

**R.D. # 0-13
Newark, New Jersey**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

TIME WARNER CABLE NEW YORK CITY, LLC¹

Employer

and

CASE 22-RD-095758

TROY RAMBONE, An Individual

Petitioner

and

**LOCAL UNION NUMBER 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICALWORKERS, AFL-CIO**

Intervenor

DECISION

I. INTRODUCTION

Petitioner, Troy Rambone, filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act. Rambone seeks a decertification election in a bargaining unit consisting of all full-time and regular part-time service technicians, business services technicians, warehouse technicians, dispatch technicians, construction technicians, plant technicians, and headend technicians employed by Time Warner Cable

¹ The Employer's name appears as amended at the hearing.

New York City, LLC (the Employer) at its Palisades Park, NJ facility (the “Bergen” facility). Local Union Number 3, International Brotherhood of Electrical Workers, AFL-CIO (the Intervenor) argues that by the parties’ actions, the unit of Bergen technicians has merged with the Employer’s other union-represented units in the New York City area, namely technicians in Staten Island, Northern Manhattan, Southern Manhattan, Brooklyn, and Queens, and that either this more expansive unit, or a unit consisting of technicians at the Employer’s Bergen, Staten Island, and Northern Manhattan facilities are the only appropriate units for purposes of processing the instant petition. The Employer agrees with the Petitioner in seeking an election in a single location unit consisting of only the Bergen facility, which, the Employer contends is the appropriate unit herein. I have considered the evidence and arguments presented by the parties as well as relevant Board precedent concerning unit determination in a decertification setting. Based on the foregoing and as discussed *infra*, I find that a multi-facility unit consisting of the Bergen, Staten Island, Northern Manhattan, Southern Manhattan, Brooklyn, and Queens facilities is the most appropriate in this decertification context. I shall therefore, dismiss the petition for the reasons 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.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed;³

² Briefs filed by the Intervenor and the Employer have been duly considered. The Petitioner did not file a brief.

³ While the presentation of evidence during the hearing was focused toward overcoming a presumption that a single location unit is the appropriate unit, upon review of the entire record and relevant Board law, it is

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 herein;⁴
3. The labor organization involved claims to represent certain employees of the Employer;⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act;
5. The following employees of the Employer constitute a unit appropriate for the purpose 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 service, plant, construction, warehouse, business services, dispatch and headend technicians employed by the Employer at the following locations: 1) Palisades Park, New Jersey; 2) Northern Manhattan; 3) Southern Manhattan; 4) Staten Island; and 5) Brooklyn/QUICS/ACQ, excluding all guards, and supervisors as defined by the Act and, at the Bergen location, all technicians performing local origination and security work.

clear that in deciding a unit determination issue in light of a decertification petition, an analysis, focusing on the parties' bargaining history is required. As the record reflects, the parties had a full opportunity during the hearing to present extensive evidence regarding bargaining history and that issue has been fully briefed by the Employer and Intervenor.

⁴ The parties stipulated that the Employer, a New Jersey partnership, is engaged in the provision of cable television, telephony, and high speed internet services from a facility located in Palisades Park, New Jersey. During the preceding twelve months, the Employer derived gross revenues in excess of \$100,000 and purchased and received at its Palisades Park, New Jersey facility, goods, supplies, and utilities in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

⁵ The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

a. Background

The Employer is engaged nationally in the residential installation of cable television, as well as telephone and data services, pursuant to franchises granted by local and municipal authorities. On the East coast, the Employer provides cable, telephone, and data services to customers in upstate New York, Westchester County⁶, New York City, Bergen County, New Jersey, and parts of North and South Carolina. The Employer's Bergen facility, located in Palisades Park, New Jersey, services approximately 53,000 customers in Bergen County.

b. Bargaining History

Since at least 1986, the Union has represented technical operations employees of the Employer, and its predecessor companies, in Staten Island, Brooklyn, Queens, Northern Manhattan, and Southern Manhattan for purposes of collective bargaining.⁷ Because cable and telephone franchises were once granted to separate and distinct entities in these jurisdictions, the collective bargaining agreement for each above-referenced division, though containing essentially identical terms, includes the name/location of the specific division.⁸ The most recent collective bargaining agreements covering the Employer's New York City divisions are effective from April 1, 2009 through March 31, 2013.⁹

⁶ The Employer services Westchester County residents out of its Mt. Vernon, NY facility, the employees of which are not represented by the Union.

⁷ It is unclear from the record as to whether the Employer recognized the Union in its New York City divisions as a result of Board-conducted elections or through voluntary recognition.

⁸ For example, while there was testimony that the Employer's Brooklyn/QUICS and ACQ (American Cablevision of Queens) have been administratively merged into one division, there are separate collective bargaining agreements which currently cover each of these territories.

⁹ Each CBA is signed by the same Union and Employer representatives.

In 2004, the Employer agreed to voluntarily recognize a unit of technicians at the Employer's Bergen facility. The 2004 recognition agreement specified that the existing CBAs of the Employer's New York City divisions would not apply to the Bergen facility, save for the parties' collectively bargained grievance procedure and no-strike clause. The recognition agreement then specified that in about October 2005, the parties would begin negotiations on a new collective bargaining agreement. A January 2006 memorandum of agreement, between TW-Fanch One¹⁰ and the Union resulted in the adoption of contract language nearly identical to the collective bargaining agreements the Union and the Employer's New York City divisions reached in 2005. The "term of agreement" clause in the memorandum stated: "January 1, 2006 – March 31, 2009¹¹: During the term of this Agreement, Employees shall be subject to terms and conditions equal to those set forth in the collective bargaining agreement entered into between Time Warner Cable of New York City and the Union as of March 1, 2005 ("the CBA"), except as set forth in this Memorandum of Agreement and subject to further modification as necessary to conform the CBA to be consistent with this memorandum." The items covered in the Memorandum of Agreement included preservation of more generous vacation, personal days, floating holidays, and sick time accrual for Bergen employees; different annual wage increases; commencement of Employer contributions to an industry educational and cultural fund, joint industry board, and dental plan; delayed Employer payment of the employees' share of FICA; guidelines for applying course work completion towards

¹⁰ This was the previous legal name of the Employer's Bergen entity which held the franchise agreement in New Jersey. None of the other New York City divisions used this name. TW-Fanch One has since been replaced by the entity appearing in the caption of this Decision, Time Warner Cable New York City, LLC.

¹¹ This agreement was timed to expire on the same date as the collective bargaining agreements negotiated between the Union and the Employer's New York City divisions.

journeyman status; exclusion of local origination and security employees from the bargaining unit; addition of certain shift schedules; and definition of standby procedures.

In 2009, bargaining commenced on new contracts for all New York City divisions and Bergen. The same negotiators for the Union and Employer bargained for these successor contracts at the same time. The Union's bargaining committee consisted of representatives from Bergen and the New York City divisions and the same representatives of the Employer bargained on behalf of all of the Employer's divisions. Brian Kelley, the Employer's area vice president for Brooklyn and Queens, testified as to how bargaining incorporated local issues in discussions on the master agreement: "...Some of those New Jersey specific issues came up in front of the whole group" and "we had the discussions on Bergen and in conjunction with a larger group, and then results of meetings that took place just specifically to Bergen."

This bargaining yielded a memorandum of agreement titled "Time Warner Cable of New York City Consisting of Southern Manhattan, Northern Manhattan, BQ/QUICS, ACQ, Staten Island and Bergen Divisions and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO." This 9-page memorandum of agreement, dated April 1, 2009 was signed by the same Employer executive vice-president, Howard Szarfarc, on behalf of each division. There is only one space and signature for the Union. The memorandum reads: "The parties indicated above do hereby agree that the changes which are summarized below were agreed upon relative to the Collective Bargaining Agreement...which will expire on March 31, 2009 and that the full text of the applicable changes will be incorporated in a new Collective Bargaining Agreement for each Division which shall become effective, upon ratification by the Union membership, on

April 1, 2009. The first 6 pages of the memorandum contain items applicable to all Divisions. On pages 7 and 8, the parties addressed modifications to the Bergen rider. Employees then ratified the contracts in a single vote covering all six divisions. There was no separate ratification vote held on any of the localized terms and conditions of work contained in the location-specific riders.

Each 2009-2013 collective bargaining agreement contains a master agreement applicable to all six divisions (Northern Manhattan, Southern Manhattan, Staten Island, Brooklyn Queens/QUICS, Queens ACQ, and Bergen¹²) with essentially identical terms and a rider delineating terms and conditions applicable only to that specific facility or division.¹³

c. Size of the Bargaining Unit

There are approximately 29 unit employees stationed at the Employer's Bergen facility. Included in this grouping of 29 are: 14 regular service technicians; 4 plant technicians; 3 construction technicians; 3 warehouse technicians; 3 dispatch technicians¹⁴; 1 headend technician¹⁵; and 1 business services technician.¹⁶ The regular service technicians, plant technicians, and dispatch technicians report directly to Bergen

¹² The 2009-2013 Bergen CBA is between the Union and TW Fanch-One. A December 2012 letter from the Employer to the Union explains that Time Warner Cable New York City, LLC is the appropriate successor to the entities which were parties to the CBAs with the Union.

¹³ For example, both the Bergen and Staten Island Riders contain more generous vacation benefits than the Master Contract and the other divisions' riders; Southern Manhattan's Rider allows for different dispatch provisions; Staten Island's Rider contains provisions for the hiring of temporary (summer) help; Bergen's Rider contains differing provisions on sick leave, shifts, and journeymen pay. Additionally, each division's Rider addresses standby procedures and standby wage rates.

¹⁴ These dispatchers only work on the day shift during the week. Dispatches either after hours (e.g. 8:00pm to 7:30am Monday through Friday) or on weekends (5:00pm-7:30am from Friday night to Monday morning) come from the Employer's Paidge Avenue (Southern Manhattan) facility.

¹⁵ The headend is the point where all of the signals come into the system via satellite, fiber, or network point of demarcation.

¹⁶ Locally, there are two shop stewards (Brian DeLoach and Phil Long) that represent Bergen employees. The Union's chief steward, Phil Copalli, is based out of the Employer's Paidge Avenue/Southern Manhattan facility.

Tech Operations manager Michael Comer.¹⁷ The warehouse technicians report to Bergen-based supervisor Sherry Gross and the construction technicians report to Bergen-based field supervisor Mark Grossman and his manager, Bergen construction manager Mike Mallick. The two remaining unit employees, headend technician David Rothwell and business services technician¹⁸ Darren Maraj report to supervisors located outside of the Bergen facility.

The Employer's New York City divisions employ a significantly larger number of unit employees. Southern Manhattan has 625 technicians; ACQ/BQ/QUICS has 525 technicians; Northern Manhattan has 215 technicians; and Staten Island has 74 technicians.¹⁹

d. Geographic Proximity

The parties stipulated to the distances between the Bergen facility and the Employer's New York City facilities. The distance between Bergen and Northern Manhattan is 6.6 miles; Bergen and College Point, Queens are 14.8 miles apart; Bergen and Paidge Avenue are 15.6 miles apart; and Bergen and Staten Island are 23 miles apart.

e. Similarity of Skills and Functions

The Employer's technicians across all of its divisions share the same skills, qualifications, and competencies to perform the assigned work. These technicians wear

¹⁷ Comer reports to Larry Collins, the Employer's new Director of Operations for Northern Manhattan, Mt. Vernon, Bergen, and Staten Island, and Bob Claus, the Employer's Director of Plant/Engineering for Northern Manhattan, Mt. Vernon, Bergen, and Staten Island.

¹⁸ Across the Employer's New York City/Bergen footprint, there are about 125 business services technicians, who service the Employer's commercial customers. About 10 business services technicians are based in Northern Manhattan; 4 in Staten Island; 115 in Paidge Avenue/Southern Manhattan; and Maraj, who is based in Bergen. Kevin Dolce is the business services foreman for Bergen, Staten Island, and Northern Manhattan. His office is located at the Employer's Paidge Avenue/Southern Manhattan facility.

¹⁹ Staten Island employs 1 general foreman (Vincent Uliano), who covers both the Staten Island and Bergen facilities; and 4 foremen (2 service foremen, 1 plant foreman, and 1 headend foreman)

the same uniforms and drive the same types of trucks, with the same Time Warner name and logo emblazoned on the side of these vehicles.

f. Discipline and Discharge

Comer testified that in 2012, he disciplined three Bergen unit employees and discharged one employee. Comer's decision to issue these written disciplines was his own and no human resources officials in New York overruled his decision.²⁰ Comer's decision to discharge technician Michael Kelley was reviewed and approved by human resources official Reynolds Turner, whose office is located at one of the Employer's New York facilities.

Shop steward Brian DeLoach testified that no Bergen grievance has ever been arbitrated. The Union filed grievances regarding three March 2012 disciplines at Bergen. DeLoach met with construction manager Mike Mallick to discuss these grievances, along with human resources official Turner, and Paidge Avenue (Southern Manhattan) construction general foreman Al Ruggiero. At the next grievance step DeLoach consulted with chief steward Phil Copalli and business representative Derek Jordan. Jordan testified that he processes grievances on behalf of the Bergen unit employees and his principal point of contact is human resources employee Connie Ciliberti, with whom he forwards grievances, sets up appointments, and meets to adjust grievances.²¹

g. Local Authority

Comer testified that in addition to issuing discipline, he is also responsible for selecting applicants to interview, hiring new employees, and approving employees' vacation requests. It appears from the record evidence that the Employer has a national

²⁰ None of the written disciplines was introduced into the record.

²¹ Jordan testified that he primarily handles discharge grievances, but there were no discharge grievances in Bergen in 2012.

public website to disseminate information about job openings and to collect applications for the available positions. For the Bergen facility, Comer reviews the job applications and selects those applicants he believes are going to be qualified to perform the job. He interviews those candidates and ultimately decides for himself whether to hire the applicant. Sometimes Comer asks a foreman to sit in on the interviews to offer a second opinion.

h. Permanent Transfer of Employees

The record evidence reflects that out of Bergen's current complement of 29 technicians, 1 technician- Darren Maraj- transferred from the Employer's New York City facilities –specifically from the Northern Manhattan division to Bergen.²² The record also reflects that 1 dispatch technician- Salvatore Zacarelli- transferred from Bergen to one of the Employer's New York City divisions in about July 2012.

i. Employee Interchange

Collective Bargaining Agreement Language

Common to all of the parties' 2009-2013 collective bargaining agreements for all divisions is Section 44 which addresses bargaining unit assignments. This clause reads: "Employees hired after March 1, 2005 will be assigned to one of the bargaining units. The Company may, at its discretion based on Company needs, upon two-weeks notice, assign any such employee to work at another bargaining unit for a minimum of two weeks. In any event, such employees shall remain on the seniority list of the bargaining unit into which they were originally hired. The parties agree that, as to employees employed by the Company prior to March 1, 2005, the Company will retain the right to

²² It is unclear from the record as to whether Maraj initiated the transfer request, or the Employer did.

temporarily transfer, in consultation with the Union, such employees to other bargaining units in the event of an emergency...”

Headend Technicians

David Rothwell is the only headend technician in the Employer’s Bergen facility. When he is absent from work for any reason headend technicians from Northern Manhattan are assigned to take Bergen headend service calls. There are about 9 headend technicians stationed in Northern Manhattan. Fletcher Bennett²³, the Employer’s general foreman for plant and headend engineering over Northern Manhattan, Staten Island, and Bergen testified that he decides where headend technicians are dispatched. The Employer’s regional operations center calls dispatch, which is located in Paidge Avenue/Southern Manhattan. A dispatcher will then contact the foreman, and it is the foreman that selects a headend technician to provide coverage to Bergen. Bennett estimated that he sends headend technicians from Northern Manhattan into Bergen about 3 or 4 times a week and he sends Bergen technicians into Northern Manhattan at least once every other week.

Glen Geraghty, the Employer’s headend foreman for hub sites in Manhattan and Bergen, testified that he also dispatches Northern Manhattan headend technicians to work in Bergen. He testified that all 8 of the Northern Manhattan headend technicians have been dispatched to Bergen in the past year. For example, the Employer assigned “Pete”, a headend technician in Northern Manhattan, to work in Bergen for full shifts on 20 different occasions in 2012. Geraghty’s notes were the only documentary evidence in the record regarding interchange of headend technicians. Geraghty contends that his notes only reflect full shifts that Northern Manhattan headend employees worked in Bergen in

²³ Bennett’s office is located in Northern Manhattan.

2012 and 2013 and are incomplete as they relate to times when Northern Manhattan headend technicians worked in Bergen for less than a full day or for training purposes. According to Geraghty's notes, between January 1, 2013 and January 14, 2013, the start of the hearing in the instant matter, Northern Manhattan headend technicians worked in Bergen 7 times. Additionally, Rothwell worked in Northern Manhattan 25 times between May 2012 and January 2013 for cross-training purposes.

Dispatch Technicians

The Employer's Bergen facility employs 3 dispatch technicians- Shawna Robertson, Ernie Maisto, and Mina Livolsi. When Robertson and Maisto were absent in 2012, Staten Island employees Freddy Blanco and Joe Bower²⁴ were temporarily reassigned to cover Bergen's dispatch duties. At no time in 2012 did any Bergen dispatchers work in one of the Employer's New York City divisions.

Business Services Technicians

Darren Maraj is the only business services technician employed at the Employer's Bergen facility. In contrast, Staten Island employs 4 business services technicians; Northern Manhattan employs 10 business services technicians; and Paidge Avenue (Southern Manhattan) employs 115 business services technicians.

Kevin Dolce, the Employer's business services foreman covering Northern Manhattan, Staten Island, and Bergen testified that call volume dictates whether he sends technicians from Northern Manhattan or Staten Island into Bergen. Dolce further testified that 2 business services technicians from Northern Manhattan- Vincent Long and Henry Reynosa- work portions of at least three days a week in Bergen. Two additional

²⁴ Blanco and Bower worked as dispatch technicians in Staten Island prior to the Employer's decision to close that dispatch center. After Staten Island's dispatch closed, they were reassigned to other technician positions in Staten Island. It is unclear from the record as to when that transition occurred.

Northern Manhattan business services technicians- Ordain and Bowers- will also work in Bergen if additional coverage is needed. Dolce estimated that Ordain and Bowers worked 10 times in Bergen in 2012. Dolce also testified that Staten Island business services technicians- usually either Jesus De La Cruz or Matt Gonzalez- work in Bergen on average about once a week.

Dolce further testified that the Employer has initiated a cross training program between business services and plant technicians. In this training program, which was approved by Bob Claus, business services technicians from Bergen and Staten Island are participating in plant field training at each of these facilities.²⁵ The focus of the training is to allow business service technicians to alone respond to business service calls that involve plant issues. Training commenced in early January 2013 and is ongoing. The record evidence reflects that Maraj and De La Cruz are participating in this training program.

The Employer provided records of the number of 2012 business service jobs performed in both Bergen and its New York City divisions. Out of approximately 979²⁶ Bergen business service calls, Maraj performed 773 of these calls. Staten Island technician Jesus De La Cruz performed 141 business service calls in Bergen in 2012 and the remaining 65 Bergen business service calls were split between 6 Northern Manhattan or Staten Island-based business services technicians. In contrast to his Bergen workload,

²⁵ The training began with a company-wide training course at the Employer's College Point Queens facility.

²⁶ The Employer conceded that the documentary evidence it produced for Employer Exhibit 6 only showed jobs performed by business service technicians. There are apparently an unknown number of business service jobs performed by installers from Northern Manhattan and Staten Island. There are no installers based out of the Employer's Bergen facility.

Maraj only performed 148 business service calls (out of a total of 4108 calls) outside of Bergen.

Plant and Construction Technicians

The Employer's Bergen facility employs 4 plant technicians and 3 construction technicians. It is undisputed that none of these 7 technicians were assigned to jobs outside of Bergen in 2012. It is also undisputed that no New York City-based plant or construction technicians performed work in Bergen in 2012.

Warehouse Technicians

The Employer employs three warehouse technicians- Bruce Spain, Juan Melendez, and Mikhail Komets- at its Bergen facility. Vincent Uliano, the Employer's general foreman covering Staten Island and Bergen, testified that Bergen warehouse technicians travel to the Employer's Staten Island facility to drop off equipment (e.g. converters), pick up equipment, and then return to the Bergen facility. Uliano testified that Spain travels to Staten Island about 3 or 4 times a month to make these deliveries- sometimes more if the need arises. He also testified that of the 7 Staten Island warehouse technicians, 1 or 2 of them travel to Bergen either once or twice a week to make deliveries. If a Bergen warehouse technician is absent one of the Staten Island warehouse technicians will cover their job for the entire day.

According to Comer, none of the 3 Bergen warehouse technicians were assigned to work in New York City in 2012. He testified that Spain did travel once to Staten Island to deliver converters to that facility.²⁷ Comer noted that Staten Island warehouse technicians deliver equipment to the Bergen facility about once every other week.

²⁷ Comer testified that he knew of Spain's travels because Spain requested an EZ-PASS prior to departing for Staten Island. Since Comer is the keeper of the EZ-PASSES at the Bergen facility, he is aware of

Service Technicians

The Bergen facility employs approximately 14 service technicians²⁸, who collectively handled about 21,000 Bergen service calls in 2012. During this calendar year, the Bergen service technicians performed zero service calls in the Employer's New York City divisions. As noted in Employer's Exhibit 8, 8 Staten Island-based service technicians performed about 140 service calls in Bergen in 2012.²⁹ The only explanation offered as to why Staten Island technicians were performing service calls in Bergen was Uliano positing that it was due to a temporary increase in call volume.

In 2011, Bergen-based service technicians performed about 140 jobs in Staten Island, all within a specific timeframe, April 2011.

III. LEGAL ANALYSIS

The Board seeks to balance employees' rights guaranteed by Section 7 of the Act with the goal of fostering stability in established bargaining relationships. It is well established that a decertification petition must be coextensive with the recognized or certified bargaining unit. See *USC Norris Cancer Hospital*, 2012 WL 2951833 (July 19, 2012); *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990). When the Board determines the appropriate bargaining unit for a decertification election, it considers extrinsic evidence of the parties' past practices in implementing the collective bargaining agreement and, thereby, limits the bargaining unit to those employees who have actually been represented by the union. *Heritage Broadcasting Co. of Michigan v. NLRB*, 308

which technicians (and when) are travelling across the area's bridges and tunnels to reach the Employer's other facilities.

²⁸ Service technicians are only dispatched on residential service calls to fix modems, internet service, and cable and game boxes.

²⁹ Uliano testified that about 25 out of the 40 Staten Island service technicians performed service calls in Bergen in 2012.

F.3d 656, 660 (2002); *Booth Broadcasting Co.*, 134 NLRB 817, 822 (1961).³⁰ As a general rule, a decertification petition for a single facility location will be dismissed if that location's bargaining history has occurred within a multi-location unit of the employer's employees for more than a year. *Arrow Uniform Rental*, 300 NLRB at 247. After analyzing the record evidence and relevant case law, I find that, while the parties' actions immediately following the Employer's 2004 voluntary recognition of the Union as its Bergen technicians' collective bargaining representative initially forged separate identities for the bargaining units, starting with the 2009 contract negotiations, the parties effectively folded the Employer's Bergen division into a multi-facility unit with the Employer's New York City divisions. Therefore, I conclude that the instant decertification petition seeking an election in a single-location bargaining unit is not coextensive with the existing multi-location unit and must be dismissed.

In this regard, in 2009 the Bergen division's contract was negotiated at the same time as the New York City division contracts, with the same bargaining complement for each side. This meant that Bergen Union delegates sat at the same table with New York City Union delegates to negotiate the exact same contract.

The parties' negotiations yielded one memorandum of agreement applicable to all divisions, including Bergen. The title of the memorandum, which lumped all of the Employer's divisions into one collective, signaled the integration of the Bergen division into the multi-location unit. Moreover, the introductory paragraph's reference to the master agreement as one document ("...the Collective Bargaining Agreement...which will expire on March 31, 2009...will be incorporated in a new Collective Bargaining

³⁰ In contrast, when the Board determines the appropriate bargaining unit for initial certification purposes, it considers whether the contested employees share a community of interest with other bargaining unit employees to justify their common representation. *Armco, Inc. v. NLRB*, 832 F.2d 357, 362 (1987).

Agreement for each division...”) reflects the reality that the vast majority of the terms and conditions contained in said Agreement apply to all technicians in all of the Employer’s New York City and Bergen divisions.³¹ This memorandum was subsequently voted on by all unit employees, including the Bergen division, meaning that in sheer numbers, the majority of Union members approving the terms of the Bergen rider came from outside of the Bergen division. This represented a significant departure from the parties’ 2005 and 2006 negotiations when only Bergen employees negotiated and approved language contained in their rider.

The Employer argues that its New York City divisions have never been recognized as one combined unit and points to the fact that each of these divisions has a separate collective bargaining agreement. I disagree. While the divisions all have separate collective bargaining agreements, this separation is simply cosmetic. What is clear from the record is that the Employer has bargained at least two consecutive contracts as if the New York City divisions are one consolidated bargaining unit and the Union has certainly followed this same course of action. The same parties have negotiated the same master agreement resulting in terms and conditions of employment almost completely uniform across the New York City divisions. All Union members ratify one memorandum of agreement which applies to all divisions. Whereas the evidence shows that the New York City divisions were effectively merged into one bargaining unit as of the 2005 contract negotiations, the evidence also shows that, for the same reasons cited above, the Bergen division was merged into the greater New York

³¹ I reject the Employer’s contention that the Bergen rider serves as a basis to segregate the Bergen division from the other divisions listed in the master agreement. Bergen’s rider makes slight modifications to the master agreement’s sick and vacation policies, in addition to setting a slightly altered standby wage scale.

City-based unit effective as of its full participation in the 2009 contract negotiations. I also reject the Employer's argument that the consolidated bargaining sessions were borne out of convenience as opposed to its intent to merge the bargaining units. In so finding I rely not on the actions of the parties at the time of the recognition of the Bergen unit, but on the actions and manifestations of the overall unit as it exists today. See *Green-Wood Cemetery*, 280 NLRB 1359 (1986) (rejecting the Employer's contention that a decertification vote should be held in a single office clerical unit and finding that a unit of office clericals was effectively merged with an existing field employee unit based in part on negotiating history, including the Union utilizing a single negotiating committee for all employees, generating a single contract proposal, and a single ratification vote); See also *Gold Kist, Inc.*, 309 NLRB 1 (1992) (finding that a reference to units as plural is not sufficient to require a finding of separate units where the history shows a merged unit).

I recognize that the parties devoted a substantial portion of the hearing to developing a record centered on the community of interest factors. I take note of the following factors which support the conclusion that the multi-location (including Bergen) unit is the appropriate unit: All of the Employer's technicians possess the same skills and qualifications to perform their respective jobs; training opportunities, both at the outset of their employment and cross-training initiatives, take technicians from all divisions and expose them to technicians from the rest of the Employer's divisions; job postings throughout New York City and Bergen divisions are posted at all facilities; seniority is honored when employees transfer from another division into Bergen; numerous supervisors, including general foremen (operations, tech ops, and plant/engineering) and directors (plant/engineering and operations), share oversight over multiple divisions,

including Bergen; and, Bergen discharges are approved by New York City-based human resources officials.

In the context of a decertification petition the ‘community-of- interest factors’ analysis relied on to determine scope of unit in a certification petition setting is not applicable. Rather, the parties’ more than four year bargaining history on a multi location basis is controlling in determining that in this decertification context, a multi location unit consisting of the **1) Palisades Park, New Jersey; 2) Northern Manhattan; 3) Southern Manhattan; 4) Staten Island; and 5) Brooklyn/QUICS/ACQ** divisions is the appropriate unit for purposes of this decertification petition. Moreover, based on all the foregoing, this multi location unit, and not the petitioned for single location unit, was the unit in existence at the time the instant decertification petition was filed.


Conclusion

Based on the above and the record as a whole, I find that the Employer’s Bergen division technicians have been effectively merged into a unit also consisting of the Employer’s New York City division technicians and that a multi location unit comprised of the Employer’s **1) Palisades Park, New Jersey; 2) Northern Manhattan; 3) Southern Manhattan; 4) Staten Island; and 5) Brooklyn/QUICS/ACQ** divisions is the appropriate unit for purposes of the instant decertification petition. Consequently, as the decertification petition seeks a single location unit, the petition is dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **February 27, 2013**. The request may be filed electronically through E-Gov on the agency's website, www.nlr.gov, but may not be filed by facsimile³².

Signed at Newark, New Jersey this 13th day of February, 2013.



J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place- 5th Floor
Newark, New Jersey 07102

³² 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.