

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

GKN AEROSPACE MONITOR, INC.
Employer

and

Case No. 29-RC-062580

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT 15, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

GKN Aerospace Monitor, Inc. ("the Employer") is engaged in the business of manufacturing titanium and aluminum machine components and assemblies for commercial and military aircraft at its Amityville, New York facility. International Association of Machinists and Aerospace Workers, District 15, AFL-CIO ("the Union") seeks to represent a unit of production and maintenance employees and quality inspection employees. The parties stipulated at the hearing that all lead employees were excluded from the unit and all shipping/receiving drivers were included in the unit.

The Employer concedes that the employees in the petitioned for unit share a community of interest; however, it maintains there are an additional 17 classifications of employees who share an overwhelming community of interest and should be included in the unit. The Employer contends that the following eleven classifications of employees should be included: numerically controlled programmers and trainees, program manufacturing engineers, process engineers, senior engineers in sp program and sp program assembly, manufacturing support engineers, senior buyers, buyers, part-

time/temporary engineers and tool design/method employees. The Employer also contends that there are six classifications of employees who are plant clerical employees and should be included the unit because they share an overwhelming community of interest with the petitioned for unit. Further, the Employer argues that these “plant clerical” classifications should be included because they were included in an earlier Stipulated Election Agreement entered into by the parties in 2008, in Case No. 29-RC-11573¹.

There are approximately 180 employees in the petitioned-for unit. There are approximately 23 employees in the classifications the Employer asserts should be included in the unit.

I find that the petitioned-for unit of production and maintenance employees and quality inspection employees constitute an appropriate unit and the plant clerical classifications of inspection clerk and the maintenance inventory clerk share an overwhelming community of interest with the petitioned for unit and should be included in the unit. I have concluded that although the record evidence shows that the remaining 15 classifications of employees have certain job related characteristics which indicate a community of interest with the petitioned-for unit, the record evidence falls far short of finding that they share an overwhelming community of interest. Accordingly, I shall direct an election in the unit as set forth below.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The Petition in 29-RC-11573 did not result in a Certification of Representation. None of the employees at the facility are currently represented by a labor organization and the parties have no history of bargaining.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Employer is a New York State corporation with a facility located at 1000 New Horizons Blvd., Amityville, New York, where it is engaged in the design, testing, manufacture and assembly of high-performance metallic structures and components for civil and military aerospace programs. During the past twelve month period, which period is representative of its operations in general, the Employer shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of New York. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated and I find that the Union is a labor organization as defined in Section 2(5) of the Act. 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.

² A brief was filed by the Employer and has been duly considered.

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 for the reasons described infra:

All full-time and regular part-time production and maintenance employees, quality inspection employees, inspection clerks and maintenance inventory control employees employed by the Employer at its Amityville, New York facility, but excluding office clericals, lead employees, production planners, 787 support specialists, continuous improvement coordinators, buyers, numerically controlled programmers/manufacturing engineers, senior engineer SP programmers and trainees, tool design/method employees and engineers, engineer/SP assembly employees, process engineers, manufacturing support engineers, professional employees, managerial, guards and supervisors as defined in Section 2(11) of the Act.

FACTS

The Employer's Operation

The Employer operates a manufacturing facility in Amityville, New York, where it manufactures titanium and aluminum machine components and assemblies for commercial and military aircraft. The Employer's large production facility has approximately 80 machines used to manufacture its products. The manufacturing process requires the use of various machines to make large pieces of metal into aircraft parts. The process requires employees to cut and grind metal into the appropriate shape for the part. Many cutting tools are used to cut the material. The tools must be changed and sharpened as often as every half hour. After the parts are made, they are sent out of the Employer's facility to be painted and tested and then shipped to the Employer's customers.

Most of the machines are located on the east side of the building. The cutter/grinding room is on the north side. The shipping receiving area is on the northwest side of the building. Maintenance is on the southwest side of the building and inspections are conducted in the center of the building.

EMPLOYEES IN THE PETITIONED FOR UNIT

All of the employees in the petitioned for unit are hourly employees and are eligible to receive overtime. They generally wear Employer issued uniforms, safety glasses and steel toe shoes. All of the Employer's employees receive the same medical, dental and vision benefits, flexible spending accounts and 401 (k) benefits. There is no minimum educational experience required for any of the positions in the unit.

There are approximately seventy five machine operators. Employees in this classification operate computerized machines that cut metal with precision to make airplane parts. These machine operators work on the shop floor. There are approximately twenty six assembly employees who take the manufactured large machine parts made by the numerically controlled machine operators and assemble smaller manufactured parts onto the larger parts. The tool room is adjacent to the machine work area and is referred to as the tool crib. The employees who work in this area collect and dispense tools to the other employees. There are also grinding employees who work adjacent to the tool crib and manually grind tools to sharpen them. The grinding employees operate conventional grinders which are not numerically controlled machines.

The five quality inspection employees examine the products at different points in the manufacturing process and verify the quality of the product according to the specifications. The shipping and receiving employees receive the raw material used to

manufacture the parts and package and ship completed parts to the customers. They ensure that the paperwork associated with the shipment is correct. They contact UPS and help load trucks for shipment. The one shipping and receiving driver prepares the manufactured parts for delivery and delivers parts to local customers by truck. He also picks up products from vendors. He sometimes assists the shipping receiving employees and packs parts to be shipped to customers.

Finally, the facility maintenance employees perform tasks to keep the building operational including maintaining the air conditioning and boiler room. Maintenance employees also maintain carts used to transport parts around the shop and perform welding work on these carts to keep them operational.

THE EMPLOYEES IN DISPUTE

The Employer asserts employees in the following job classifications are plant clericals and should be included in the unit: inspection clerk, junior production planner, maintenance inventory controller, 787 support specialist, continuous improvement coordinator and junior buyer. The Employer asserts that the employees in the following job classifications should also be included in the unit because they share an overwhelming community of interest: numerically controlled programmers and trainees, program manufacturing engineers, process engineers, senior engineers in sp program and sp assembly, manufacturing support engineers, senior buyers, buyers, part-time/temporary engineers and tool design/method employees. The following is a description of each job classification, based upon the record evidence.

Although uniform shirts and pants are available for all employees, unlike the employees in the petitioned for unit, the employees in the disputed classifications do not

regularly wear uniforms. The Employer did not introduce the specific wage rate of any employee in the petitioned for unit or the employees in dispute. The Employer asserts that the annual pay for both the unit employees and employees in dispute is in the range of \$46,000 to \$98,000.

A. Inspection Clerk

One employee is in this classification and he is paid hourly. The inspection clerk is responsible for scanning quality documents and placing them into the proper electronic files. He creates checklists for rework and modifications of parts. He works at a desk on the shop floor with the quality inspectors and reports to the same supervisor as the quality inspectors. He has daily contact with the quality inspectors but does not have regular contact with the production and maintenance employees. There is no minimum educational requirement to hold the inspection clerk job for this position. The inspection clerk is supervised by the same supervisor as the quality inspection employees.

B. Junior Production Planner

There is one employee who holds this position and he is paid hourly. The junior production planner receives assembly work orders from outside contractors and makes detailed step by step plans to make the order from start to finish. He creates requisitions for materials and supplies that go to the purchasing department to be procured for the job. He spends about one hour a day in the tool crib and interacts with the tool room employees. He primarily works at his desk using his computer. He does not have common supervision with the other unit employees.

C. Maintenance Inventory Controller

There is one employee in this position and he is paid hourly. The maintenance inventory controller keeps the stock of spare parts for machines and orders new machine parts as necessary. He maintains the stock of cleaning supplies and ensures that the eye wash stations and fire extinguishers are in working order. He interacts with unit employees when they come to him to obtain parts on a daily basis. The maintenance inventory controller reports to the facilities maintenance supervisor as do the maintenance employees.

D. 787 Support Specialist

The Employer provides certain airplane parts used in the manufacture of Boeing 787 airplanes. The Employer manufactures "bifurcation tracts" which are installed in airplane engines and 787 airplanes. Sometime after 2008, the Employer created the position of 787 support specialist. There is one 787 support specialist and he coordinates the flow of material, the accuracy of the paperwork of the parts that eventually are used for the Boeing 787. He ensures that the work is performed according to schedule and expedites the process when necessary. The 787 support specialist is an hourly employee and reports to the director of 787 programs. The 787 support specialist is the only employee who works on the shop floor supervised by the director of 787 programs. The 787 support specialist has a desk in an office with no other employees.

E. Continuous Improvement Coordinator

There is one continuous improvement coordinator and he is a long time hourly employee who works on the shop floor. He has the responsibility of improving the manufacturing process through technical help of finding ways to cut the process or improving the flow of material. When the Employer has a machining or assembly

process which needs improvement, the continuous improvement coordinator will, for example, help improve the process by looking at the cutters and seeing which tools they used for the job or look at the assembly tools and methodology. He sometimes operates the machine himself to see if the operator is doing something wrong. Based upon his observations, he makes suggestions. He can train the operator in improving the process. He interacts with the inspectors, the numerically controlled machine operators and assembly workers. He reports to the Director of Continuous Improvement. He also manufactures specialized containers and racks to move parts around the shop. He has a desk that he works at when not on the factory floor.

F. Buyers

The Employer employs two senior buyers, one buyer and one junior buyer. The junior buyer is an hourly employee and is responsible for keeping track of parts that leave the facility for special processing. He coordinates with inspection to create a purchase order for the part. He coordinates the shipping of the part with the shipping department and keeps track of the part while it is outside the facility. The Employer's job posting for the junior buyer position states, under requirements: "one to two years college level courses preferably in business or technical studies...".

The buyer and senior buyer are salaried employees. The buyer is responsible for procuring items like hardware. The buyer creates a purchase order and keeps track of the purchase until it arrives in the shop. The buyer spends most of her time in the office or outside the shop. The senior buyers have similar duties to the buyer. The main difference is that the senior buyer procures items of a higher dollar value. All of the

buyers sit at desks in the same office. The buyers do not have common supervision with the unit employees.

G. Numerically Controlled Programmers/ Manufacturing Engineers, Senior Engineer SP Programmer and Trainee

All of these positions report to the numerically controlled programming supervisor who does not supervise Unit employees. All of these employees are salaried. There are four numerically controlled programmers/manufacturing engineers and two trainees. There is one senior engineer. These individuals provide programs to drive the approximately eighty numerically controlled machines on the shop floor. For example, they program a cutter by determining the cutting methods to remove the metal materials. Both the programmers and trainees are required to have a two year college degree. The programmers and trainees spend approximately 25% of their time on the shop floor evaluating the machines and the programs. Most of the programming work is performed on a computer. The employees in these positions do not have common supervision with the unit employees.

H. Tool Design/Method and Part-Time/Temp Engineer

There are two employees in the classification of tool design/method and one part-time/temp engineer. The design/method employees and engineer design tools. A tool is a fixture that holds the part in place while the machine operator is machining it to specification. Only the design/method employees perform what the Employer refers to as method. The methods are the approach or plan to determine the operations needed to make the part. A design for the tool is created which is manufactured in the tool room. These employees work at desks. The tool design/method employees are salaried and the

engineer is paid hourly. The employees in these positions do not have common supervision with the unit employees.

I. Senior Engineer/SP Assembly

There is one salaried employee in this job classification. This position performs the same functions of the tool design/method employees, building larger assemblies with individual parts. The Employer considers this classification to be the senior person when working with the tool design/method employees. This position designs assembly jigs which are used for assembling parts that hold tools in place for the machine operators. The employees in these positions do not have common supervision with the unit employees.

J. Process Engineer and Manufacturing Support Engineer

One salaried employee is employed in each of these classifications. After a part is manufactured by the machine operators, it is sent to an outside vendor's processing house to be primed, painted and to have non-destructive testing performed. The process engineer writes the process instructions for the vendor to follow. The current manufacturing support engineer is training to become a process engineer and performs the same tasks. In addition, the manufacturing support engineer receives reports on defective parts from customers and writes new instructions for the manufacturing process so that the part is made correctly in the future. The employees in these positions do not have common supervision with the unit employees.

ANALYSIS

In *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 8-9 (2011), the Board set forth the factors for unit determination. The Board

examines the petitioned-for unit first. If the unit is an appropriate unit, the Board proceeds no further because the unit does not have to be the most appropriate unit, only an appropriate unit. It is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit*, 283 NLRB 475 (1987); *P.J. Dick Contracting*, 290 NLRB 150 (1988); *Dezcon, Inc.*, 295 NLRB 109 (1989); *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the *only* appropriate unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposal." *Dezcon, Inc., supra*, 295 NLRB at 111. Thus, the unit requested by a petitioning union is the starting point for any unit determination. In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions.

The Employer concedes that the employees in the petitioned for unit share a community of interest however, it contends that the employees in the other 17 disputed categories also share an overwhelming community of interest with them. In *Specialty Healthcare & Rehabilitation*, the Board set forth the test to be applied when an employer contends that the smallest appropriate unit contains employees who are not in the

petitioned-for unit. When a labor organization petitions for an election in a unit of employees who are readily identifiable as a group, based on job classifications, departments, functions, work locations, skills or similar factors, the Board will find the petitioned-for unit to be appropriate despite a contention that employees in the group could be placed in a larger unit which might also be appropriate, or even more appropriate. *Id.*, slip op. at 12-13. The Board now holds that the proponent of the larger unit must demonstrate that employees in the larger unit share an “overwhelming community of interest” such that there “is no legitimate basis upon which to exclude certain employees from it.” The Board has stated that the traditional community of interest factors of the two groups must “overlap almost completely.” *Id.*, slip op. at 11, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008).

Although the Employer contends that there are six classifications of plant clericals, I find that only the inspection clerk and maintenance inventory control employees are plant clericals. I also find that these two classifications share an overwhelming community of interest with the petitioned for unit and should be included in the unit. The employees in these classifications, like the unit employees, are paid hourly, have common supervision, regularly interact with the other unit employees and work in the same location. Plant clericals having such commonality with admitted unit members are customarily included in a production and maintenance unit. See *Kroger Co.* 342 NLRB 202 (2004).

Unlike other unit employees, the junior production planner, 787 support specialist, the continuous improvement coordinator and the junior buyer do not have common supervision with the unit employees and work at desks using computers.

Further, these four classifications of employees do not perform plant clerical functions but rather each use independent judgment to perform their work and do not perform ministerial tasks. The continuous improvement coordinator analyzes the production process and finds technical solutions to improve it. Likewise, the junior production planner receives orders from outside contractors and makes detailed instructions to manufacture the product. The 787 support specialist oversees the production of parts for Boeing 787 parts and uses his independent judgment expedite the process. These classifications do not perform routine clerical functions and arguably only share a few community of interest factors.

The record evidence also does not support a finding that the employees in the other eleven classifications share an overwhelming community of interest with the petitioned for unit. The employees in these eleven classifications, numerically controlled programmers and trainees, program manufacturing engineers, process engineers, senior engineers in sp program and sp program assembly, manufacturing support engineers, senior buyers, buyers, part-time/temporary engineers and tool design/method employees, unlike the unit employees, are paid a salary and do not share common supervision with unit employees. There is no interchange among the employees in these classifications and those in the petitioned-for unit, either on a temporary or permanent basis. Further, the employees in these classifications only have occasional interaction with the unit employees.

Unlike the unit employees, the Employer seeks to fill vacant buyer positions with individuals who have some college education. Likewise, the Employer seeks individuals with an associate degree for its programming and engineering positions. The buyers'

primary function is arranging for the purchase of materials to create the product and they spend most of their time in an office or outside the shop. To the contrary, the unit employees spend their time on the shop floor engaged in the manufacturing process.

Although the programmers and engineers in these classifications spend some time on the shop floor, their interaction with unit employees is incidental to their work. These employees work on computers performing skilled work to program the machines and improve the manufacturing process. Unlike the unit employees, all of these classifications require the incumbents to use independent analysis and skills to resolve issues and to set up the manufacturing process used by the unit.

In sum, aside from the inspection clerk and maintenance inventory control classifications, I find that the employees in the other fifteen classifications share a limited number of the community of interest factors with the petitioned-for unit employees and that the Employer has failed to demonstrate that they share an “overwhelming community of interest” such that there “is no legitimate basis upon which to exclude certain employees from it.” *Specialty Healthcare & Rehabilitation, supra at 11*. The traditional community of interest factors of the two groups certainly do not “overlap almost completely.” *Id.*

Accordingly, based upon the forgoing and the stipulations of the parties at the hearing, I find that the following petitioned-for unit constitutes an appropriate unit and I shall direct an election as described herein:

All full-time and regular part-time production and maintenance employees, quality inspection, inspection clerks and maintenance inventory control employees employed by the Employer at its Amityville, New York facility, but excluding office clericals, lead employees, production planners, 787 support specialists, continuous improvement coordinators, buyers, numerically controlled programmers/manufacturing engineers, senior engineer SP programmers and

trainees, tool design/method employees and engineers, engineer/SP assembly employees, process engineers, manufacturing support engineers, professional, managerial, guards and supervisors as defined in Section 2(11) of the Act.

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 they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, District 15, AFL-CIO. 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 lay 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 a 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 who are employed in the unit 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). This 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, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **October 28, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office

by electronic filing through the Agency's website, www.nrlb.gov,³ by mail, or by facsimile transmission at (718) 330-7579. 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** copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 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.

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, D.C.

³ To file the eligibility list electronically, go to www.nrlb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **November 8, 2011**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁴ but may **not** be filed by facsimile.

Dated: October 25, 2011.



Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter, and is also located under "E-Gov" on the Agency's website, www.nlr.gov.