitioned-for unit, as amended at the hearing, reads as follows:

All full-time and regular part-time line workers, service workers, meter technicians, electricians, distribution specialists, garage mechanics, storekeepers, meter readers, collectors, crew workers, utility workers and utility mechanics employed by the Employer at its service center located in Gassaway, West Virginia; excluding office clerical employees and guards, managerial employees, professional employees, confidential employees and supervisors as defined in the Act.

¹ The names of both the Employer and the Petitioner appear as amended at the hearing.

A hearing officer of the Board held a hearing and the parties filed timely briefs with me. The parties are essentially in accord as to the composition of the unit. However, as evidenced at the hearing and in the briefs, the parties disagree on the inclusion of the following five classifications of employees in the bargaining unit for the election to be directed herein: service workers, crew workers, utility workers, utility mechanics, and distribution specialists. With respect to the service workers, crew workers, utility workers, and utility mechanics, the Employer contends that these four job classifications do not exist at the Gassaway facility, that there are no incumbents holding these job titles and there are no plans to establish and populate any of these positions, while the Petitioner contends that these positions exist elsewhere within the Employer's organization and that they should be included in the Gassaway unit. Further, while the Petitioner also seeks to include four employees with the title of distribution specialist in the unit, the Employer would exclude this classification on the ground that these employees lack a community of interest with the other employees in the petitioned-for unit.

The unit sought by the Petitioner has approximately 23 current employees, while the Employer contends that the appropriate unit would include about 19 employees.² The Petitioner has indicated a willingness to proceed to an election in any unit found appropriate herein.

Although there is no history of collective bargaining for any of the employees petitioned-for herein, the Employer has at least four collective bargaining agreements with two separate labor organizations, including the Petitioner. The bargaining units at other facilities covered by those collective bargaining agreements include some of the job classifications at issue in this proceeding.

² There was an issue raised for the first time at the hearing involving the voting eligibility of employee John Bush, who may be currently acting in a supervisory capacity. The parties agreed that Bush would be placed on the election eligibility list and that he would be permitted to vote subject to challenge. Based on the agreement of the parties, I shall permit John Bush to vote subject to challenge in the election to be directed herein.

I have considered the evidence and the arguments presented by the parties on the issues presented. As discussed below, I have concluded that the distribution specialists are not technical employees. I have also concluded that the distribution specialists should be included in the unit as they share a sufficient community of interest with the other employees who the parties agree are appropriately combined in the petitioned-for unit. Finally, I have concluded that the unit should not include the classifications of service workers, crew workers, utility workers, or utility mechanics as these positions do not exist at the facility. Accordingly, I have directed an election in a unit that consists of approximately 23 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer operates a public utility which distributes electrical service in various parts of the State of West Virginia. In about February, 2011, the Employer became a wholly-owned subsidiary of FirstEnergy Corp., which also wholly-owns a number of utilities in Ohio, New York, Pennsylvania and New Jersey.³ FirstEnergy owns and operates generating facilities, transmission facilities, and distribution facilities. The generating facilities generate the FirstEnergy's product, which is electricity. The transmission companies transmit the bulk electrical services within FirstEnergy and to its local distribution companies, one of which is the Employer. The Employer is one of ten distribution companies in several states owned by FirstEnergy, which is headquartered in Akron, Ohio.

The headquarters of Mon Power is located in Fairmont, West Virginia. Within West Virginia, the Employer maintains a number of Customer Service Centers as central offices, and each of these "hubs" has several satellite offices. The Gassaway facility at issue herein is one

³ Some of the other subsidiaries include: Ohio Edison, Met-Ed, and Penelec.

of the Employer's hub offices. The satellite offices associated with the Gassaway facility are located in Glenville, Spencer, Summersville and Webster Springs, all in West Virginia.⁴ The Employer's service centers construct and maintain all of the poles and wires within their respective areas of responsibility which distributes electricity to the Employer's customers.

The overall operations of the Employer are the responsibility of James Haney, President of West Virginia Operations. Reporting directly to Haney is Director of Operations Services James Sears. Reporting to Sears is General Manager of Operations Services Alex Patton, who in turn has Dale Keplinger, Manager of Operations Services at the Gassaway facility, as a direct report. Scott Summits is the Manager of Human Resources for the facility. The petitioned-for employees are assigned, by functional area, to various immediate supervisors who appear to report, in turn, to Gassaway Manager Keplinger.

Keplinger is responsible for the Employer's electrical power distribution system within his designated geographic area of West Virginia, including all necessary new construction and maintenance activities, as well as storm restoration work. Line workers install and repair components on the poles, connecting wires and other parts of the lines which service the Employer's customers. The meter technicians install and maintain the Employer's complex metering system for its large industrial and commercial customers. The meter readers read both the commercial and residential electric meters to determine customer usage for the Employer's invoicing purposes. The electricians maintain the equipment in the distribution and transmission substations in various locations. The collectors are responsible for collecting customers' accounts that are in arrears and, correspondingly, the turn-off, turn-on of any customer's electric service. The garage workers maintain the Employer's service vehicle automotive fleet. The storekeeper works within the Employer's facility maintaining the

⁴ Of these associated offices, only the employees of Webster Springs are represented by a labor organization, specifically the Petitioner herein.

Employer's inventory of line material and substation material that the other workers use in the field to install and maintain equipment and systems for the Employer and its customers.

Distribution specialist is a classification which came into existence within the Employer's organization only since Mon Power's merger into FirstEnergy in 2011. The record indicates that a variety of existing jobs were combined into the overall category of distribution specialist and, thus, the classification encompasses an assortment of work activities. Within Gassaway, distribution specialists perform the functions of forestry technician, engineering technician, planning/scheduling, and design work. The forestry aspect involves work with the Employer's tree and vegetation program as it relates to the electrical distribution system. The engineering technician work involves technical design for the integration of customers' facilities into the Employer's distribution system based on work requests from those customers. Distribution specialists initiate systems designs and, based on these, issue work orders for construction or maintenance to the line workers and others who are in the petitioned-for unit. The planner/designer function also involves some design work on a smaller scale and includes structuring and maintaining the work schedule for the line workers as well as other employees of the facility.

All of the employees in the petitioned-for unit except the distribution specialists are hourly paid and classified by the Employer as non-exempt for Fair Labor Standards Act purposes. The distribution specialists are salaried employees and classified as exempt under the FLSA and, therefore, are not paid overtime except when assigned to repair storm damage.⁵ The job descriptions for the distribution specialist position state that an advanced degree is required unless the candidate possesses a minimum of a GED/high school education, along with a requisite number of years of work-related experience. Not every current distribution specialist possesses an advanced degree. The other petitioned-for classifications require a

⁵ The record indicates that distribution specialists work an average of about 200 hours of overtime per year for storm damage work.

combination of a GED/high school education, work experience and/or technical schooling. The distribution specialist position has a higher starting rate and a different rate of progression for subsequent wage increases than the other classifications in the petitioned-for unit. If the salary of the distribution specialists is converted to an hourly rate on a 40 hour-per-week basis, they are paid several dollars per hour more than the other employees in the petitioned-for unit, exclusive of overtime.⁶ All employees have the potential to earn an annual bonus which is based on a percentage of the individual's total income. The distribution specialists have the potential to earn up to 8-10% while the maximum amount the other groups are eligible for is 6%.

All employees receive the same benefits as FirstEnergy provides all of its nonunion employees with a uniform benefits package, including a 401(k) plan, health insurance, sick time and vacation. The distribution specialists, along with other salaried employees of the Employer, are limited in the manner they may utilize vacation in that they accrue vacation in three periodic increments throughout the year while the hourly employees accrue all of their annual vacation allotments on January 1 of each calendar year.

The employees, who the parties agree should be included in any unit found appropriate, generally work fixed daylight shifts from about 6:30 am until 3:00 pm, although this varies slightly with the season, while the distribution specialists have the ability to work a flex-time schedule. The line workers and electricians work on crews while the other employees in the petitioned-for unit, including the distribution specialists, generally work alone. Distribution specialists choose the priority of their daily work assignments while the daily tasks of the other employees are prioritized by their immediate supervisors.

As all of the classifications in the petitioned-for unit perform somewhat unique tasks, there is little interchange between the various groups that the parties agree should be in the unit. In this regard, the meter services employees (meter techs and meter readers) have similar

⁶ In this regard the record reveals that the overtime earned by the other classifications narrows the gap on an annual basis between the higher paid distribution specialists and the others at the facility.

knowledge as do some line workers and electricians, so there can be some interchange in these specific areas. But there is no evidence of interchange between or among the garage mechanics, storekeeper, collectors, or distribution specialists. However, the record reveals that there have been occasions, including recently, when a line worker has transitioned to become a distribution specialist.⁷

With the exception of the storekeeper and the garage mechanics, all employees work in the field, including the distribution specialists. The overall record indicates that distribution specialists spend about 60% of their time in the facility and the remaining 40% is spent in the field. The line workers and others spend most of their time in the field although they report to the service center each morning and evening. Interactions between the petitioned-for employees occur casually at the facility where all employees report daily, as well as on some jobs where the different groups are required to work together. The record also indicates that all employees, including distribution specialists, work occasionally for or at the satellite offices of the service center as may be deemed necessary. All employees are subject to a 24-hour call for emergencies. Likewise all employees can be required to work together in emergencies or during storm damage situations, which occur with some regularity although the need for such work fluctuates.

At times, the petitioned-for employees in the field have to contact a distribution specialist if there is a question or problem with a design or a drawing as the distribution specialists provide the work orders for the line workers, the electricians and the meter technicians. Upon project completion, the distribution specialists are required to close out these same work orders. If the distribution specialist has questions concerning job status, materials utilized, or problems encountered, they must contact the petitioned-for employees who worked the job to secure this information. Issues regarding materials used and inventory may also involve the storekeeper.

⁷ The Employer asserts that this type of transition will not be permitted in the future and has occurred only sporadically in the past.

The distribution specialists record their working time by entering their hours on the various work orders that they handle. Other employees in the petitioned-for unit use a variety of systems including automated terminals, manual transmission, and simply reporting their time to a member of the clerical staff. The Employer is in the process of transitioning its reporting systems but it appears that no employees punch a time clock. While some of the petitioned-for employees wear uniforms, the distribution specialists as well as others in the petitioned-for unit do not. Some employees are required to wear flame-retardant clothing which may or may not have an Employer logo on it. All employees wear the same protective clothing while doing storm damage work. There is only one break area at Gassaway which is used by all of the employees.

Members of the petitioned-for unit use a variety of equipment in their work, some of which is common among work groups and some of which is unique to a job classification. While working in the Gassaway facility, the distribution specialists do most of their work on a computer, as does the storekeeper who is responsible for tracking and controlling the Employer's inventory. Electricians have laptops which are used while they work in the substations. The line workers have mobile data terminals which are like laptops, and are located in their trucks. Work orders between the groups are transmitted electronically via the Employer's software systems. Both meter readers and meter technicians use hand-held electronic devices which measure electrical service and customer usage, and collectors may have similar hand-held devices. The garage mechanics utilize standard automotive-mechanic tools and equipment.

II. ANALYSIS

A. Legal Standards

In cases involving public utilities, the Board has long held that a system-wide unit is the optimum bargaining unit due to "the essential service rendered to their customers and the integrated and interdependent nature of their operations." Colorado Interstate Gas Co., 202 NLRB 847 (1973). However, the Board's preference for a system-wide public utility unit does not

foreclose the possibility that a smaller unit may be found to be appropriate. Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973). Rather, the Board balances the employees' Section 7 rights against the public's interest in uninterrupted utility services that a single entity provides. Alyeska Pipeline Service Co., 348 NLRB 808 (2006). In balancing these interests, the Board will find smaller units appropriate where "compelling evidence" shows that collective bargaining would be a "feasible undertaking," namely where (1) employees in the petitioned-for smaller unit share a substantial community of interest, (2) the boundaries of the requested unit conform to a well-defined administrative segment and could be established without undue disturbance to the company's ability to perform its necessary functions, and (3) there is no opposing bargaining history on a broader basis. Alyeska Pipeline, 348 NLRB at 810, citing Baltimore Gas & Electric Co., 206 NLRB at 201; and PECO Energy Co., 322 NLRB 1074 (1997). I note that in the instant case, as many of the Employer's employees are already represented by both the Petitioner and another labor organization in separate bargaining units, the evidence demonstrates that collective bargaining is a "feasible undertaking" in a unit that is smaller than system-wide. Accordingly, the system-wide public utility presumption does not preclude a finding that a smaller than system-wide unit is appropriate here.

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof...." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." Overnite Transportation Co., 322 NLRB 723 (1996); Parsons Investment Co., 152 NLRB 192, fn. 1 (1965); Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enf'd.* 190 F.2d 576 (7th Cir. 1951). Thus, there is ordinarily more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. General Instrument Corp. v. NLRB, 319 F.2d 420, 422-3 (4th Cir. 1962), *cert. denied* 375 U.S. 966 (1964); Mountain States Telephone & Telegraph Co., 136 NLRB 1612 (1962),

aff'd. 310 F. 2d 478 (10th Cir. 1962). The Board's procedure for determining an appropriate unit under Section 9(b) is to first examine the petitioned-for unit.

In determining whether a petitioned-for-unit is appropriate, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees, and functional integration.⁸ Kalamazoo Paper Box Corp., 136 NLRB 134, (1962); Brand Precision Services, 313 NLRB 657 (1994); Ore-Ida Foods, Inc., 313 NLRB 1016 (1994), enf'd 66 F.3d 328 (7th Cir. 1995); The Boeing Company, 337 NLRB 152 (2001). The Board generally looks to the totality of the circumstances or the overall community of interest in making unit determinations. Johnson Controls, Inc., 322 NLRB 669 (1996). Although not dispositive, a petitioner's unit desire is a relevant consideration. Marks Oxygen Co. of Alabama, 147 NLRB 228, 230 (1964).

B. Technical Employees

The Board has long applied the criteria that technical employees are defined as employees who do not meet the strict requirements of the term "professional employee" as defined in the Act but whose work is of a technical nature, involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses. Folger Coffee Co., 250 NLRB 1 (1980); Augusta Chemical Co., 124 NLRB 1021 (1959). See also Audiovox Communications Corp., 323 NLRB 647 (1997). However, it is well established that if technical employees otherwise share a community of interest with production and maintenance employees, they may be included in the

⁸ Contrary to some of the contentions raised herein, the composition of other bargaining units is not a persuasive factor in this analysis, particularly when the origins of the composition of those units are unknown. In this regard I have examined Turner Industries Group, LLC, 349 NLRB 428 (2007), and find it inapposite to the instant situation. In Turner, the regional director erroneously exalted bargaining history as the determinative factoring concluding that the historical unit at the facility involved in that case was an appropriate unit. Here, the Employer points to facilities in other locations where distribution specialists are not included in a bargaining unit. I also note that the record (CX-3) reveals that there are no distribution specialists employed at the Employer's newly organized facility in Webster Springs.

same unit. Dynalectron Corp., 231 NLRB 1147, 1148 (1977); Airesearch Mfg Co. of Arizona, 137 NLRB 632, 635-636 (1962); Sheffield Corp., 134 NLRB 1101 (1961).

In applying these standards to the instant case, I can not find that the record establishes that the distribution specialists qualify as technical employees as asserted by the Petitioner. In this regard, I note that the record does not establish that the distribution specialist positions mandate any formal or specialized training as the job description criteria in evidence clearly shows that a GED/high school education with related work experience is acceptable background for these positions. Thus, it appears that distribution specialists may be capable of performing their tasks with only training which is acquired on the job. I also note that while the Employer asserts that formal educational requirements for distribution specialists will be mandated in the future, this has not been required up until the present time and at least one of the employees at issue does not meet any formal educational requirements. Moreover, the record does not establish that the distribution specialists utilize independent judgment in their work as there is insufficient evidence provided upon which to base such a conclusion.

It is clear from the record that the tasks of the distribution specialists vary from position to position within that classification and there are distribution specialists at issue herein whose job responsibilities, education, and qualifications were not discussed beyond a cursory description. Accordingly, based on the record, I do not find that the distribution specialists are technical employees who utilize independent judgment. See Folger Co., supra. However, although I find that the distribution specialists are not technical employees, they may still be appropriately included in the unit and the relevant factors described above must be considered in order to determine whether or not the distribution specialists share a community of interest with the other employees in the petitioned-for unit.

C. The Community of Interest Analysis

The Petitioner seeks to include the four employees with the title of distribution specialist in the unit. The Petitioner contends that the distribution specialists share a community of interest with the other employees in the unit as they work in the same location, for the same

manager, and under common conditions of employment with those employees. While the Employer would exclude this classification on the ground that the distribution specialists lack a sufficient community of interest with the other employees in the agreed-upon unit, the Employer, however, does not contend that the distribution specialists are professional employees as defined in the Act.

All of the employees working in the Gassaway Service Center, including the distribution specialists which the Employer seeks to exclude from the unit, are involved in building and maintaining the infrastructure which enables the Employer to distribute its product, electricity, to its customers. While the Employer's overall operations are complex, the Gassaway service center has a clearly defined role in the process. The service center employees proceed in the following manner: they receive a request for new service or for needed repairs; they assess what is necessary to provide, or continue to provide, the Employer's product to the customer; and, they implement the plan. Later, the customers' needs and usage are continuously serviced and monitored, also by employees in the petitioned-for unit. The distribution specialists are involved in this process in several ways.

The distribution specialists at Gassaway receive the customers' work orders, plan the work, forward the orders to the field crews, and then are responsible to close out the order after others have finished their jobs. To separate a classification of employees involved in such an integrated process would unnecessarily fragment the unit. The functional integration discussed above results in a considerable amount of work-related contact among the petitioned-for employees who all work out of the same facility. Although the distribution specialists and the employees in the other petitioned-for classifications do not necessarily work on a project simultaneously, sometimes they do, most notably in the case of storm damage. However, it is apparent that the various groups all must coordinate their efforts and consult with each other in the course of their work, which is limited in scope and common in purpose.

I recognize that the distribution specialists are salaried and treated by the Employer differently in some aspects but I am not dissuaded in my conclusions because of this fact. In

this regard, I note that the distribution specialist classification has only existed in its present form for less than a year. Thus, I do not find it particularly significant that these employees have been salaried for nine months when the distribution specialists share other important attributes which contribute to their common interest in terms and conditions of employment with the petitioned-for unit. I also recognize that the distribution specialists may possess skills that others in the petitioned-for unit do not possess but the reverse is also true, and the same situation exists between other groups in the petitioned-for unit which the Employer agrees are appropriately combined into the unit. This is a unit which is bound by its functional integration and common interests within a small complement of employees at a single small facility, not by its identical job content criteria among the job classifications of the various employees.⁹ See United Gas, Inc., 190 NLRB 618 (1971).

All of the Employer's non-union employees, including all employees involved herein, are covered by identical personnel policies, procedures, and benefits packages which are managed by a centralized human resources' policy. The petitioned-for employees all report to the same facility where they are under the control of the same Service Center Operations Manager. Most of the petitioned-for employees spend time varying amounts of time in the field, albeit some work in crews and some work alone. Moreover, the fact that the distribution specialists work in the service center for a greater percentage of work time than some of the other groups in the petitioned-for unit does not negate a finding that a community of interest otherwise exists. See, Central Power & Light Company, 195 NLRB 743, 746 (1972). In this regard, it is noteworthy that some employees in the petitioned-for unit other than the distribution specialists, spend most, if not all, of their working time within the facility as well. While at the facility, all employees

⁹ The Employer cites Lundy Packing Co., 314 NLRB 1042 (1994) in its brief for the assertion that the Board will not include technical employees with production employees unless the two groups have an "overwhelming" community of interest. Initially, I have concluded herein that the distribution specialists are not technical employees. Further, in Lundy, the employer sought to have the laboratory technicians included in the petitioned-for unit over the objection of the petitioner. In the circumstances of that case, which are not present here, the community of interest between the two groups had to be so compelling as to mandate the inclusion of the laboratory technicians with the production and maintenance employees in the same unit.

share a common break area. All employees are on 24-hour call and are subject to summons for emergency work. All employees also work together on crews to repair storm damage. During these periods, all employees wear the same uniforms and work together toward the common goal of restoring service for the Employer's customers.

In summary, I have considered the functional integration of work duties of the employees involved in the customer service process, the degree of interaction and many similarities in working conditions and skills between the distribution specialists and the other employees in the petitioned-for unit, and I find that the distribution specialists share a sufficient community of interest with the employees in the petitioned-for unit which warrants their inclusion in that unit. This is particularly true in light of the small employee complement under consideration and the relatively limited nature of the duties performed by the employees of the Employer's Gassaway service center. Moreover, my conclusions balance the Board's interest in finding appropriate units which recognize the respective parties' interests while also avoiding undue fragmentation of units in public utilities. Accordingly, I find that a unit including the distribution specialists, alone is an appropriate unit.¹⁰

¹⁰ In so finding, I am mindful of the Regional Director's Decision in Pennsylvania Electric Company, Penelec, a Subsidiary of FirstEnergy Corp. at Case 06-UC-000489 upon which the Employer relies and which is contained in the record in this matter. However, I find both the facts and law of that case distinguishable from the instant case. In Penelec, the union was seeking to accrete two newly created positions of distribution specialists, also known as circuit reliability coordinators, to an existing unit on the basis that these new positions were performing bargaining unit work. Within Penelec there were also other distribution specialists whose inclusion in the unit was not put at issue by the union in that petition. Certainly, it is clear from the instant record that all distribution specialists are not the same. The Regional Director found that the two employees were not performing bargaining unit work and had virtually no contact with the employees in the existing unit. Further, as detailed in that decision, the standard for accretion, which deprives employees of the right to vote in an election, demands that the jobs to be accreted share an overwhelming community of interest such that the position at issue has little or no separate identity from the positions in the preexisting unit. See cases cited at CX-7, pp. 15-16.

Applying this standard, which is clearly more stringent than the standard community of interest inquiry involving a Question Concerning Representation (QCR) as is present here, the Regional Director declined to deny the employees at issue of their right to vote and accrete them into the existing unit. In this regard I also note the Employer's reference to Safety Carrier, 306 NLRB 960 (1992), and find that case inapplicable to the instant situation as that case sets forth an analysis by an Administrative Law Judge of an accretion issue which, as stated above, is not the issue in the instant matter. Based on the legal analysis and other factual dissimilarities between the Penelec case and the situation present herein, I do not find the cited decision involving another employer, albeit a subsidiary of the same parent company, to be controlling. I further note that every case raising a QCR is independently assessed on its

D. The Vacant Positions

As set forth above, with respect to the service workers, crew workers, utility workers, and utility mechanics, the Employer contends that these four job classifications should not be included in the petitioned-for unit. The Employer avers that these jobs do not exist at the Gassaway facility, and that there are no employees with these job titles and no plans to establish and populate any of these job classifications at the facility. The Petitioner contends that these positions exist elsewhere within the Employer's organization and speculates that they could be established at the facility in the future. Therefore, the Petitioner asserts that service workers, crew workers, utility workers, and utility mechanics should be included in the unit description because these jobs may someday be filled.

Based on the record, I find that the four classifications of service workers, crew workers, utility workers, and utility mechanics do not exist at the Employer's Gassaway facility and that there is no evidence that the Employer plans to establish these positions at the facility. The Petitioner has introduced no evidence to the contrary. While it appears, as contended by the Petitioner, that the Employer does or recently has employed individuals in these capacities in other locations, no such employees are based in Gassaway with the employees in the petitioned-for unit. Therefore, in the absence of evidence that there is work being performed which the Union would seek to represent, I find it unnecessary to include these vacant classifications in the proposed unit.¹¹

In so finding I note that no employees will be disenfranchised by my determination,¹² and, should the positions be filled in the future and the Petitioner represents the other

unique facts and, while binding on the parties to that matter, has no precedential value in other unrelated cases which involve different parties.

¹¹ In this regard see, e.g., Textprint, Incorporated, 253 NLRB 1101, fn. 5 (1981), in which the Board refused to rely on the employer's speculative testimony that it intended in the future to purchase a separate facility in which to conduct its operations; also Avis Rent-A-Car System, 280 NLRB 580 (1986) in which the Board accorded little weight to speculative testimony.

¹² If any of these four positions are filled before the eligibility date of the election directed herein, any such employees may vote subject to challenge.

Gassaway employees, there are appropriate Board procedures which may be utilized to establish unit placement of any such positions at that time. Therefore, I will neither include, nor specifically exclude, the classifications of service workers, crew workers, utility workers, or utility mechanics in the unit found appropriate herein.

III. FINDINGS AND CONCLUSIONS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 matter.
3. The Petitioner 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:¹³

All full-time and regular part-time line workers, meter technicians, electricians, garage mechanics, storekeepers, meter readers, collectors, and distribution specialists employed by the Employer at its Gassaway, West Virginia facility; excluding office clerical employees, confidential employees, managerial employees, and guards, professional employees and supervisors as defined in the Act.

¹³ Pursuant to the afore-mentioned agreement of the parties at the hearing, employee John Bush shall be placed on the Excelsior list and be permitted to vote subject to challenge.

IV. 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 International Brotherhood of Electrical Workers, Local 2357, AFL-CIO, CLC. 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 April 12, 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, by mail, or by facsimile transmission at 412-395-5986. To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 **two (2)** 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 copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **April 19, 2012**. The request may be filed electronically through the Agency's website, www.nlr.gov,¹⁴ but may not be filed by facsimile.

DATED: April 5, 2012.

/s/ Robert W. Chester
Robert W. Chester, Regional Director
National Labor Relations Board, Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

Classification Index
362-6776-0000
440-6750-6700
530-8018-0133

¹⁴ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.