

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

PARKSIDE UTILITY CONSTRUCTION LLC

Employer

and

Case 04-RC-106177

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, MID-ATLANTIC REGION

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Parkside Utility Construction, performs field construction work for utilities in southeastern Pennsylvania.¹ The Employer's main office and facility is in Harleysville, Pennsylvania, but it also has facilities in Allentown, State College and York, Pennsylvania. The Petitioner seeks to represent a unit of construction employees, including yard workers, equipment operators, truck drivers, crew leaders and working foremen, based at the Harleysville facility.² The Employer contends that a unit limited to the Harleysville facility is not appropriate because it does not include the construction employees based at the Allentown, State College and York locations. Additionally, the Employer contends that two mechanics and three inspectors who work out of the Harleysville location share a community of interest with the employees sought by the Petitioner and should be included in any appropriate bargaining unit.³ The Petitioner maintains that a unit limited to the Harleysville construction employees is appropriate and that mechanics and inspectors do not share a sufficient community of interest with the construction employees to require their inclusion in the petitioned-for unit.

A Hearing Officer of the Board held a hearing, and the parties submitted briefs. I have considered the evidence and the arguments presented by the parties and conclude, in agreement with the Petitioner, that a unit limited to the Harleysville facility is appropriate and that

¹ The Employer also has a facility in Rhode Island, but the Union does not seek to represent the employees there and the Employer does not assert that they should be included in the bargaining unit in this matter.

² At the hearing, the Petitioner took the position that Harleysville employee Gerry Kenny is a supervisor within the meaning of Section 2(11) of the Act and should be excluded from the unit. In its brief, however, the Petitioner states that it now agrees with the Employer that Kenny is not a supervisor and should be included in the unit. The Harleysville unit sought by the Petitioner includes approximately 17 employees.

³ The multi-location bargaining unit sought by the Employer, including the two mechanics and three inspectors, would consist of approximately 33 employees.

mechanics and inspectors do not share a sufficient community of interest with the Harleysville construction employees to require their inclusion in the unit.

I. OVERVIEW OF OPERATIONS

The Employer's business is construction work for utilities, primarily in the telecommunications industry, but the Employer also performs underground work involving water and sewer lines. Most of the Employer's work is for Verizon. The Employer's construction employees work out in the field, performing multiple tasks related to the installation, replacement or repair of underground or above ground (aerial) utility lines. They install pipe and wire underground, install poles, and place copper and fiber-optic cable on poles. They operate construction equipment (including backhoes, trenchers, plows, pavers, rollers and forklifts), drive trucks, and perform concrete work, laboring work, carpentry, maintenance and landscaping. The Employer's principal place of business, with offices, storage and repair facilities, and a yard, is located in Harleysville, but the Employer also has a yard with a small office in Allentown, and yards in State College and York. The yards in Allentown, State College and York are used to store or stage materials, vehicles and equipment, and may include stationary trailers for equipment storage. The Allentown location is approximately 35-40 minutes (approximately 40 miles) from Harleysville, the York location is 1.25 to 1.5 hours (approximately 90 miles) from Harleysville, and the State College location is approximately 2.5 hours (approximately 180 miles) from Harleysville.⁴ Work requests from Verizon generally come from its central offices, also known as switching offices, which are located throughout eastern Pennsylvania and grouped into geographic "markets" or "market areas." The rates that Verizon pays for the Employer's work vary based on the market area. The Employer's Harleysville, Allentown, State College and York facilities are each located in a different Verizon market area. Approximately 60 percent of the Employer's work is generated out of the Harleysville market, which is close to Philadelphia, 20 percent from the Allentown market, and 20 percent from the York and State College market areas combined.

All of the Employer's higher-level managers are based in Harleysville. They include President William D. Rowe III, along with Project Manager John Kelly, Safety Manager/Director Al Laubach and Estimator Charlie Allocco, who work under Rowe on the Employer's business side. On the operations side are General Manager William Rennard, Manager Phil Emery, and Manager Kevin Kintzly. Also at Harleysville are Manager/Equipment Yard Manager Dan Haraczka, who supervises the two mechanics, and Supervisor Matt Gallagher. The three inspectors who work out of the Harleysville location report to the General Foremen, General Manager Rennard or other Managers. There are three General Foremen at Harleysville, Nick Rulli, Bob Emmel and Bob Barberio, who report to the operations side managers and directly supervise the 17 Harleysville-based construction employees.

⁴ I take administrative notice of these latter two distances, which are derived from the MapQuest website. See Federal Rule of Evidence 201.

Outside of Harleysville, there is a General Foreman based at the Allentown facility, Brian Spohn, who works in the Allentown office approximately 50 percent of the time and the rest of his time out in the field covered by the Allentown facility. Four Allentown-based construction employees report to Spohn. Finally, there is one General Foreman for both the State College and York facilities/market areas, Jim Zweible, who works out of his home and communicates by cell phone with the seven construction employees who report to him, three based at the State College facility and four based at the York facility.

II. THE RELEVANT LEGAL STANDARDS

A. Community of Interest

The Act does not require that the unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be an appropriate one. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting*, 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming*, 355 NLRB No. 127 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units which may or may not be units suggested by the parties. *Bartlett Collins Co.*, supra; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7th Cir. 1969), cert. denied 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as employee skills and job functions, functional integration, common supervision, contact and interchange, similarities in wages, hours, and other terms and conditions of employment, and bargaining history. *Publix Super Markets*, 343 NLRB 1023 (2004); *Home Depot USA*, 331 NLRB 1289 (2000); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins Co.*, supra.

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10-13 (2011), the Board modified the framework to be applied in making certain unit determinations. The *Specialty Healthcare* framework applies when the petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest, but another party seeks a broader unit. The party seeking a broader unit must demonstrate "that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. *Northrop Grumman Shipbuilding*, 357 NLRB No. 163, slip op. at 3 (2011).

B. Multi-Location Unit

Where an employer operates multiple facilities, the Board presumes that a petitioned-for unit limited to employees at a single facility is appropriate. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). This presumption in favor of a single-location unit can be overcome by a showing that the facility has been effectively merged into a more comprehensive unit or is so functionally integrated with another unit that it has lost its separate identity. *Budget Rent a Car Systems*, 337 NLRB 884, 885 (2002); *New Britain Transportation Co.*, 330 NLRB 397 (1999). The burden is on the party opposing a petitioned-for single-location unit to present evidence to overcome the presumption. *J&L Plate*, *supra*; *Red Lobster*, 300 NLRB 908, 910-911 (1990). Factors considered in determining whether the single facility presumption has been rebutted include: centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation*, *supra*; *Globe Furniture Rentals*, 298 NLRB 288 (1990). The Board has described the burden of overcoming the single-facility presumption as "heavy." *Mercy Sacramento Hospital*, 344 NLRB 790 (2005).

On brief, the Employer contends that because it provides services to Verizon, the Employer should be treated like a public utility where system-wide units have been found "optimal" or presumptively appropriate. See *New England Telephone Co.*, 280 NLRB 162, 164 (1986). However, the Employer is not a public utility providing to the public "essential services that [the Employer] alone can adequately provide." *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973), quoted in *New England Telephone Co.*, *supra*. The Employer is merely a subcontractor to Verizon, and may be one of many that perform similar work for Verizon. The Employer cites no authority holding that the system-wide unit preference for public utilities should be applied to the utilities' private subcontractors. Thus, the public utility system-wide presumption is not applicable in this case, and I will apply the Board's single-facility presumption.

In *Specialty Healthcare*, discussed above, the Board did not indicate whether the analytical framework set forth in that case is intended to apply to a multi-facility unit issue. Assuming *Specialty Healthcare* applies, it would transform the multi-facility burden applied in these cases into a requirement that the party seeking to overturn the single-facility presumption demonstrate that employees at the facilities it seeks to add share an overwhelming community of interest with employees at the petitioned-for location. Because of the uncertainty regarding the Board's intentions in this area, I will analyze the multi-facility issue using both the single-facility presumption and the *Specialty Healthcare* standard.

III. MULTI-LOCATION UNIT ISSUE

A. Facts

Centralized Control and Local Autonomy

The Employer's labor relations policies are centrally controlled by officials in Harleysville. All employees at all locations in Pennsylvania have the same health benefits, holidays, personal days, tenure-based vacation leave, and Section 401(k) retirement plan. Harleysville officials also have final authority for setting wage rates, effecting promotions and issuing formal discipline. All employees have the same work week and all construction employees throughout the Pennsylvania locations are paid hourly, are subject to the same work rules, and perform the same type of work under similar working conditions. Payroll and other administrative functions are handled in Harleysville. The General Foremen for Allentown and State College/York gather the employees' timesheets, collect all receipts and invoices from the jobsites, put the materials in folders and send them to Harleysville.

Operationally, the Employer's construction work consists of discrete projects, each of which is performed by a crew that follows the instructions on a written customer job order called "work prints." Generally, the crew will be led by a working foreman (larger projects) or crew leader (smaller projects) who serves as the "point person" and makes sure the work prints are followed correctly. Working foremen and crew leaders are non-supervisory construction employees who spend nearly all their time performing construction work alongside their crews, and assignments to these positions are rotated through the construction employee workforce at each location. While at one point in his hearing testimony President Rowe stated that work assignments for all the locations come from General Manager Rennard at Harleysville, at another point Rowe testified that 70 percent of the work assignments for Allentown, State College and York are communicated directly from the client to the General Foremen in the field who are responsible for those areas, and 30 percent of those areas' assignments go through Harleysville back out into the field. The Allentown and State College/York General Foremen also sometimes purchase materials for their yards, though other times General Manager Rennard handles purchases for those locations. The record contains no evidence that job assignments or material purchases for Harleysville projects are handled by non-Harleysville managers.

The two General Foremen in the Allentown and State College/York locations have authority to decide which employees to send to the jobs in their areas. They make these assignments based on the employees' experience levels, workloads and capabilities. These General Foremen also decide which employees will act as working foremen or crew leaders on jobs. For the Harleysville construction employees, assignments involve both Managers and General Foremen, and the record does not indicate the extent to which the Harleysville General Foremen make such assignments on their own.

General Foremen have authority to issue verbal warnings in the field. They also recommend more formal discipline, such as written warnings, suspensions and discharge, as well as promotions. They make these recommendations to Managers in Harleysville who make the final decision. When asked what weight is given to a General Foreman's recommendation on

discipline of the employees under him, President Rowe testified a “fair” amount “because he’s the one that’s dealing . . . most times with that complaint, as a chain of command.” Similarly with respect to what weight is given to the General Foreman’s recommendations on promotions, Rowe testified, “Certainly, a percentage, because he’s the one that’s probably working the most with the guys in the field.” With respect to pay raises, President Rowe testified that he meets with Managers Emery and Kintzly, who have received information on each construction employee from the General Foremen who supervise them, and Rowe and the Managers then decide what raise each employee should get. The parties stipulated that all of the General Foremen have the authority to transfer employees from jobsite to jobsite, assign work, recommend discipline, and responsibly direct employees in their work, and that they are supervisors within the meaning of Section 2(11) of the Act. The record contains no evidence that General Foremen based at Harleysville exercise authority over construction employees at non-Harleysville facilities, or that non-Harleysville General Foremen exercise authority over Harleysville construction employees.

Skills, Functions and Working Conditions

The parties stipulated that construction employees’ skills, duties, functions, and working conditions do not vary by geographic location.

Transfers, Interchange and Contact

The Employer cited only one example of a construction employee transferring from one of its geographic areas to another: Hector Vega transferred from Harleysville to Allentown.

There is no record evidence of employee interchange involving the Harleysville construction employees. These employees normally report to Harleysville to pick up their work vehicles to go to a job or get a ride from Harleysville to the job with other employees. Occasionally, on a long project, they may report directly to the job. The employees in Allentown, State College and York report directly to job sites from their homes after communicating with the General Foremen in their areas by cell phone, unless they need to report to their respective locations to obtain materials, vehicles or equipment. The record reflects that sometimes York employees are assigned to report to the State College facility or work with a State College crew, or vice versa. However, the record contains no evidence that Harleysville construction employees ever report to the Allentown, State College or York locations, or are assigned to work as members of a crew at those locations, or that Allentown, York and State College employees ever report to Harleysville or are assigned to work as members of a Harleysville crew.

With respect to contact between employees from different locations, there is no record evidence that Harleysville construction employees have any contact with Allentown, State College or York construction employees or General Foremen unless they happen to be assigned to the same jobsite. The evidence presented by the Employer to show the occurrence of such same-jobsite contact is limited. With respect to Harleysville employees working in the Allentown market area or Allentown employees working in the Harleysville area, President Rowe and General Manager Rennard testified that this “can” or “could” happen in the range of

three to five times per week. As to Allentown and Harleysville employees actually working on the same jobsite, President Rowe testified that this happens on average once or twice per week. Rowe provided no specific examples, however. He also testified that he does not “get into the day to day operations” and relies on Managers for information about such operations. Operations General Manager Rennard testified that he did not know how often Harleysville and Allentown employees work side-by-side on jobs and provided no example of when this has ever happened. Rennard testified that Harleysville employees work side-by-side with State College employees “[n]ot very often at all,” and that it would be “very, very rare” that Harleysville employees work with York employees. Rennard further testified that the Employer keeps daily timesheets prepared by foremen in the field that would indicate whether Harleysville employees have worked alongside employees from Allentown or other locations. The Employer did not produce any such documents at the hearing.

Collective Bargaining History

There is no history of collective bargaining at any of the Employer’s facilities.

B. Single-Facility Presumption Analysis

I find that the Employer has not met its heavy burden to overcome the presumption favoring the appropriateness of the petitioned-for single location unit at Harleysville. While the construction employees at all four of the Employer’s locations share the same wages, benefits, skills, job duties and working conditions, and most labor relations matters are centrally-controlled by managers in Harleysville, the record evidence does not establish that the Harleysville construction employees have been so effectively merged into a larger unit, or so functionally integrated with the Allentown, State College and York employees, that the petitioned-for unit lacks a separate identity.

There is considerable local autonomy at the Harleysville facility, which is where all of the Employer’s top managers are located, as well as the three General Foremen who directly supervise the Harleysville construction employees. There is no evidence that the Employer’s non-Harleysville managers, i.e., Allentown General Foreman Spohn or State College/York General Foreman Zweible, exercise any authority over the Harleysville construction employees, or that non-Harleysville employees serve as leadmen for Harleysville job crews. The Allentown, State College and York locations also retain local autonomy separate from Harleysville. The employees at those locations are directly supervised by General Foremen Spohn and Zweible, not by the Harleysville General Foremen. These locations operate in Verizon market areas separate from Harleysville, and General Foremen Spohn and Zweible receive most of their respective market areas’ job orders directly from Verizon rather than through Harleysville. Spohn and Zweible assign non-Harleysville employees to work on these jobs and select which of these employees will serve as working foremen or crew leaders for the jobsites. While final decisions on formal discipline, wage increases and promotions are made by higher managers in Harleysville, they are based to a significant degree on Spohn’s and Zweible’s recommendations and input for the non-Harleysville employees, and on the recommendations and input of the Harleysville General Foremen for the Harleysville employees.

The Board has found the presence of local managers to be evidence of significant autonomy over local terms and conditions of employment supportive of a single facility unit. *D&L Transportation*, 324 NLRB 160, 161 (1997); *Cargill, Inc.*, 336 NLRB 1114, 1114 fn. 1 (2001). The fact that Harleysville central office managers make final decisions, after recommendations and input from local supervisors on formal discipline, wage increases, promotions and other matters does not establish a lack of local autonomy. *D&L Transportation, supra*. The instant case is distinguishable from *Trane*, 339 NLRB 866 (2003), where the Board found that the single-facility presumption was rebutted and that a satellite location's employees should be included with the petitioned-for unit of main office employees. There, in contrast to the instant case, no management was stationed at the satellite location, all direct supervisory functions and work assignments for both groups of employees were handled by a manager and a dispatcher in the main office, and the satellite location lacked any separate supervisors or even leadmen apart from the main office's employees.

The Board has identified employee interchange as another critical factor in deciding whether the single-facility presumption has been rebutted. *Mercy Sacramento Hospital*, 344 NLRB 790, 790 (2005); *First Security Services Corp.*, 329 NLRB 235, 236 (1999). The regular shifting of employees between facilities tends to undermine the identity of employees at a particular site as a discrete group and indicates the merger of employees into a multi-location grouping. The absence of significant interchange, on the other hand, will necessarily have a tendency to reinforce employee identification with the other employees at their separate facilities and support a finding that a single-location unit is appropriate. In *New Britain Transportation, supra*, 330 NLRB at 398, the Board stated that a party seeking to rely on this factor to rebut the single-facility presumption must present detailed evidence of interchange showing that a high percentage of employees regularly experience interchange. Here, the record contains no evidence of employee interchange between the Harleysville construction workforce and the non-Harleysville workforces. With respect to employee transfers, there is evidence of only one permanent transfer between currently-existing facilities: former Harleysville employee Hector Vega is now based in Allentown. The record does not reflect how this transfer came about or whether it was initiated by Vega or the Employer.

The record evidence on contact between Harleysville and non-Harleysville construction employees is very limited. There is no evidence that employees from different locations interact unless they happen to be assigned to the same jobsite. The only evidence that Harleysville and non-Harleysville employees work on the same jobsites with any regularity was the testimony of President Rowe that Harleysville and Allentown employees work on the same jobsites on average once or twice a week. However, Rowe admitted that this testimony was not based on his own first-hand knowledge, but rather on information he has received from his operations-side managers. His chief operations-side manager, Operations Manager Rennard, testified at the hearing but did not support Rowe's testimony, and Rennard conceded he did not know how often Harleysville and Allentown employees work on the same jobsites. The Employer could have produced daily timesheets showing such contact, if it existed, but the Employer chose not to do so. Rowe's hearsay-based and uncorroborated testimony is not sufficient to establish regular interaction or contact between Harleysville and Allentown employees. Further, the Employer failed to present evidence of the percentage of Harleysville employees who regularly work on jobsites with Allentown employees. I find that the Employer's unsupported and generalized

evidence fails to demonstrate significant contact between Harleysville and non-Harleysville employees. *New Britain Transportation*, supra; *Bowie Hall Trucking*, supra, 290 NLRB at 43.

Another important factor in this analysis is the approximate distances between Harleysville and the outlying locations of Allentown, York and State College, PA; namely 40 miles, 90 miles and 180 miles respectively. While not determinative, significant geographic separation is an important factor where, as here, there are other persuasive factors that support a single-facility unit. *New Britain Transportation*, supra; *Bowie Hall Trucking*, supra.

On balance, in view of the local autonomy at the Harleysville location separate from the non-Harleysville locations, the lack of evidence of interchange or significant contact between the Harleysville and non-Harleysville employees, and the substantial distance between Harleysville and the other three locations, I find, applying the Board's single-facility presumption, that a unit limited to Harleysville employees is appropriate. *Cargill, Inc.*, supra; *D&L Transportation*, supra.

C. Specialty Healthcare Analysis

I reach the same result applying the *Specialty Healthcare* standards. The initial step required under *Specialty Healthcare* is a determination of whether employees in the petitioned-for unit constitute a discrete group with a community of interest. In this case, the Harleysville employees constitute such a group. They share local supervision and have common skills and duties and similar terms and conditions of employment. Since this community of interest has been demonstrated, the burden is on the Employer to show that the Allentown, York and State College employees share an overwhelming community of interest with the Harleysville employees. As the Board explained in *Northrop Grumman Shipbuilding, Inc.*, supra, 357 NLRB No. 163, slip op. at 3, "additional employees share an overwhelming community of interest with the petitioned-for employees only when there 'is no legitimate basis on which to exclude [the] employees from' the larger unit 'because the traditional community-of-interest factors 'overlap almost completely.'"

The Employer has failed to meet this burden. There is little specific evidence of contact and no evidence of interchange between the Harleysville and non-Harleysville employees, and employees at Harleysville are supervised separately on a day-to-day basis by different General Foremen than the General Foremen who supervise the non-Harleysville employees. The existence of these factors favoring separate units is sufficient to defeat any claim of an overwhelming community of interest between the Harleysville employees and the Allentown, York and State College employees, and requires a finding that the Harleysville facility employees constitute an appropriate unit.

In short, whether the Board's single-facility presumption or the *Specialty Healthcare* framework applies, I find that the Employer has not carried its burden of rebutting the appropriateness of a unit limited to Harleysville employees. Accordingly, I shall direct an election in a Harleysville-only unit.

IV. INCLUSION OF MECHANICS AND INSPECTORS

A. Mechanics

Facts

The two mechanics employed by the Employer work primarily at the Harleysville location in the office or in the yard. About 80 percent of their time is spent working at Harleysville to repair jackhammers, compressors, jumping jacks, small trailers and other equipment and vehicles used by construction employees. About 20 percent of their time they load or unload trucks in the yard, or repair equipment in the field. Occasionally they also deliver materials to the field, or even perform touch-up landscaping in the field. They repair equipment and vehicles from all four Employer locations. The two mechanics wear uniforms supplied by the Employer while the construction employees do not wear a uniform. About 80 percent of the mechanics' work is performed indoors and 20 percent outdoors, unlike the construction employees who work 100 percent of their time outdoors. Mechanics repair tools used by the construction employees but do not use these tools themselves. Mechanics are supervised by Manager/Equipment Yard Manager Dan Haraczka, while the construction employees are supervised by General Foremen. Some construction employees may be capable of making minor repairs, but construction employees cannot perform most mechanic work, and mechanics possess training not shared by the construction employees. The record contains no evidence of interchange between mechanics and construction employees. With respect to contact, when President Rowe was asked at the hearing how often the mechanics interacted with the 31 other employees sought by the Employer in its proposed bargaining unit, Rowe testified, "I would say daily." The other 31 employees referenced in the question included the inspectors and non-Harleysville construction employees, and the Employer offered no further details as to the nature or extent of interaction between the mechanics and the petitioned-for Harleysville construction employees. Mechanics share the same benefits as the construction employees. The record does not indicate how their wage rates compare with those of the construction employees.

Analysis

The repair work mechanics perform on construction employees' equipment and vehicles is important for construction employees to do their jobs, the mechanics and the Harleysville construction employees share certain common benefits, and both groups are based at the same location. However, the record does not establish that the mechanics have any regular or significant interaction with construction employees, who work all their time in the field while the mechanics spend nearly all their time at the Harleysville facility. Nor is there evidence of employee interchange. Further, the mechanics are separately supervised, wear uniforms not worn by other employees, and perform different work requiring different skills and under different conditions. Accordingly, I find that the Employer has not demonstrated an overwhelming community of interest between the mechanics and the petitioned-for unit and therefore will not require that they be included in that unit. *Specialty Healthcare*, supra.

B. Inspectors

Facts

There are three inspectors, all of whom work out of the Harleysville location. Much of the Employer's utility line installation work is billed by length or area, and sometimes these measurements are uncertain or in dispute. Inspectors go to jobsites and measure or re-measure the work to ensure accurate billing. They also meet with customers about measurements, get other necessary information and report back to managers at Harleysville. If there are complaints about the Employer's work in the field, the inspectors will meet with the customer or property owner. If they find a problem on the site they advise a Manager or General Foreman. Sometimes the inspector can take care of the problem immediately. They often take topsoil, seed and other landscaping materials on their trucks in order to resolve such issues. Inspectors have minimal interaction with the Employer's construction employees, and spend no more than five percent of their time on jobsites where construction employees are working. There is no evidence of interchange with construction employees. The mechanics are based, and generally report to work, at the Harleysville facility, but spend less than five percent of their time there. Inspectors are supervised by Managers at the Harleysville office and generally are given assignments by the General Foreman or a Manager. They only work with tools approximately five percent of their time while construction employees work with tools 90 to 100 percent of the time. Most of the inspectors' time in the field is spent meeting with customers, inspecting jobs and taking measurements. Inspectors do not wear uniforms. In terms of education and training, inspectors need to understand construction work, and know how to take measurement and to work with customers. Inspectors share the same fringe benefits as construction employees. They are paid \$18 per hour, which appears to be within the range of wage rates paid to construction employees at the Employer's four locations.

Analysis

The inspectors share the same fringe benefits as the petitioned-for construction employees, report to General Foremen and Managers at Harleysville, and spend most of their time in the field. However, the record reflects that they have minimal contact and interaction with the construction employees, and no interchange. Their jobs are also very different. While construction employees spend 90 percent or more of their time working with tools, the inspectors spend nearly all of their time taking measurements, dealing with customers and property owners, and resolving problems related work done in the field, and work with tools only about five percent of their time. Accordingly, I find that the Employer has not demonstrated an overwhelming community of interest between the inspectors and the petitioned-for unit and therefore will not require that they be included in the unit. *Specialty Healthcare, supra*.

V. CONCLUSIONS AND FINDINGS

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby 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 case.

3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time construction employees (including, but not limited to, yard workers, equipment operators, truck drivers, crew leaders and working foremen) employed by the Employer at its Harleysville, Pennsylvania facility; **excluding** all other employees including mechanics, inspectors, General Foremen, Managers, guards, and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Laborers International Union of North America, Mid-Atlantic Region**. 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. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not

been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date 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 seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Thursday, July 18, 2013**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) 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 a minimum of three (3) working days prior to 12:01 a.m. on 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 five (5) 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 non-posting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

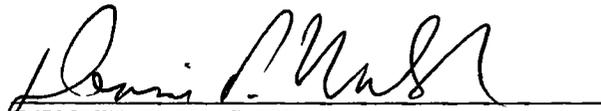
Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Thursday, July 25, 2013, at 5:00 p.m. (ET) unless** filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁵ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Signed: July 11, 2013

at Philadelphia, PA


DENNIS P. WALSH
Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.