

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

**ENTERGY NUCLEAR OPERATIONS, INC.**

**Employer**

**and**

**Case 07-UC-073591**

**UTILITY WORKERS UNION OF  
AMERICA, AFL-CIO AND ITS LOCAL 150<sup>1</sup>**

**Petitioner**

**APPEARANCES:**

Adam C. Abrahms, Attorney, of Los Angeles, CA, for the Employer  
Robert Ritsema, of Kalamazoo, MI, for the Petitioner

**DECISION AND ORDER**

The Employer operates ten nuclear power facilities throughout the United States.<sup>2</sup> The petition involves the Palisades nuclear power plant located in Copart, Michigan. The Employer acquired Palisades in about April 2007, however, the facility began operating in the early 1970s. On May 20, 2011,<sup>3</sup> following an election, Petitioner was certified as the exclusive collective-bargaining representative of the following unit, known as the technical unit:<sup>4</sup>

All full-time and regular part-time employees in the following classifications and departments: Radiochemist Iii (Nuc) and Sr Radiochemist (Nuc) in the Chemistry Department; Technician B Sr-Nuclear(Craft) and Sr Lead Technician in the Maint - Fac & Sup Department; Technician B Ii-Nuclear(Craft), Technician B Iii-Nuclear-Craft, Technician B Sr-Nuclear(Craft), Sr Health Physicist (Nuc) and Sr Lead Technician in the Maint - FIN Department; Technician B Iii-Nuclear-Craft, Technician B Sr-Nuclear(Craft) and

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<sup>1</sup> The name of the petitioner appears as corrected in the corrected Certification of Representative that issued on April 27, 2012.

<sup>2</sup> The Employer refers to its facilities collectively as its "fleet."

<sup>3</sup> All dates refer to 2011 unless otherwise stated.

<sup>4</sup> Petitioner also represents a bargaining unit of operating, maintenance, and construction employees, which includes mechanics, electricians, and nuclear plant operators. The Employer voluntarily recognized this unit, known as the "craft unit," upon acquisition of the plant. Since April 2010, United Government Security Officers of America (UGSOA) has represented a unit of security guards.

Sr Lead Technician in the Maint - I&C Department; Sr Lead Technician in the MP&C Department; Health Physicist Ii (Nuc), Health Physicist Iii (Nuc) and Sr Health Physicist (Nuc) in the Radiation Protection Department employed by the Employer at its Palisades facility currently located at 27780 Blue Star Memorial Highway, Covert, Michigan; but excluding all exempt employees, including Specialist, ALARA, Sr HP/Chem Spec (Nuc), HP/Chem Spec Iii (Nuc) and, all other non-exempt employees, all operating, maintenance and construction employees, all professional employees and guards and supervisors as defined in the Act.

On August 24, the Nuclear Regulatory Commission (“NRC”), a federal governmental department which licenses nuclear power plants, issued a Confirmatory Order Modifying Licenses (NRC Order) which required, inter alia, the Employer to reorganize the quality control (“QC”) reporting relationship at its plants so that those persons whose primary function is to assign or perform quality control inspections would report directly to a manager in the quality assurance department.

On November 14, the Employer submitted to the NRC a plan for reorganizing the QC reporting relationship at its plants, including the Palisades plant, as required by the August 24<sup>th</sup> Order. Pursuant to this plan, the Employer changed the reporting relationship for QC specialists in the maintenance department by moving them to the former quality assurance department, renamed in the plan the “nuclear oversight department”, and creating a new supervisory position—quality assurance supervisor—to whom they would report. According to the Employer, while drafting the mandated reorganization plan, it discovered that employee Arthur Steve Curry was misclassified as a senior lead technician and was, by virtue of his job duties, a QC specialist.

The Petitioner seeks to clarify the existing unit to include the QC specialist position, also known as the inspection coordinator position, into the bargaining unit. The Petitioner argues that Curry properly should be included in the Unit because his prior position title was included in the certified bargaining unit, he was on the *Excelsior* list, and, although his prior position was “eliminated,” he is performing identical work in his new position. The Employer’s position is that the QC specialist position should be excluded from the Unit because 1) the Employer intended the stipulated election agreement to exclude employees performing QC specialist duties from the Unit, 2) the NRC order requires the QC department personnel to report to separate management, 3) it is an “exempt” position under the Federal Labor Standards Act, 4) the position is a professional position, and 5) the QC specialists do not have a community of interest with the existing technical bargaining unit.

As discussed below, based on the record and relevant Board law, I reject the Petitioner’s arguments for including the QC specialists in the certified unit. I find that the QC specialists as professional employees and exempt employees are specifically excluded by the unit as described in the certification of representative, and do not possess an overwhelming community of interest with the unit.

## Board Law

### *Professional Employees Under Section 2(12) of the Act*

The Act defines professional employees, in relevant part, as follows:

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

For an employee to be a professional within the meaning of the Act, the evidence must establish that the employee satisfies each of the four requirements set forth in Section 2(12). *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993).

### *Unit Clarification*

Unit clarification petitions most frequently are used to clarify unit placement issues, and can also be used to clarify unit scope issues by carving out employees from an existing unit following organizational changes or restructuring. *Lennox Industries*, 308 NLRB 1237, 1238 (1992); *Armco Steel Co.*, 312 NLRB 257, 259 (1993).

Where a party argues that a newly created position should be included in the existing bargaining unit, the burden is generally on the party seeking to include the new group to show that the new group has little or no separate group identity. *Seven-Up/Canada Dry Bottling Co.*, 281 NLRB 943 (1986); *Bay Shipbuilding Corp.*, 263 NLRB 1133, 1140 (1982), enfd. 721 F.2d 187 (7<sup>th</sup> Cir. 1983).

The Board follows a restrictive policy in determining accretions to existing units as employees accreted to the unit are not accorded a self-determination election. *Towne Ford Sales*, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9<sup>th</sup> Cir. 1985); see also *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Thus, the Board will find accretion only when the employee sought to be added to an existing bargaining unit has little or no separate identity and shares an overwhelming community of interest with the pre-existing unit to which accretion is sought. *E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607, 608 (2004); *Compact Video Services, Inc.*, 284 NLRB 117, 119 (1987). In determining under this standard whether an employee in a newly created position shares a sufficient community of interest with employees of an existing bargaining unit, the Board weighs various factors, including interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining

history. *E.I. Du Pont de Nemours, Inc.*, supra at 608; *Archer Daniels Midland Co.*, supra at 675.

Cases in which every factor favors accretion are rare, and the Board has noted that “the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.” *E.I. Du Pont de Nemours, Inc.*, supra at 608, quoting *Great A & P Tea Co.*, 140 NLRB 1011, 1021 (1963). The Board has identified the degree of employee interchange and common day-to-day supervision as particularly important factors in determining whether an accretion is warranted. *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218; *Mercy Health Services*, 311 NLRB 367 (1993); *Towne Ford Sales*, supra at 312 (1984).

### **Application of Board Law to this Case**

In reaching the conclusions that the QC specialists are professionals within the meaning of the Act, and do not possess an overwhelming community of interest with the existing bargaining unit, I rely on the following analysis and record evidence.

#### **(1) *Curry Was Erroneously Classified***

Prior to the reorganization of what became the nuclear oversight department pursuant to the NRC Order, Curry was classified as a non-exempt (under the Federal Labor Standards Act) senior lead technician in the maintenance instrument & control (“I&C”) department. Curry’s placement in that classification was inconsistent with the classification of all other employees performing his job duties throughout the Employer’s fleet. All other employees performing his job duties were classified as exempt quality control specialists. Further, the other senior lead technicians in the maintenance I&C department performed different job duties than Curry.

Petitioner’s argument that Curry and, by extension the QC specialist position, should be included in the Unit because his name was on the *Excelsior* list is without merit. The Board has long held that placement of an employee's name on the *Excelsior* list is not determinative of that employee's status with regard to the bargaining unit. *Kirkhill Rubber Co.*, 306 NLRB 559, 560 fn.4 (1992).

I find that the classification of Curry as a senior lead technician in the maintenance I&C department was in error.

#### **(2) *The Stipulated Election Agreement***

The Employer argues that placement of the QC specialist position within the bargaining unit now is contrary to the Employer’s intent to exclude QC specialists from the bargaining unit when it executed the stipulated election agreement. I do not find the Employer’s intent dispositive.

Similarly, I find the Employer's argument that the NRC Order necessitates the QC specialists' exclusion from the Unit unpersuasive. The NRC Order did not mandate the position's exclusion from the Unit.

**(3) *The QC Specialists are Exempt Employees and Professionals***

The Employer also asserts that the QC specialists are excluded from the unit because the unit description specifically excludes exempt and professional employees. Because Curry was misclassified, and his proper classification is an exempt position, I find that he and the other QC specialists are excluded by the express terms of the certified unit. Similarly, I find that QC specialists are professionals, and thus, the unit description precludes inclusion in the Unit.<sup>5</sup>

The job duties of QC specialists include reviewing work orders and work schedules in order to identify inspection activities, performing and documenting independent inspections, documenting unacceptable inspection results in the corrective action program, recording independent inspections in the inspection log, maintaining the inspection log, maintaining the inspection waiver log, requesting QC inspection waivers, coordinating the QA supervisor and other site supervisors to confirm and/or arrange for qualified inspection personnel for independent inspection activities, providing oversight of independent inspections performed by qualified inspectors provided by line organizations or vendors (supplemental personnel), maintaining QC inspector certifications, and training and certifying inspection personnel. QC specialists also inspect the work performed by bargaining unit employees.

Reviewing work orders constitutes approximately 50% of the QC specialists' job. QC specialists review the work order and insert "hold points"—specific inspection points in a process or procedure where an inspection must be performed—into the planned work flow. The QC specialist looks at the plan set forth in the work order to determine at which point in the process work should be halted in order for an inspection to take place. A QC specialist may also remove hold points if he determines it is no longer needed in a process or a procedure. QC specialists use their discretion and judgment in deciding where to insert or remove the hold points.

During the implementation of the work order process or procedure, when work reaches the "hold point," an inspector will check to verify that the work is correct and in accordance with a pre-determined standard. He signs off on the hold point, and the work then can continue to the next step.

All individuals at the plant at all levels may complete and submit condition reports, which document observed deviations from standard procedure and may recommend corrective action, such as further training. These are submitted by the individual to the department in which the deviation occurred and are eventually maintained in a log by QC specialists, who are responsible for determining trends reflected by the condition reports. QC specialists are expected to use their observations of trends to inform their decisions on where to insert or remove hold points.

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<sup>5</sup> In addition, Sec. 9(b)(1) of the Act states that a unit is inappropriate if it includes professional and nonprofessional employees unless a majority of the professionals vote for inclusion in the unit.

Under Section 2(12) of the Act, it is the work performed and the “consistent exercise of discretion and judgment in its performance,” rather than the employee's qualifications, which is controlling in determining whether an individual is a professional employee. *A.A. Matthews Associates*, 200 NLRB 250, 251 (1972).

The evidence establishes that the QC specialists consistently engage in varied, intellectual work. QC specialists use their judgment to decide where to insert hold points into the plant’s processes and procedures, and when work reaches the “hold point,” an inspection is conducted to verify that the work is correct. QC specialists do not follow any written procedures in deciding where to insert hold points. Compare with *Twin City Hospital Corp.*, 304 NLRB 173 (1991) (medical technologists were not professional employees where 70-85 percent of their work consists of running tests on automated instruments and applying detailed written procedures). QC specialists are expected to be familiar with predetermined standards in order to determine if work is performed in accordance with those standards.

There is no evidence that the QC specialists’ work is or can be standardized in terms of time. In addition, the QC specialists engage in work requiring an “advance type of knowledge,” in that they must be able to review and understand engineering documents in order to appropriately apply hold points to the plant’s processes and procedures.

The qualifications for QC specialists include being qualified by an American National Standards Institute<sup>6</sup> (“ANSI”) Level III inspector to perform all I&C, Electric, and Mechanical inspections at an ANSI Level II or Level III. QC specialists are not required to hold an engineering degree, but if an employee does, it is applied towards qualifying an employee for the position pursuant to ANSI standards. Regardless of whether an employee holds an engineering degree, on the job experience is required to meet the qualifications of the classification.

In sum, I find that QC specialists consistently exercise discretion and judgment in the performance of varied, intellectual work which cannot be standardized in time, and which requires an advanced type of knowledge. As such, they are professionals within the meaning of the Act and are expressly excluded from the stipulated Unit.

**(4) *The QC Specialists Lack an Overwhelming Community of Interest with the Bargaining Unit***

As an additional basis for denying Petitioner’s unit clarification petition, I find that the QC specialists do not share an overwhelming community of interest with the Unit, and accretion is thus inappropriate.

As discussed, Curry was misclassified as belonging to a classification contained in the stipulated Unit description. Curry’s appropriate classification, QC specialist, did not exist at Palisades until the Employer drafted its reorganization plan in response to the NRC Order. The

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<sup>6</sup> ANSI is similar to a national board which develops industry standards.

appropriate inquiry with regard to the unit clarification petition, then, is whether Curry's proper classification—QC specialist—should be accreted into the Unit.

As set forth above, the Board will find accretion only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the pre-existing unit to which accretion is sought. *E.I. Du Pont de Nemours, Inc.*, supra at 608; *Compact Video Services, Inc.*, supra at 119. I find that the QC specialists lack an overwhelming community of interest with the bargaining unit. In making this determination, I rely upon the lack of interchange among the employees, the lack of common supervision, and the lack of similar working conditions. I also note that record evidence of the two factors which the Board finds particularly important in assessing the appropriateness of an accretion— employee interchange and common day-to-day supervision—is completely absent, and I find this absence weighs heavily against accreting the QC specialists into the Unit. *Passavant Retirement & Health Center*, supra at 1218; *Mercy Health Services*, supra; *Towne Ford Sales*, supra at 312.

**(a) Employee Skills and Functions; Degree of Functional Integration**

There is some minimal overlap in the skills of the QC specialists and some of the bargaining unit employees. In addition, at times, the QC specialists and the Unit employees are functionally integrated, in that the QC specialists inspect the work of the Unit employees, and insert and implement hold points into the Unit's flow of work.

While the QC specialists provide independent oversight of the work of the plant, the bargaining unit employees, by contrast, perform the physical work to ensure the plant's systems and controls work properly. For example, unit employees in the maintenance I&C department monitor, analyze, and perform calibrations. They conduct repairs of systems and components, and perform day-to-day maintenance on instruments in the field or in the control room. Unit employees in the radiation protection department ensure that radiation is controlled, and they also provide support in fixing systems within the radiological controlled area. Unit employees in the chemistry department perform sampling and analysis in order to maintain chemistry to support safe plant operations.

Some maintenance employees in the bargaining unit have additional limited skills to perform inspections in a specific area of expertise.<sup>7</sup> The QC specialists monitor these employees' certifications to perform inspections and coordinate their inspection work with oversight department supervision. In 2011, 94% of inspections were performed by QC specialists. In 2012, all inspections as of the date of the hearing were performed by QC specialists.

As discussed above, the QC specialists insert hold points into the work flow of the processes and procedures performed by employees, including bargaining unit employees, at the plant. When work reaches a "hold point," an inspector, either a QC specialist or a maintenance employee with the specific area of expertise, will check to verify that the work is correct and in

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<sup>7</sup> In addition, contractors may also perform limited inspections under the oversight of the QC specialists.

accordance with a pre-determined standard. He signs off on the hold point, and the work then can continue to the next step.

Thus, Unit employees in the maintenance department may use similar skills to QC specialists when they perform limited inspections. Other than this task, the Unit employees use different skills than QC specialists. Their work is functionally integrated to accomplish the Employer's mission. However, while the functional integration of the two groups weighs in favor of a finding of a community of interest, no one factor is determinative and "a balancing of factors is necessary." *E.I. Du Pont, Inc.*, 341 NLRB 607, 608 (2001), quoting *Great A & P Tea Co.*, 140 NLRB 1011, 1021 (1963).

***(b) Geographic Proximity and Working Conditions***

QC specialists work in an office environment with the rest of the oversight department in the Service Building Annex. They have cubicles with their own desks, computers, phones, and office cabinets. Other individuals working on that floor include maintenance supervision, management, quality assurance auditors, assessors and staff, the planning and scheduling department, and emergency planning department. None of these employees are in the bargaining unit.

All bargaining unit employees are considered non-exempt under the Federal Labor Standards Act; that is, they are entitled to payment for overtime work. The QC specialists are exempt from payment for overtime work. The QC specialists also work under a different incentive or bonus plan than the bargaining unit employees.

The working conditions of the QC specialists reflected in the record mitigate against their inclusion in the bargaining unit.

***(c) Lack of Employee Interchange and Lack of Common Supervision***

The record reflects no interchange between the QC specialists and the Unit employees.

With regard to supervision, QC specialists and Unit employees do not share common day-to-day supervision.

The reorganization plan implemented after the NRC Order instituted a supervisory hierarchy at all of the Employer's single reactor plants, including Palisades, for the nuclear oversight department: the two QC specialists and two quality assurance auditors report to a quality assurance supervisor who reports to the plant's nuclear oversight manager. Reporting directly to the nuclear oversight manager are two quality assurance assessors. The nuclear oversight manager is the highest ranking individual in a plant's nuclear oversight department, and he or she reports at the corporate level to the director of oversight. Above the director of oversight is vice president of oversight, who reports directly to the Employer's chief executive officer ("CEO").

The QC specialists do not share common supervision or management with the bargaining unit in the supervisory hierarchy before the level of the CEO. The only circumstance in which they might share supervision is in the infrequent event a maintenance department employee would be performing an inspection and would thus report to the quality assurance manager for purposes of that inspection. These infrequent, *ad hoc* circumstances notwithstanding, the QC specialists and the bargaining unit employees do not share common supervision.

The complete absence of employee interchange and common day-to-day supervision weighs heavily against a finding that accretion is appropriate. *Passavant Retirement & Health Center*, supra at 1218; *Mercy Health Services*, supra; *Towne Ford Sales*, supra at 312.

***(d) Collective Bargaining History***

The Unit into which Petitioner seeks to accrete the QC specialists is a newly certified unit. The parties have not reached an initial contract, and have bargained unsuccessfully regarding the placement of the QC specialists. Thus, the bargaining history is a neutral factor in my analysis. *In re Trane*, 339 NLRB 866, n.4 (2003).

***(e) Conclusion Regarding Accretion***

Due to the lack of interchange among employees, lack of common supervision, and lack of similar working conditions, I find that the QC Specialists lack an overwhelming community of interest with the bargaining unit. In reaching this conclusion, I find the complete absence of interchange and common day-to-day supervision to weigh heavily against a finding of an overwhelming community of interest. Accordingly, accretion is inappropriate. *Passavant Retirement & Health Center*, supra at 1218; *Mercy Health Services*, supra; *Towne Ford Sales*, supra at 312.

**CONCLUSIONS AND FINDINGS**

Based on the foregoing discussion and on the entire record,<sup>8</sup> I find and conclude as follows:

1. The hearing officer's rulings 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.
3. The labor organization involved claims to represent certain employees of the Employer.
4. The QC specialist position is excluded from the Unit due to the express exclusions of exempt and professional employees in the certified unit, and the lack of an overwhelming community of interest favoring accretion.

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<sup>8</sup> The Employer timely filed a brief, which was carefully considered.

Accordingly, the Petitioner's request to clarify the stipulated bargaining unit to include the quality control specialists is denied.

Dated at Detroit, Michigan, this 14th day of May 2012.

(SEAL)

*/s/ Terry Morgan*

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Terry Morgan, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

### **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 **May 29, 2012**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,<sup>9</sup> but may **not** be filed by facsimile.

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<sup>9</sup> To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.