

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**HENKEL CORPORATION**

**Employer**

**and**

**Case 32-RC-108535**

**MACHINISTS & AEROSPACE  
WORKERS LOCAL NO. 1584,  
DISTRICT LODGE NO. 190,  
INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND  
AEROSPACE WORKERS, AFLCIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Henkel Corporation (the Employer) is a California corporation with a facility in Bay Point, California, where it manufactures adhesives for the aerospace industry. By its petition, the International Association of Machinists & Aerospace Workers, District Lodge No. 190, Local 1584 (the Petitioner), seeks to represent a unit comprised of all paste and film employees at the Employer's Bay Point facility, excluding all other employees, guards, and supervisors. There are approximately 64 employees in the petitioned-for unit.<sup>1</sup>

The Employer asserts that the petitioned-for unit is inappropriate for collective bargaining purposes, and that the only appropriate unit is one that also includes all warehouse operators, maintenance mechanics, lab technicians (quality control, research and development, and quality assurance), and planners employed at its Bay Point facility.

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<sup>1</sup> In addition, the parties stipulated that the unit should include the engineering technician employed at the facility.

Three witnesses testified at a hearing held on July 17, 2013: Director of Operations Mark Piemonte; Human Resource Manager Kristine Malzahn; and film operator Christopher Fajardo. After considering the evidence and arguments presented by the parties, I have concluded, as discussed below, that the petitioned-for unit of employees is an appropriate unit for collective-bargaining purposes, and that the Employer failed to show that the additional employees it seeks to include share an overwhelming community of interest with the employees in the petitioned-for unit.

### **FACTS**

The Bay Point facility is the world headquarters of the Employer's aerospace adhesive division, which produces about 800 types of film and paste adhesive for use in a wide range of applications on aircraft, utilizing over 4,000 customer-provided specifications. Approximately 250 employees work at the facility, which operates 24 hours a day, five days a week in a complex of attached buildings.

In terms of organizational structure, the facility is headed by a vice-president to whom six main managers report, including Vice-President of Technology Raymond Wong and Director of Operations Mark Piemonte. Wong's responsibilities include the research and development department, where 26 research and development lab technicians work to develop new products in collaboration with the Employer's clients. Piemonte oversees five departments: production, purchasing and planning, quality control, maintenance, and customer service and logistics.

Film and paste adhesives are manufactured in the production department, which is headed by a production manager. This department also includes an assistant production manager, three production supervisors, several salaried process engineers, an engineering technician, and the 64 film and paste employees in the petitioned-for unit. The film and

paste employees spend about 95 percent of their time manufacturing adhesives on the production floor. The employees who manufacture film perform one test, to measure its weight, but for the most part film and paste employees just operate the production machinery, and they are the only employees who do so.

Film and paste employees are trained on their equipment by more senior employees in their department. The evidence does not show that other categories of employees are qualified or trained to operate the machinery used in paste and film production, aside from Michael Halbasch, a lab technician who previously worked as a film and paste employee. However, the engineering technician, who also previously worked as a film and paste employee, spends about 90 percent of his time on the production floor engaging in production activities.

The purchasing and planning department is headed by a materials manager who oversees five planners and five other employees. The planners, who do not wear a uniform, are involved in purchasing raw materials, planning production orders, and talking to vendors. They spend about 70 percent of their time working upstairs at desks in an area adjacent to the production building, but not in it. They spend their remaining time on the production floor, delivering labels or obtaining missing work orders.

The quality assurance department includes a group of salaried engineers and one quality assurance lab technician. This department is responsible for reviewing customers' specifications to ensure that the Employer has the quality management system and manufacturing equipment needed to meet those specifications. Employees in quality assurance spend time in laboratories auditing the quality control technicians and ensuring that their equipment is properly calibrated. They also venture onto the production floor to check calibration tags.

The quality control department is headed by a manager who oversees about 23 quality control lab technicians. Some quality control lab technicians work with raw materials, while others conduct in-process or physical testing of paste and film adhesives as they are being manufactured. Still others work in the warehouse as the customers' designated service quality representatives, testing final products before they are shipped. Most quality control lab technicians rotate among these different assignments.

Customer service and logistics is headed by a manager who oversees the customer service representatives as well as the warehouse department, which is located in its own building and handles incoming and outgoing material as well as packaging. Within the warehouse department, there are about 30 warehouse employees who work under the direction of two warehouse supervisors. Their department is located in the same building as research and development, but the two departments are separated by a partition.

The maintenance department includes 10 maintenance mechanics who repair and maintain the facility's equipment. For the most part, they are not specially trained or certified. They are based in a machine shop located off of the production floor.

In addition, in the separately located research and development department, which is overseen by Vice-President Wong, 26 research and development lab technicians primarily test new products on a small scale in their laboratories. These lab technicians also spend about 25-30 percent of their time on the production floor when they are working on a new product, or when there is a modification to a process or a change in raw material. Representatives from the research and development department also sit on a quality review board, along with others from process engineering and quality assurance. There is no evidence that film and paste production employees are involved with this board, whose mission is to analyze problems with product quality.

The Employer's operations are highly integrated in several respects. For instance, virtually everyone who works at the facility has access to the computer system that follows material as it makes its way through the production process. In addition, due to the nature of the raw material used in making adhesives and the nature of the product itself, both are tested and labeled at many steps along the way.

Thus, when raw material arrives, warehouse operators first enter the information into the computer system, and then take the material to the quality control lab technicians for testing. The material then goes to the production floor to be manufactured into adhesive paste, some of which is further processed into adhesive film. At various stages during this process, the in-process quality control lab technicians leave their enclosed laboratories, which are located on the production floor, to obtain samples of the film or paste and/or to perform physical tests on the product. These lab technicians also obtain information from film and paste production employees who may have reported product deviations. If the lab technicians observe a problem, they call a process engineer or recommend a solution.

Piemonte testified that the quality control lab technicians spend about 60 percent of their time on the production floor, although Fajardo gauged the time at five to ten percent. However, Piemonte and Fajardo both testified that the actual testing is performed in the technicians' separately enclosed labs. In addition, as Piemonte testified, these technicians spend time in the quality control building verifying procedures, and may also work as designated service quality representatives in the shipping area, where they spend 60-65 percent of their time interacting with warehouse operators.

The next step in the process takes place in the warehouse, where warehouse operators set up the product configuration, package the product in small containers for the

customer, and affix labels. After this takes place, other quality control lab technicians retest the product in a separate building.

The record does not show that employees in different classifications are cross-trained to perform each others' jobs. However, film and paste employees and warehouse operators have similar training with respect to forklifts, labeling, and the handling of material. But there is no evidence that other classifications of employees, such as the lab technicians, are trained or qualified to work on film and paste machinery. Likewise, there is no evidence that film and paste production employees are trained to do the work of any other job classification, except for 11 individuals, noted below, who permanently transferred from production into other departments since 1982.

Although many employees, including those in film and paste production, have eight-hour shifts, film and paste employees alone can work on rotating twelve-hour shifts. Employees in different departments also generally wear different attire. Thus, film and paste employees wear blue coveralls; quality control technicians wear white lab coats; maintenance mechanics wear a two-piece uniform; warehouse employees don either coveralls or lab coats; and planners do not wear any uniform. Regarding time clocks and break rooms, although they are located in three different areas of the facility, in practice the film and paste employees utilize the ones in the production department.

On the other hand, the wages and benefits of all of the facility's employees, excluding management, are largely similar. Thus, all non-managerial employees, including those outside of the Employer's proposed unit, receive wages and benefits within the same range, including bonuses, health benefits, and 401(k). The employee handbook also applies to all employees, and safety requirements do not vary based on job classifications.

Regarding employee interchange, there is no evidence that employees in different departments mutually exchange duties. Fajardo testified that on one occasion, he spent a day working in the warehouse. Moreover, although the employer presented evidence that 17 employees have transferred into new positions since 1982, only 11 were production employees who transferred to jobs in other departments (three of whom did so for medical reasons). Additionally, the record shows just one instance of an employee transferring into production from another department (Ruben Tolentino).

There is no bargaining history between the Petitioner and the Employer involving these employees.

### **ANALYSIS**

Section 9(a) of the Act provides that a union will be the exclusive representative if it is chosen by a majority of employees in “a unit appropriate” for collective-bargaining, and Section 9(b) authorizes the Board to decide on an appropriate unit “in each case.” Nothing in the Act requires that the petitioned-for unit be the only appropriate unit, or the most appropriate unit; it requires only that the unit be “appropriate.” *Overnight Transp. Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enf’d* 190 F.2d 576 (7th Cir. 1951).

In deciding whether a group of employees constitutes an appropriate unit, the Board focuses on whether they share a “community of interest.” *NLRB v. Action Automotive*, 469 U.S. 490, 491 (1985); *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB No. 83, slip op. at 9, *petition for review pending sub nom. Kindred Nursing Centers East, LLC v. NLRB*, Nos. 12-1027, 12-1174 (6th Cir.). Procedurally, the Board examines the petitioned-for unit first, and “‘if it is an appropriate unit, the Board’s inquiry ends.’” *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 8 (quoting *Wheeling*

*Island Gaming, Inc.*, 355 NLRB No. 127, slip op. at 1 n.2 (2010)). See also *Boeing Co.*, 337 NLRB 152, 153 (2001). Thus, when the petitioned-for unit consists of “employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional factors,” then the Board will find the unit to be appropriate, even if the employees could also be placed in a larger unit that would also be appropriate or even more appropriate. *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 12.

In determining whether employees share a community of interest, the Board examines:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Specialty Healthcare*, 357 NLRB No. 83, slip op. at 9 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). Accord *Overnite Transp. Co.*, 331 NLRB 662 (2000); *J.C. Penney Co.*, 328 NLRB 766 (1999); *Kendall Co.*, 184 NLRB 847 (1970).

Further, if a party contends that the petitioned-for unit is inappropriate because it excludes certain employees, then that party must “demonstrate[] that the employees in the broader unit share an overwhelming community of interest with those in the petitioned-for unit.” *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 11-14. Accord *Lanco Constr. Sys., Inc.*, 339 NLRB 1048, 1050 (2003); *Lodgian, Inc.*, 332 NLRB 1246, 1255 (2000). See also *Sandvik Rock Tools v. NLRB*, 194 F.3d 531, 533-34, 537-38 (4th Cir. 1999) (employer challenging petitioned-for unit of chemical products division employees had burden of proving the unit was “utterly inappropriate” unless it was expanded to

include mineral tools division employees); *NLRB v. Aaron's Office Furniture*, 825 F.2d 1167, 1169 (7th Cir. 1987) (employer must show that the petitioned-for unit is “clearly inappropriate”). “A unit is truly inappropriate if, for example, there is no legitimate basis upon which to exclude certain employees from it.” *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008).

Applying these principles to the facts in this case, it is clear that the paste and film production employees are readily identifiable as a group based on their job classifications and departmental grouping, including supervision, as well as their job functions, skills, and work location. They are the only employees who regularly operate the paste and film equipment on the production floor, and they are specifically trained by more experienced coworkers to perform that unique function. The record does not show that any other group of employees is trained to operate, or in fact operates, this production equipment. Moreover, the paste and film employees are grouped in the same department—production—that is headed by a production manager, assistant production manager, and three production supervisors. Aside from the salaried process engineers, who are not claimed to be part of any unit, the production department includes only the 64 film and paste employees and the engineering technician, a stipulated member of the unit.

The factors noted above also establish that the paste and film production employees share a community of interest. Thus, they are organized under a separate department; have distinct skills and training; share distinct job functions and perform distinct work; and are separately supervised. Although mechanics, planners, warehouse operators and certain classifications of lab technicians also ultimately report to Director of Operations Piemonte, they are separated from the film and paste employees by several intervening layers of management and supervision governing the production department

alone. See *Int'l Paper Co.*, 96 NLRB 295, 298 n.7 (1951) (manner in which an employer has chosen to organize his plant has a direct bearing on whether employees share a community of interest); accord *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 9 n. 19. As for the research and development lab technicians that the Employer seeks to include in the unit, they do not even report to Piemonte. Moreover, the film and paste production employees are the only employees who can work rotating twelve-hour shifts; they use the time clock and break room located near the production floor; and their blue coverall uniforms are distinctive, shared only by some but not all of the warehouse employees.

Although the paste and film production employees' other terms and conditions of employment—notably, their wage scales and benefits—are similar to those of employees in other job classifications, the same terms and conditions also apply to personnel who are wholly outside of the broader unit sought by the Employer. Moreover, this one factor does not outweigh the evidence noted above that the film and paste employees share a distinct community of interest. And the commonality of wages and benefits, even when viewed in conjunction with the limited evidence of employee interchange and contact discussed below, does not suffice to establish that the film and paste employees share an overwhelming community of interest with workers in other job classifications.

Thus, the Employer adduced only limited evidence of interchange between the paste and film production employees and personnel in other job classifications. To begin, there is no evidence of employees interchanging jobs in the sense of mutually exchanging duties. Fajardo testified that on one occasion, he spent a day working in the warehouse, but that was an isolated event, and the record does not show any instances of warehouse

operators or employees in other job classifications operating the film and paste machinery.

The evidence of employee interchange is limited in other respects as well. Thus, the record shows that since 1982, only 17 employees have transferred into new job classifications, and of those 17, just 11 were film and paste production employees who transferred into other departments. Moreover, ten of the 11 transfers were one-way, from production into other departments. Given the infrequency and limited scope of these transfers, they do not undermine a finding that the film and paste employees share a distinct community of interest, nor do they establish that employees in the broader unit sought by the Employer share an overwhelming community of interest.

Further, although the Employer presented evidence that its processes are functionally integrated, for the most part it failed to show frequent, meaningful contact among employees in the many job classifications that it seeks to include in the unit. For example, planners spend 70 percent of their time working at desks located on a separate floor, and enter the production area only to retrieve work orders or distribute labels; thus, their interaction with film and paste production employees is limited. With respect to the quality assurance lab technician, the record shows only that he spends an unspecified amount of time checking calibration tags on the production floor. Moreover, film and paste production employees interact with warehouse operators, who work in a different building, only to call them for materials or have them pick up the finished product. As for the lab technicians who work in research and development, which is located in a different building, film and paste production employees rarely interact with them. And the film and paste production employees' contacts with maintenance mechanics are

limited to occasions when production equipment needs to be repaired; they do not work alongside each other.

Although Director of Operations Piemonte testified that the in-process lab technicians spend 60 percent of their time on the production floor, he also testified that the same technicians spend 60 percent of their time with warehouse employees. Further, Fajardo, a production employee who was able to provide first-hand observations because he spends 95 percent of his time on the production floor, testified that the in-process lab technicians spend just five to ten percent of their time there. In any event, it is undisputed that the in-process lab technicians work out of separately enclosed office laboratories, where they perform the testing that only they are trained to do. On this record, the Employer's claim that the film and paste production employees lack a distinct community of interest must be rejected. See *Penn Color, Inc.*, 249 NLRB 1117, 1119-20 (1980) (excluding quality control and research and development technicians from a petitioned-for unit of production and maintenance employees, even though the employer's operations were highly integrated, based on the two groups' separate supervision, different training, and lack of interchange, and fact that technicians' contact was limited to working alongside the other group).

The Employer errs in contending that the integrated nature of its operations compels a finding that the film and paste employees have no distinct community of interest. *The Boeing Co.*, 337 NLRB 152, 153 (2001), on which the Employer relies, is not to the contrary. There, the Board found that two groups of employees shared a community of interest because they had the same skills, qualifications, and certifications, and performed the same type of work. *Id.* The integrated nature of their work was merely an additional factor supporting the Board's finding. *Id.* By contrast here, as

noted above, the film and paste production employees perform a unique function not shared by any other employee classification. In these circumstances, the fact that the Employer's operations are integrated does not establish that the film and paste employees lack a separate community of interest.<sup>2</sup> Accord *Penn Color, Inc.*, 249 NLRB at 1117, 1119-20. Nor does the integrated nature of the enterprise establish that employees in the broader unit sought by the Employer share an overwhelming community of interest.

In sum, the record shows, and I find, that the film and paste employees are readily identifiable as a distinct group, and that they share a community of interest. Further, the record fails to show that those employees share an overwhelming community of interest with the planners, warehouse operators, maintenance mechanics, quality control, research and development, and quality assurance lab technicians that the Employer seeks to include in the unit. Accordingly, I find that the film and paste employees in the production department, together with the engineering technician whose inclusion is stipulated, constitute an appropriate unit for collective bargaining purposes.

## **CONCLUSIONS AND FINDINGS**

Based upon the entire record, I conclude and find as follows:

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

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<sup>2</sup> For similar reasons, the Employer's reliance on *Publix Super Markets*, 343 NLRB 1023 (2004), is unavailing where the constellation of facts differed in key respects from the instant case. Notably, in *Publix*, unlike the instant case, the two groups of employees performed the same or similar duties; they temporarily interchanged jobs; and about a third of them transferred from one group to the other. *Id.* at 1026.

2. The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 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:

All full-time and regular part-time film and paste production employees and engineering technicians employed by the Employer at its Bay Point, California facility, excluding all other employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

### **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 purposes of collective-bargaining by the **Machinists & Aerospace Workers Local No. 1584, District Lodge No. 190, International Association of Machinists & Aerospace Workers, AFL-CIO**, or no union. 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 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, in an economic strike which commenced less than 12 months before the election date, employees engaged in such 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 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). 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.). 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, National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA 94612, **on or before August 15, 2013**. 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.nlr.gov](http://www.nlr.gov),<sup>3</sup> by mail, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional or Subregional Office.

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<sup>3</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

### **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 3 working days prior to 12:01 a.m. of the day 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, DC 20570-0001. This request must be received by the Board in Washington by **August 22, 2013**. The request may be filed electronically through E-Gov on the Board's web site,

[www.nlr.gov](http://www.nlr.gov),<sup>4</sup> but may not be filed by facsimile.

**DATED** at Oakland, California, this 8<sup>th</sup> day of August 2013.

/s/ William A. Baudler  
William A. Baudler, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612

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<sup>4</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.