

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

WEYERHAEUSER NR COMPANY¹

Employer

and

Case 06-RC-079980

UNITED MINE WORKERS OF AMERICA,
REGION 1, AFL-CIO, CLC²

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Weyerhaeuser NR Company, herein called the Employer, is engaged in the manufacture and non-retail sale of pressed woods and boards at its Heaters, West Virginia facility, where it employs approximately 103 employees. The Petitioner, United Mine Workers of America, Region 1, AFL-CIO, CLC, filed a petition, as amended at the hearing, with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time maintenance technicians employed by the Employer at its Heaters, West Virginia facility, excluding all operational employees, laboratory employees, quality control employees, maintenance operations planners, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the parties filed a timely brief and memorandum of points and authorities, respectively, which have been duly considered by the undersigned.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner was amended at the hearing to correct the Petitioner's name. The original petition identified the Petitioner as from Region I, and the amendment corrected the name to state that the Petitioner is from Region 1.

As evidenced at the hearing and in their written arguments the parties disagree on the appropriateness of the petitioned-for unit based on the community of interest of employees throughout the plant.

At the hearing, the Employer contended that the only appropriate unit consists of all production and maintenance employees, and excluding quality control/lab employees, guards, supervisors and managers. In its brief, the Employer further contends that the petitioned-for unit runs contrary to precedent finding that a wall-to-wall unit is presumptively appropriate in the lumber industry.³ The Petitioner, contrary to the Employer, seeks a unit of maintenance technicians only, and contends that the petitioned-for unit is a presumptively appropriate service and maintenance unit.⁴ At the hearing, the parties agreed that any unit found appropriate would exclude laboratory employees, quality control employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The unit sought by the Petitioner includes approximately 26 employees, while the unit the Employer seeks would include about 103 employees. The Petitioner stated on the record that it is unwilling to proceed to an election in any unit other than the petitioned-for unit. There is no history of collective bargaining for any of the petitioned-for employees.

I have considered the evidence and the arguments presented by the parties on each of the issues. For the reasons discussed below, I have concluded that the operators and

³ At the hearing and in its brief, the Employer states that the appropriate unit is a unit of all production and maintenance employees or, in the alternative, the unit should include the three maintenance operations planners. As noted herein, the Employer does not offer testimony or take a position with respect to the placement of the Shipping team. The record additionally reveals that the employees identified more fully infra as B team employees, who are generally administrative personnel, are not involved in the hearing. Based on the record, I cannot, therefore, conclude that the Employer has proposed a presumptively appropriate plant wide unit.

⁴ The Petitioner, in its memorandum and at the hearing, contended the petitioned-for unit is a presumptively appropriate service and maintenance unit in accordance with *Laurel Associates, Inc.*, 325 NLRB 603 (1998). *Laurel Associates* reflects the Board's decision that service and maintenance units are presumptively appropriate in a nursing home setting. The Board has not applied the case outside of the health care industry. Thus, the petitioned-for unit is not a presumptively appropriate service and maintenance unit.

maintenance technicians share an overwhelming community of interest.⁵ Accordingly, and because the Petitioner will not proceed to an election in a unit other than the petitioned-for unit, I am issuing an Order dismissing the petition.⁶

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, a Washington corporation, is engaged in the manufacturing and non-retail sale of pressed wood and boards at its Heaters, West Virginia facility. The Employer primarily produces oriented strand board, which are four-by-eight foot sheets of compressed wood, for use by home builders in residential construction. The Employer's facility includes a multi-story indoor facility covering approximately 13 acres, as well as outdoor surrounding areas. In these operations, the Employer employs approximately 103 employees.

The overall operations of the Employer are the responsibility of its Plant Manager Jesse Merica. The Employer's management staff includes Operations and Maintenance Manager Steve Cutlip, Materials Manager Jo Carr, Raw Materials Manager Curt Hassler, Technical Manager John Noffsinger, Human Resources Manager Bill Underwood, Financial Manager Darrell Hawkins, Area Manager Kevin Cochran, Area Manager Mike Feronti, Area Manager Tim Sagraves, Area Manager Cindi Liston and Team Leader Ed Williams.⁷

⁵ In its brief, the Employer stated that the Regional Director, through the Hearing Officer, determined that the petitioned-for unit was not presumptively valid, and that "the Union carried the burden of presenting evidence demonstrating that the petitioned-for unit has an overwhelming community of interest with what it believes to be the only appropriate unit in this case." In fact, the Regional Director did not make any pre-hearing determinations in these respects. Further, to the extent that the Hearing Officer misstated the law on the record, such misstatement is not to be substituted for controlling case law on the issues.

⁶ As set forth infra, because of my conclusions on these issues, I find it unnecessary to resolve the unit placement issues relating to the three maintenance operations planners.

⁷ During the hearing, the parties stipulated, and I find, that the above individuals are statutory supervisors under Section 2(11) of the Act, based on their authority to hire and fire.

All employees enjoy the same benefits, which include family medical and dental insurance coverage, tax-favored health care accounts, life insurance, short- and long-term disability insurance, pension plan, paid vacation based on continuous service, the My Discount program⁸ and adoption assistance. In addition, the Employer provides a yearly safety toe boot allowance for all employees and provides uniforms for all employees for a low fee. All hourly employees record their hours electronically in the Employer's computer system. Also, all employees take breaks in the employee break room. There are several smaller break areas with computers throughout the facility, where all employees can check e-mail and record their hours.

All employees are subject to uniform policies in the same employee handbook. All of the operations and maintenance employees are required to complete firefighting safety training. The same performance evaluation form is utilized for operators, maintenance technicians and maintenance planners. These employees are evaluated on the factors of Initiative, Critical Thinking, Administrative Communication, Interpersonal and Safety/Health/Environment.

The plant consists of four major production areas: the log handling, stranding and screening (LSS) area, the drying, energy and environmental (DEE) area, the blending, forming and pressing (BFP) area and the sawing, packaging and warehousing (SPW) area. One Area Manager heads each of the four major production areas and supervises the employees working in that area.

The automated production process begins outdoors, where the 135-foot portal crane unloads logs from trucks and places them on log decks. Log decks are on chain conveyors which carry the logs to an area where they are sprayed with water and cleaned. From there, the conveyors carry the logs to the debarker, which removes bark from the logs. Then, the logs proceed through the ring stranders, which cut the logs into strands. The strands are separated

⁸ The My Discount program offers discounts to employees in the categories of auto, clothing, finance, food, home/garden, household/family, mind/body, sports/recreation, technology/electronics and travel/entertainment.

by size, then are moved on conveyors and dropped into the dryer area. There are four dryers that dry the strands. The strands then go on the chain conveyor through the BFP area, where they are oriented and pressed. In the finishing area, one board at a time is cut into a square and trimmed. In the packaging area, the boards are painted, packaged, loaded onto trucks, and shipped to the market.

The mill's employees are divided into six distinct teams on a rotating schedule. The six teams are referred to as the W, V, O, S, B and Shipping Team, respectively. All of the teams have a supervisory team leader and a team coordinator.⁹ The mill also assigns five employees, one maintenance technician and four operators, to work on a skeleton team. The skeleton team works only on weekends when all other production and maintenance work is suspended.¹⁰

Teams W, V and O are the three production teams which are comprised of production employees who are also referred to by the Employer as operators. The employees on each team have a fixed shift such that they work five night shifts, followed by five days off. Then they work three day shifts, have one day off, work three day shifts and have four days off, before the rotation repeats. Each production shift is a 12-hour shift, from 7:47 a.m. to 8 p.m., or 7:47 p.m. to 8 a.m. The three production teams consist of about 22 employees including approximately equal numbers of employees from each production area. Thus, each production team includes seven to eight LSS employees, three to four DEE employees, three to four BFP employees and seven SPW employees. In addition, teams W, V and O each include two shift maintenance employees. The shift maintenance employees are employees of the maintenance department, who spend a year or more assigned to perform maintenance during the scheduled operations shifts.¹¹ The shift maintenance employees work the same 12-hour production shift as the

⁹ The parties stipulated that the team leaders are supervisors within the meaning of Section 2(11) of the Act, while the team coordinators are not.

¹⁰ The record indicates that the skeleton team serves a safety function. The skeleton team monitors equipment that is left on even when operations are suspended, and monitors the arrival of deliveries of logs to the mill.

¹¹ One witness from the maintenance department testified that shift maintenance employees are assigned to a production team through a rotation process. When the rotation process "calls up" a maintenance

production employees. When they need to call off from work, the shift maintenance employees receive coverage from a list of employees in the maintenance department.

Since 2008, the mill has had one maintenance department team, known as the S team.¹² The S team includes maintenance technicians who work four weekdays, usually Tuesday through Friday, from 6:30 a.m. to 4:30 p.m. The maintenance department also includes three maintenance operations planners that the Petitioner seeks to exclude from the unit. As described more fully below, maintenance technicians are assigned to specific areas of the plant.

The administrative, accounting, technical, human resources and engineering personnel make up the B team. About five shipping employees comprise the Shipping team.

The mill operates 24 hours per day, five days per week. However, on every Friday and one Saturday per month, also referred to as “down days,” production ceases and the mill dedicates the day to preventive maintenance and repairs. On such days, as discussed further below, it is common for production employees to perform various preventive maintenance tasks and clean-up in the functional areas to which they are assigned. In addition, maintenance employees perform regular maintenance on down days, sometimes with the assistance of operators.

None of the production or maintenance positions require special types of training or certification. However, the record reveals that certain employees in both the production operator and maintenance technician classifications possess skills in electrical, millwright and welding work. Only the maintenance team leader and one maintenance technician are qualified to operate the lathe.

technician for shift maintenance, he is required to spend one year with the production team working as a shift maintenance employee. The witness testified that maintenance technicians can choose to remain on the production schedule for longer than a year if they desire.

¹² Before that, there was no separate maintenance team.

II. THE PETITIONED-FOR UNIT OF MAINTENANCE TECHNICIANS

The Petitioner seeks a unit of about 26 maintenance technicians. Approximately 19 maintenance technicians are assigned to specific production areas of the mill and work a 10-hour shift four days per week. Approximately six remaining maintenance technicians work on production teams as shift maintenance employees during the day shift, on the rotating 12-hour production schedule, and one maintenance technician works on the skeleton team. On the night shift, only two shift maintenance technicians work at the mill. All maintenance technicians are administratively classified within the maintenance department and report to Maintenance Supervisor Edward Williams.¹³ Shift maintenance technicians, as described in greater detail below, also report to the production team leader for the production team shift (W, V or O) to which they are assigned.

When an individual applies for a maintenance technician position, he must take a Ramsay test, which assesses various maintenance skills. As noted, the Employer does not require maintenance technicians to attain special training or certification.

At the start of the S team shift, the maintenance coordinator gives the maintenance technicians a report on the events of the night shift and whether there were any problems to address. Maintenance technicians then receive assignments based on any problems that might have occurred on the previous shift. Maintenance technicians are responsible for conducting daily walkthroughs in their assigned production areas to identify maintenance issues and relay them to others. Maintenance technicians also perform scheduled maintenance projects on the equipment and machines in their area. Maintenance technicians are assigned to work in the same functional production areas as the operators, and there are two maintenance technicians, referred to as shift maintenance employees, on each production team. The shift maintenance

¹³ The maintenance department also includes three maintenance operations planners, whom the Petitioner seeks to exclude from the unit. As discussed more fully herein, the maintenance operations planners work the S team schedule and provide planning services for both the maintenance technicians and the operators.

employees address immediate maintenance issues on the equipment and perform preventative maintenance.

Generally, maintenance technicians provide coverage for other maintenance technicians who are unable to work their scheduled shift. However, the record reveals instances in which operators have provided coverage for maintenance technicians. For example, in 2010, a group of production operators provided coverage for two maintenance technicians who went on a two-and-a-half-week vacation. In that instance, the operators provided coverage because of a lack of available maintenance technicians. However, a list of the other maintenance technicians working was provided in the event assistance to the operators was needed.

The record establishes transfers between the positions at issue in this proceeding. About seven of the current maintenance technicians worked formerly as operators. One of the maintenance technicians began work as a maintenance technician, took a job as a maintenance planner, and about twelve years ago returned to a maintenance technician position in the BFP area. One of the current production operators began employment as a maintenance technician and later quit. He then sought reemployment and returned to work as an operator. The record references one employee who started as an operator, tested into the maintenance department, then later returned to work as an operator.

As to cross training, the record reveals that about 19 current maintenance department employees have been trained in various operations tasks, in order to run the operations equipment in one of the mill's functional areas. Also, as discussed more fully below, many maintenance technicians are trained in the use of production equipment and operations tasks as a result of their participation in the Employer's Advancement by Contribution (ABC) program.

If there is an emergency failure of some kind, the Employer can require maintenance technicians to remain on site for up to an additional 16 hours. The Employer cannot require similarly operators to remain on site.

The maintenance technicians are paid on the maintenance department pay scale. The maintenance pay scale ranges from \$13.73 per hour at Level I to \$24.23 per hour at Level VI.

As discussed below, the range of pay for maintenance and production employees is very similar.

Maintenance technicians have an assigned toolbox, which they often keep in the mill's maintenance shop. Operators also use or have access to toolboxes, which generally includes hand tools and are kept in their respective functional areas. Maintenance technicians use some specialized tools that are not commonly used by operators, including motor lining tools, milling machine bits, lathe specialty tools,¹⁴ and a variety of other measuring and specialty tools. For example, unlike operators, maintenance technicians possess and use specialty tools required to run a milling machine or a millwright. However, the record indicates that the operators can use maintenance technicians' tools, as well as materials from the mill's maintenance shop, as needed. The maintenance shop is not locked, is open to all employees and occasionally, operators enter the maintenance shop in the course of their work.

III. MAINTENANCE OPERATIONS PLANNERS

The Petitioner also seeks to exclude three maintenance operations planners (Terry Andrews, Judy Craft and Paul Parker) from the unit petitioned-for herein on the basis that they do not share a community of interest with the maintenance technicians.

The maintenance operations planners are administratively classified within the maintenance department, under the S team. The maintenance operations planners work the same S team schedule and are paid on the same wage scale as the maintenance technicians. Like the maintenance technicians, these employees are under the supervision of Team Leader Edward Williams. All of the maintenance operations planners have attained Level VI and are cross trained in maintenance and operations work.

The record establishes that the maintenance operations planners provide planning services for both the maintenance and operations teams. Planning work includes scheduling the work of contractors and deliveries for both the maintenance and operations employees, as

¹⁴ There is only one maintenance technician who regularly carries lathe specialty tools in his toolbox.

well as ordering parts for the mill. Also, maintenance operations planners print off work orders from the Employer's computer system and distribute preventive maintenance (PM) assignments to both maintenance technicians and operators. Maintenance operations planners track PMs and if the PMs are not completed, the maintenance operations planners notify management.

All three of the maintenance operations planners have cubicles on the upper floor of the office building in the facility, where they sit together and perform planning work on their computers. Throughout the day, in the course of planning, the maintenance operations planners walk downstairs to the storeroom to verify whether certain parts are in the storeroom. Unlike the maintenance operations planners, the maintenance technicians do not have assigned cubicles. To the extent that maintenance technicians use the facility's cubicles, such use is not related to their responsibilities as maintenance technicians. In this regard, the record establishes that one maintenance technician uses a cubicle in connection with his role of mill fire chief and keeper of the mill's hand held radios.

The record reveals that maintenance operations planners engage in maintenance work. For example, the maintenance operations planners are included in the coverage list and therefore provide occasional coverage for the shift maintenance employees. Such maintenance work makes up a relatively small portion of the duties of the maintenance operations planners.

Maintenance operations planners spend between 10 and 30 percent of their time performing hands-on maintenance work. Terry Andrews, a maintenance operations planner assigned to the BFP area, spends about 50 percent of his time doing planning work, and between 20 and 30 percent of his time performing maintenance work, and another 20 to 30 percent of his time performing other tasks. Andrews occasionally volunteers to provide shift coverage for maintenance technicians and has stayed over to perform maintenance tasks from 4:30 p.m. to 8 p.m., along with his maintenance operations planner duties. On normal working days, when he is not providing coverage for other employees, Andrews performs occasional maintenance work, such as repairing call strings, rebuilding hot oil pumps and helping work on an unloader boom. The other two maintenance operations planners, Craft and Parker, spend

about 90 percent of their time doing planning work. Andrews worked nine to ten years in the maintenance department before he became a maintenance operations planner, and therefore Andrews appears to possess greater maintenance skills than Craft and Parker. In addition, it appears that maintenance work is not required of the maintenance operations planners unless they are called to cover absences, and that to the extent they perform maintenance work, it is done on a volunteer basis and in the spirit of cooperation.

The maintenance operations planners' day-to-day personal contact with the maintenance technicians appears somewhat limited. The record indicates that maintenance operations planners spend a majority of their day planning in their cubicles in the upper floor office space and in the storeroom. Although the maintenance operations planners are each assigned to plan for a specific functional areas, they do not have a designated walkthrough area like the maintenance technicians. In addition, if an employee from another functional area requests their planning services, the maintenance operations planners assist those other areas as well.

IV. PRODUCTION EMPLOYEES/OPERATORS

Operators work throughout the mill in one of the four major production areas. As noted, operators work on one of three production teams, referred to as teams W, V and O, which each works a different rotating 12-hour shift. In the various functional areas, the operators work on specific machines necessary for the part of their respective part of the process. For example, in the LSS area, the operators primarily work with the portal crane, debarker and stranders. In the DEE area, the operators primarily work with the dryers. In the BFP area, the operators use the blenders, screens and presses. In the SPW area, the operators work with automated saws and equipment used for the finishing and packaging processes.

As noted, each production team includes two shift maintenance employees. The shift maintenance employees perform maintenance as needed for that production shift, work the hours and schedule of the production shift and are supervised by the production team leader.

Each production team includes a team coordinator, who helps to run preshift meetings and acts as a liaison and main contact for mill issues.¹⁵ On the Team V production team the team coordinator is a shift maintenance employee. The other two team coordinators are operators.

When an individual applies for an operator position, he must take an assessment test. If an operator, as an internal candidate, wishes to transfer to a maintenance department position, he must apply and take the assessment tests that any outside candidate would take.

When an operator needs shift coverage, other operators generally provide that coverage. The record contains limited examples of a maintenance technician providing coverage for an operator. For example, maintenance technicians provide coverage for operators during special celebratory dinners and special meetings. In addition, approximately two years ago, maintenance technicians performed operations work while the operators were being trained.

The operators are paid on the production pay scale. The production pay scale ranges from \$13.67 per hour at Level I to \$23.17 per hour at Level VI, such that the difference in pay compared with maintenance technicians amounts to six cents at Level I, and about one dollar at Level VI. The shift differential operators receive narrows the gap between the maintenance department and production pay scales even further.

Like maintenance technicians, operators often possess a high level of training and skills in maintenance subjects. For example, the record reveals that several operators are trained as welders and millwrights. In addition, some operators possess skills and training in electrical work.

The record reveals that, on a weekly basis, operators work with maintenance technicians on repairs and that operators perform maintenance work on their own. The work includes both preventive maintenance and more skilled repairs, including in traditional maintenance skills such

¹⁵ The team coordinators work on teams in the functional areas, but also share a cubicle on the second floor of the office building, where they keep materials pertaining to their duties as team coordinators.

as electrical work. For example, the record references a recent repair involving an arch and notch system in the finishing area. In the repair of that system, operators, who possess training in electrical work, assisted with the wiring of the equipment.

As to operators and maintenance technicians working together on repairs, recently both repaired the log deck chain on the conveyor. The record also contains a sampling of work orders evidencing jointly performed repair work. Repairs on the clarifier, which treats the mill's water supply, were jointly performed by operators and maintenance technicians. In 2010 maintenance technicians and operators replaced a strander ring. In late 2011 or early 2012, maintenance technicians and operators rebuilt the strander ring, replaced a dryer and performed bullnose repairs. There are also instances where operators perform maintenance functions without the presence of a maintenance technician. For example, two weeks before the hearing in this matter, the conveyor broke down on a night shift. The operators had reinstalled the chain by the time maintenance technicians arrived after being called in to work.

Down Days

On down days, which occur every Friday and on one Saturday per month, all employees work together to perform various maintenance assignments. On these days, operators receive work orders to perform preventive maintenance (PM). Preventive maintenance generally includes basic, routine maintenance of a machine, including the lubrication and cleaning of equipment. On down days, maintenance technicians also receive PM assignments, as well as more skilled scheduled maintenance repairs. If a maintenance technician is assigned a more skilled maintenance repair project, operators are often assigned to assist the maintenance technicians in completing the project. In those instances, the maintenance technicians and operators work together to complete a repair.

Advancement by Contribution

In recent years, the Employer implemented the Advancement by Contribution (ABC) program, a program by which employees can become cross trained and advance in pay while acquiring additional technical skills. According to the Employer's 2011 Resource Guide, there

are six steps included in the process. The steps appear to coincide with the Employer's pay scales, which include six levels as well. Each level requires approximately 70 points and a test must be passed to reach the next level. There are various certifications and programs in which employees can opt to participate in order to move up a level. Among other methods available from which to gain points, operators can earn points by completing the operations millwright and operations welder programs. The operations millwright and operations welder programs help the operator gain experience and eventually certification in these maintenance skills. For either program, the operator spends about 340 hours working on those specific maintenance skills.

The program includes a requirement of cross-development experience in order for employees to reach Level VI. In order to advance and reach Level VI, operators must complete at least 80 hours of maintenance experience, and maintenance technicians must complete at least 80 hours of operating experience. In the case of maintenance technicians seeking to attain Level VI, the 80-hour requirement includes one full rotation (48 hours) with an operations team.¹⁶ In the case of an operator seeking to attain Level VI, seven consecutive days (40 hours) of work with an operations or maintenance team, and 40 hours of working with maintenance on down days or coming in and working with the maintenance team on the operators' days off.

As noted, the ABC program is voluntary. The ABC program appears to be the only way that current employees can work towards reaching Level VI. However, the record indicates that a new employee could be hired in at any pay level, including Level VI.¹⁷

¹⁶ According to the ABC program manual, the requirement also includes 32 hours of operating experience from when the maintenance team runs the mill. The testimony from multiple witnesses indicated that since about two years ago, there are no longer regular periods during which the maintenance department runs the mill. The record shows that currently, the maintenance department only runs the mill during times that operators are engaged in special celebratory team dinners or meetings or training, which occur relatively infrequently. It appears that the requirement for attaining Level VI effectively no longer requires experience running the mill.

¹⁷ Currently, there are about 42 operators, three maintenance operations planners and 19 maintenance technicians who have reached Level VI. The record is silent as to whether any of these, or any employee, has actually been hired in at a Level VI.

V. ANALYSIS

A. Board Law

The Petitioner seeks to exclude the approximately 69 production employees, also referred to as operators, from the unit petitioned-for herein on the basis that they do not share an overwhelming community of interest with the maintenance technicians. In its brief and at the hearing, the Employer cited the holding articulated in *Weyerhaeuser Timber Co.*, 87 NLRB 1076 (1949), also referred to as the *Weyerhaeuser* doctrine, in which the Board rejected a separate maintenance unit in the lumber industry. The Employer described the progression of case law since then, and noted in its brief that the *Weyerhaeuser* doctrine was later found not to operate as a per se prohibition on separate maintenance units. *U.S. Plywood Champion Papers, Inc.*, 174 NLRB 292, 295 (1969) (“We no longer adhere to the *Weyerhaeuser* doctrine, but determine the appropriateness of units in this industry based on the same factors as any other type of enterprise. However . . . the underlying reasons of the *Weyerhaeuser* decision remain valid factors to be considered and weighed in making unit findings . . .”). Contrary to the Petitioner, the Employer contends that a unit including all maintenance and production employees constitutes the appropriate unit. In the alternative, the Employer contends the unit should include the three maintenance operations planners.

The Act does not require a petitioner to seek representation of employees in the most appropriate unit, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the petitioned-for unit is appropriate. An appropriate unit is one that is readily identifiable and in which employees share a community of interest. Where these conditions are met, the Board will find the petitioned-for unit appropriate, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending shows that employees in the larger unit share an “overwhelming community of interest with those in the petitioned-for unit. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (August 16, 2011), slip op. at 17.

Under the traditional analysis, in determining whether employees in a petitioned-for unit share a community of interest, thereby constituting an appropriate unit, the Board weighs:

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.

United Operations, Inc., 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills.

Gustave Fisher, Inc., 256 NLRB 1069, fn. 5 (1981). However, the Board considers all relevant factors in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there is "no legitimate basis upon which to exclude [the] employees from" the larger unit because the traditional community of interest factors "overlap almost completely." *DTG Operations, Inc.*, 357 NLRB No. 175 (December 30, 2011), slip op. at 5; *Specialty Healthcare*, supra at 11-13 and fn. 28, quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-22 (D.C. Cir. 2008). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (December 30, 2011), slip op. at 3, fn. 8.

The Board has long found that a separately petitioned-for maintenance-only unit is appropriate "where the facts of the case demonstrate the absence of a more comprehensive bargaining history and the petitioned-for maintenance employees have a community of interest separate and distinct from other employees." *Buckhorn, Inc.*, 343 NLRB 201 (2004), citing *American Cyanamid Co.*, 131 NLRB 909 (1961). In *Buckhorn, Inc.*, in finding the petitioned-for maintenance-only unit inappropriate, the Board focused on the highly integrated nature of the

employer's operations, the significant degree of contact and interaction between the production and maintenance employees, the shared performance of certain duties, the absence of a wide disparity in the two classifications' skill levels, evidence of permanent work transfers between the two groups, an absence of completely separate supervision, identical working conditions such as work rules, facilities and fringe benefits and an overlap in the wage rates paid to the two groups. *Id.* at 202-04. Similarly, the Board has found maintenance-only units inappropriate where maintenance and production employees work together to solve immediate production and maintenance problems, and operators routinely assisted maintenance employees in repairs. *TDK Ferrites Corp.*, 342 NLRB 1006 (2004).

B. Application of Board Law: The Employees in the Unit Sought By Petitioner Are Readily Identifiable as a Group and Share a Community of Interest, but the Employer Has Met Its Burden of Demonstrating the Existence of an Overwhelming Community of Interest Between the Petitioned-For Employees and the Operators.

In this case, all of the petitioned-for employees share the same job classification of maintenance technician. All are part of the maintenance department and are supervised by Maintenance Team Leader Williams. Most of the maintenance technicians work a schedule of four ten-hour days. Their primary duties involve repairs to machinery. Based on these factors, I conclude that the maintenance technicians constitute a readily identifiable group.

The Employer does not contend that employees in the petitioned-for unit do not share a community of interest. Rather, the Employer contends that the appropriate unit includes maintenance and operations employees and maintenance planners, because the groups share an overwhelming community of interest. In the alternative, the Employer contends that the appropriate unit must at least include the three maintenance operations planners.

Applying the *Specialty Healthcare* framework in this case, I find that the Employer has carried its burden of proving that the operators share an overwhelming community of interest with the employees sought by Petitioner. Accordingly, the unit sought by Petitioner is not appropriate.

In making my determination in addition to the Specialty Healthcare framework, I have considered the Board's decision in *Buckhorn*, supra, which has many similarities to the instant case. In that case, all of the employer's plastic containers production process was located within the same facility. The employer employed 89 production and shipping, receiving and warehouse employees and 19 maintenance employees.

In *Buckhorn*, the Board found that the petitioned-for unit of maintenance employees, excluding the production employees was not an appropriate unit for collective-bargaining purposes. The Board's decision was based on the highly integrated nature of the employer's operations and the significant degree of contact among maintenance employees and production employees. Skilled maintenance and set up maintenance spend virtually all of their time on the production floor working with production employees to produce a finished product. Production employees sought out assistance if maintenance employees when such problems arose but routinely performed the same duties as maintenance employees. In addition, there was not a wide disparity in the skill level among the majority of the maintenance and production employees with the exception of the five skilled maintenance employees.

There were no education or certification requirements and maintenance employees regularly performed production work. The Board also noted the evidence of permanent transfers between the two groups of employees.

Also weighing against the appropriateness of a separate maintenance unit was the fact that most of the maintenance employees were supervised by shift production supervisors also supervised production employees. Finally, all maintenance employees and production employees shared identical terms and conditions of employment, including work rules and policies and fringe benefits. Specifically, the production and maintenance employees worked similar shifts, were all hourly paid, had identical benefits, and were subject to the same policies outlined in the employee handbook, and shared the same break room/schedule and locker.

Although skilled maintenance received the highest wage, production employees received similar wages.

In this case, the three shift maintenance employees and the maintenance employee on the skeleton shift are supervised by the shift production supervisor as well as maintenance team leader Williams and the rest of the maintenance technicians are supervised by Williams. However the other factors relied on by the Board are remarkably similar to the facts in this case. The operations and maintenance employees have similar wage rates and identical benefits, are subject to identical policies, utilize the same break rooms, and work together on many projects where they have daily contact on the production floor. In addition there is evidence of transfers between the groups. As in *Buckhorn*, the Employer herein requires no formal education or certification for its maintenance employees and the record shows the two groups have similar skills.

With regard to my conclusion that the unit sought by Petitioner is not an appropriate unit, I find that the unit sought by Petitioner is not drawn along departmental lines, in that the petitioned-for unit excludes the three maintenance operations planners, notwithstanding that they are maintenance department employees who share the same schedule and supervision with the rest of the maintenance department. Moreover, the record indicates that the work of the operators and maintenance technicians is substantially functionally integrated. *Odwalla, Inc.*, 357 NLRB No. 132 (2011), slip. op. at 5. The operators and maintenance technicians work in the same functional areas and perform several of the same tasks. While the traditional roles of maintenance technicians and operators differ, the functional areas depend on both classifications working closely together in an integrated fashion. In addition, working as part of each production team are two shift maintenance employees who have constant interaction with the operators in order to maintain production. Also noteworthy is the fact that the maintenance operations planners perform their duties for both operators and maintenance technicians, further evidencing the integrated nature of the Employer's operations.

Nor is the unit sought by Petitioner structured appropriately along lines of supervision. In this regard, Petitioner seeks to represent the maintenance technicians, who are all supervised by Team Leader Ed Williams. However, the shift maintenance employees report not only to Williams, but also to the team leader on the production team to which they belong. Thus, the Employer has established that with regard to supervision, some of the maintenance technicians and operators share common supervision.

The unit sought by Petitioner is also not drawn in accordance with differing methods of compensation or differing benefits. On the contrary, although there are minimally different pay scales for the maintenance and production employees, the employees are all hourly paid, are paid the same hourly ranges and have exactly the same benefits.

Also important to my conclusion that the Employer has met its burden of proving an overwhelming community of interest is record evidence showing transfer and frequent interchange between the maintenance technicians and the operators. More specifically, the record reveals that the two groups work in the same functional areas and perform many of the same maintenance tasks. Not only do operators perform preventive maintenance and provide assistance with larger scale repairs, but the record indicates that operators sometimes perform the repairs themselves and maintenance employees occasionally operate the machinery. In performing their work one third of the petitioned-for unit works on production teams or the skeleton team on the same schedule as the operators. I also note that seven of the maintenance technicians were formerly operators. Similarly, some operators and maintenance technicians share key skills, such as electrician, millwright and welding skills, although none of the employees are required to be licensed or certified in any area. In order to advance in the pay scale, maintenance technicians and operators must perform work and earn certifications in the other classification. In order to advance to the highest level of the pay scales, both maintenance technicians and operators are required to work for one rotation with the other

classification. In this regard, the record establishes that all three of the maintenance operations planners, 19 of the maintenance technicians, and 42 operators have reached Level VI.

I recognize that there are some factors with regard to work hours, departmental lines and separate supervision tending to show that the maintenance technicians have some differences from the operators. However, considering the totality of the evidence as outlined above regarding their shared terms and conditions of employment, these differences are insufficient to establish such a distinct community of interest to permit the exclusion of the operators. Rather, the record establishes that the operators and the maintenance technicians share an overwhelming community of interest.

Accordingly, based upon the record and the above, I conclude that the Employer has met its burden under Specialty Healthcare, and shall dismiss the petition.¹⁸

VI. 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. No 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.

¹⁸ Inasmuch as I have found that the operators share an overwhelming community of interest with the petitioned-for employees, and the Petitioner has indicated it does not wish to proceed to an election in any other unit other than the petitioned-for unit, I do not reach the issue of placement of the three maintenance operations planners.

VII. ORDER

The petition in this matter is dismissed.

VIII. 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 June 25, 2012. The request may be filed electronically through the Agency's website, www.nlr.gov,¹⁹ but may not be filed by facsimile.

Dated: June 11, 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

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440-1760-9167-4562

¹⁹ 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.