

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

CHALLENGE UNLIMITED, INC.

Employer

and

Case 14-RC-116294

**TEAMSTERS, AUTOMOTIVE, PETROLEUM
AND ALLIED TRADES, LOCAL UNION 50**

Petitioner

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

The Employer, Challenge Unlimited, Inc., an Illinois corporation, provides vocational and developmental training to individuals with disabilities. The Petitioner, Teamsters, Automotive, Petroleum and Allied Trades, Local Union 50, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent all skill trainers employed by the Employer at its Swansea, Illinois facility. A hearing officer of the Board held a hearing and the Employer filed a brief with me.

As evidenced at hearing and in the Employer's brief, there are three issues to be decided: (1) whether the single-facility unit sought by the Petitioner is appropriate, (2) whether the petitioned-for unit of skill trainers is appropriate or whether it should include other job classifications, and (3) whether the production coordinators are supervisors within the meaning of Section 2(11) of the Act.

The Petitioner contends that a single-facility unit comprised of nine skill trainers at the Swansea, Illinois facility is an appropriate unit. The Employer opposes the petitioned-for unit and contends that a multi-facility unit consisting of the Employer's Swansea and Alton, Illinois facilities is appropriate. The Employer further contends that this multi-facility unit should be composed of the following employees at Swansea: 9 skill trainers, 1 production coordinator, 2

job coaches, and 2 bus drivers; and the following employees at Alton: 17 skill trainers, 1 production coordinator, 7 bus drivers, 2 truck drivers, and 1 janitorial supervisor. In support of its position, the Employer cites the centralized control of labor relations and corporate policies; similarity of employee skills, functions, and working conditions; and employee interchange and contact.

The Petitioner contends that the production coordinators are supervisors within the meaning of the Act because they provide instructions to, and coordinate and review the work of the skill trainers. Contrary to the Petitioner, the Employer contends that the production coordinators do not have any of the indicia of statutory supervisors.

I have considered the evidence and arguments presented by the parties on the issues, and I find that the petitioned-for single-facility unit of skill trainers is appropriate. I find the Employer has failed to rebut the single-facility presumption and the record fails to establish an overwhelming community of interest between the skill trainers and the other job classifications at the Swansea facility the Employer seeks to include. Because I have concluded that the production coordinator does not share an overwhelming community of interest with the skill trainers, it is unnecessary to make a finding with regard to the supervisory status of the production coordinator. Accordingly, there are nine employees in the unit.

I. OVERVIEW OF OPERATIONS

The Employer is an Illinois corporation that provides vocational and developmental training for disabled individuals, called clients. The Employer provides the clients with training opportunities, such as in packaging and assembly work, and assists the clients in obtaining outside employment. The Employer's administrative office is located in Alton, Illinois. The Employer has two developmental training (DT) facilities, in Swansea and Alton, Illinois, which are about 30 to 40 miles apart. Both the Swansea and Alton facilities operate under one license from the State of Illinois and are governed by the same State of Illinois developmental training

rules and regulations. The State of Illinois reviews the Employer's facilities jointly for regulatory compliance.

The Employer procures production contracts with outside companies and state and federal agencies to perform light assembly, packaging, labeling, and collating of materials, which is done by the Employer's clients with the assistance of the skill trainers. Both the Swansea and Alton facilities have warehouses and production line operations to service customer contracts.

The executive officer-administration and services oversees the Employer's operations. A chief program officer oversees the operation of the two DT facilities. The skill trainers report to case managers who, in turn, report to either the Swansea or Alton director of DT services. The janitorial supervisor reports to the Alton director of DT services. The directors of DT services, one at each facility, the director of production, and director of transportation report to the chief program officer. Two production coordinators, one at each facility, report to the director of production. The two truck drivers and nine bus drivers report to the transportation supervisor and, in turn, the director of transportation.¹ The job coaches report to the support employment placement (SEP) coordinator.

The case managers are degreed professionals who develop goals and objectives for clients and document client files as to training, development, and progress. The case managers supervise skill trainers who are assigned clients on a daily basis to work on achieving the clients' developmental goals and objectives. Every 2 weeks the director of production, the two directors of DT services, and the marketing employee meet to discuss and coordinate production contracts for the two facilities.

Upon hire, all employees attend a 1-day orientation and undergo a 2-week training period. When there is more than one new hire employed at different facilities, the new

¹ The parties stipulated that the case managers, directors of DT services, director of production, transportation supervisor, and director of transportation are supervisors as defined in the Act.

employees from both facilities may train together. The Employer also conducts bi-annual in-service training for all employees, which includes CPR, first aid, crisis prevention, abuse and neglect, and blood borne pathogens. This training is typically conducted at the Alton facility, which has more employees. The Employer's personnel manual and job descriptions apply to employees at both facilities. All full-time employees receive the same benefit package, which includes short and long-term disability, sick leave, vacations, personal time, and paid holidays. All the employees the Employer seeks to include in the unit are hourly paid and wear name badges but not uniforms.

A. Skill Trainers

The skill trainers are responsible for assisting clients by providing them training and modeling in whatever life skills the client may need assistance, from personal hygiene to specific job skills related to assembly-line production, packaging and collating, and working on clients' program goals. Depending on the skill level of the clients, the skill trainers may give the client step-by-step instructions and guidance on performing a task or the skill trainers may perform the production task with the clients. Skill trainers also set up the work lines where the clients receive their training, ensure that necessary materials are on the work tables, perform the assembly and packaging work as a model for the clients, and prepare materials for shipment. The skill trainers may also operate various machinery, pallet jacks, and forklifts.

During daily production meetings held prior to the arrival of the clients, the production coordinator discusses with the skill trainers the production needs for the day. When there are changes to the production lines, the director of production as well as the director of DT services may attend the daily meeting to discuss the changes. Also at the daily meeting, the case managers discuss with the skill trainers the specific objectives and goals of the individual clients and reassign tasks to the clients so that they receive a variety of experiences. At the end of each day, skill trainers complete paperwork tallies on the clients' work performance and submit these to the production coordinator. The production coordinator reviews the client paperwork for

accuracy and discusses any discrepancies with the skill trainer. Skill trainers are also assigned as bus monitors on a rotating weekly basis. The skill trainers perform the same duties at each facility.

The starting wage rate for skill trainers is \$8.45 per hour with annual merit increases, currently from 2 to 4 percent, based on their evaluations prepared by their case manager and director of DT services. The skill trainers work 37½ hours per week, from 7:30 a.m. to 3:30 p.m. or 8 a.m. to 4 p.m., Monday through Friday. They are required to have a high school diploma or GED. Skill trainers report daily to their case manager and perform all their duties at the Employer's facility unless they are assigned to bus monitor duties.

B. Production Coordinators

Each facility has a production coordinator who is supervised directly by the director of production. The production coordinator has her own office at each facility and performs all her duties at the facility. The production coordinator is responsible for the day-to-day operation of the production contracts through contact with the customers, scheduling shipping and receiving, completing production reports, and ensuring quality control of all contracts. Each day the production coordinator sets the production goals, describes for the skill trainers the scope of the work and how to complete the contract correctly within necessary deadlines, and performs quality control checks. They receive and review the skill trainers' completed paperwork regarding the clients' daily production tallies. When paperwork is inaccurate, the production coordinator will make the appropriate correction or ask the skill trainer to do so. Production coordinators have no role in evaluating the skill trainers' performance. Depending on the customer contract, the work load, and the staffing levels, the production coordinator's time spent on the production floor varies. When there is a large contract and the skill trainers are understaffed, the production coordinator may assist with production work. The record testimony varied as to how much time the production coordinator spends on the production floor – from 50 to 60 percent, 80 to 90 percent, 90 to 100 percent, or not very often except recently

due to understaffing and machinery malfunctioning.

Production coordinators work 37½ hours per week, 7:30 a.m. to 3:30 p.m. or 8 a.m. to 4:30 p.m., Monday through Friday. The production coordinator's rate of pay starts at \$12 per hour and can increase to \$14 or \$15 based on experience. Production coordinators are required to have a high school diploma or GED and 1-year of production-related experience.

C. Job Coaches

The Employer employs two job coaches, one at each facility. According to the job coach job description, they are in the community rehabilitation department and report to the SEP coordinator. The job coaches work with individual clients in a variety of settings: one-on-one in the community, trying to assist the client in attaining and keeping employment; and in small groups, teaching clients job skills such as completing employment applications, interviewing skills, and finding jobs through classified advertisements. Job coaches may also work with individual clients at the Employer's DT facilities, helping them with vocational and developmental training, behavioral training, social skills, and life skills. Job coaches are not responsible for the production contracts but rather the clients' development through vocational training on the production contracts. Job coaches may interact with the skill trainers in addressing individual clients' developmental needs.

Job coaches work 37½ hour work weeks, typically from 8 a.m. to 4:30 p.m., Monday through Friday; however their hours may fluctuate depending on the needs of the clients. Job coaches are hourly employees and are required to have a high school diploma or GED. Their starting rate of pay is \$8.70 per hour and can increase to about \$10 per hour based on length of employment.

D. Bus Drivers

The Employer employs nine bus drivers, two of which work at Swansea and seven at Alton, who report to the transportation supervisor and the director of transportation. The bus drivers transport the clients from their residences to a DT facility for training and special events.

Bus drivers interact with skill trainers, who are assigned as bus monitors on a rotating basis, and when they load and unload clients at the DT facility, and may also interact with the production coordinator while loading and unloading clients. Bus drivers have minimal contact with job coaches. The record indicates that in times of short staffing or heavy production workloads, the bus drivers may be asked to assist with production; but no witness testified that this, in fact, has occurred.

Bus drivers are considered part-time employees and work from 6:30 a.m. to 10:30 a.m. and from 1 p.m. to 4 p.m., Monday through Friday, and as needed. They are required to have a high school diploma or GED and a Class C commercial driver's license with a passenger endorsement, and must pass State of Illinois Department of Transportation physicals and drug screens. As part-time employees, they are paid a minimum of \$10.50 and up to \$12 per hour, and receive the Employer's basic Challenge benefit package, which provides fewer benefits than those provided to full-time employees.

E. Truck Drivers

The Employer employs two truck drivers who are assigned to the Alton facility but performs duties for both DT facilities. The director of production and the director of transportation coordinate the truck drivers' schedules based on the production needs of each facility. The truck drivers report to the transportation supervisor and director of transportation. They are responsible for picking up and delivering product from the customers to the DT facilities and between the DT facilities. The truck drivers may also drive a forklift at the DT facilities, wrap product, and assist on the production line and with clients. The truck drivers interact daily with the production coordinator and the skill trainers as they come in and out of the DT facilities to pick up and deliver product and materials. The truck drivers exchange paperwork, such as bills of lading and customer instructions, and discuss with the DT staff what product is ready, where it is located, and where it is to be delivered. On one occasion, for a portion of a day, when the Employer was short staffed on skill trainers at the Swansea facility, a

truck driver assisted on the production line alongside the skill trainers and clients.

The truck drivers are full-time employees who earn \$15 per hour and receive the same salary benefit package as other full-time employees. They are required to have a high school diploma or GED and the appropriate driving licensure.

F. Janitorial Supervisor

The Employer employs one janitorial supervisor who works at the Alton DT facility. The janitorial supervisor provides oversight to the specific janitorial program, which includes an internal program at the Alton DT facility and two community off-site programs where clients learn community work skills. The janitorial supervisor also works directly with the Employer's clients on a daily basis, providing them training and modeling in whatever life skills that the clients may need assistance, from personal hygiene to specific job skills related to performing janitorial duties as well as assembly/production line duties similar to the skill trainers. The janitorial supervisor performs skill trainer duties and fills in and assists the skill trainers when needed. The janitorial supervisor reports directly to the Alton director of DT services. The record is silent as to whether the janitorial supervisor is a full-time employee, the wage rate or benefits package, or the education and experience requirements.

II. UNIT SCOPE

The Petitioner contends that the Swansea facility constitutes an appropriate single-facility unit, while the Employer asserts that the appropriate unit is a multi-facility unit consisting of the Alton and Swansea facilities. For the reasons set forth below, I will direct an election in the single-facility unit sought by the Petitioner.

A. Case Authority

It is well-established that a single-facility unit, such as the one being sought here, is a presumptively appropriate bargaining unit unless it has been so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. *D&L Transportation*, 324 NLRB 160 (1997). The party challenging the appropriateness of a single-

facility unit has the burden of rebutting the presumption. *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Renzetti's Market*, 238 NLRB 174 (1978). In order to rebut the presumption, the party challenging the presumption must be able to show that the day-to-day interests of the employees at the single location have merged with those of the employees at the other locations. *Renzetti's Market* at 175. To determine whether the presumption has been rebutted, the Board examines such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990).

B. Discussion and Analysis of Relevant Factors

1. Centralized Control Over Daily Operations and Labor Relations

The record shows that the Employer's human resources and administrative functions are centralized under the executive officer-administration and services, including the human resources director, and chief program officer. The chief program officer supervises the director of transportation, director of production, and the two directors of DT services. The Employer's two directors of DT services, one at each of the Swansea and Alton facilities, are responsible for the overall day-to-day operation of their assigned facility. Each facility's case managers report to their director of DT services. Each facility's director of DT services and case managers hire, fire, evaluate, and discipline the skill trainers at their facility. Each facility conducts daily meetings to discuss the daily production needs and the client goals for that facility. While the Employer's witnesses testified that if there is a large customer contract both facilities might work on it, no specific evidence was presented that this has occurred or what level, if any, of production coordination or integration would occur. The general testimony was that each facility completes its own contracts and the clients learning to perform the work are assigned to a single facility. The only evidence of overlap between the facilities is the scheduling of the

truck driver pick-ups and deliveries of materials and product, which are coordinated by the director of transportation and the director of production, and the coordination of bi-annual in-service training attended by employees of both facilities. While the Alton director of DT services has filled in at the Swansea facility during times when the Swansea director of DT services position was vacant, this has occurred only three times in the Alton director of DT services' 12-year tenure; and there is no evidence of any overlap of oversight or supervision between the two directors of DT services.

2. Similarity of Employee Skills, Functions, and Working Conditions

The record establishes that the skills and duties of the respective job classifications at each facility are identical. The skill trainers at the Alton DT facility perform the same duties as the skill trainers at the Swansea DT facility, as do the production coordinators, job coaches, and drivers. Similarly, these employees' work schedules, wages, benefits, training requirements, and educational and licensure requirements are the same for each job classification regardless of the facility to which the employee is assigned. The truck drivers and bus drivers also share similar working conditions with the exception that the bus drivers are part-time employees who do not receive the same level of benefits as full-time employees.

3. Employee Interchange and Contact and Functional Integration

The frequency of employee interchange is controverted. The Employer's witnesses testified that, when necessary due to staff shortages and production needs, the skill trainers may be assigned to work at the other facility or the bus drivers and truck drivers may be called on to assist the skill trainers. However, the only evidence of this actually occurring is the one recent occasion when a truck driver spent a portion of one day assisting on the production line at the Swansea facility. This occurred when two skill trainers at Swansea recently resigned their positions, but those positions have since been filled. Similarly, the Alton director of DT services testified to filling in for the Swansea director of DT services facility when that position was

vacant and when training the newly hired director of DT services. But, according to the Employer's witness, this has only occurred three times in the past 12 years.

Employees from both facilities have contact with each other, but the only consistent contact is at the bi-annual in-service training in which all employees, supervisors, and managers participate. On occasion, when both facilities have new hires at the same time, new employees may attend orientation training together, but the record fails to disclose any specific evidence of how frequently this occurs. While the truck drivers provide pick-up and delivery service to both facilities, all the other employees the Employer maintains should be included in the unit are assigned to a specific facility and perform their duties at that facility. In the case of the job coaches and bus drivers, whose duties occur outside as well as inside their assigned facility, they only perform services for clients at their particular facility.

With respect to the functional integration factor, the record establishes that each DT facility's production contracts are generally completed at one facility for the purpose of training clients assigned to that facility. An Employer witness referred to contracts that may be so large as to be performed at both facilities, but no specific testimony or documentation was presented to corroborate or verify the frequency or reality of such an occurrence.

4. Collective-Bargaining History

There is no history of collective bargaining between the Petitioner and the Employer.²

5. Geographic Proximity

The Alton and Swansea DT facilities are approximately 30 to 40 miles apart.

C. Analysis

In the instant case, I conclude that the petitioned-for single-facility unit located in

² At hearing, the Employer requested that administrative notice be taken of the Decision and Direction of Election in Case 14-RC-12507 (June 16, 2004). The conclusions and findings in that case are not precedential as that case involved the Employer and two other corporate entities and a different petitioner who sought three separate multi-location units. In addition, the decision issued prior to the Board's holding in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011).

Swansea, Illinois is an appropriate unit. The Employer has failed to rebut the presumption that a single-facility unit is an appropriate unit.

There are factors that would support a finding that the single-facility presumption has been rebutted, including the fact that the Employer's human resources and labor relations are centralized, the State of Illinois regulatory license encompasses both of the DT facilities, and the employees' duties, wages, and hours in the various job classification are the same at both facilities. Also, benefits and other employee terms and conditions of employment at both facilities are established by a companywide personnel manual. However, the centralized control of labor relations and operations upon which the Employer relies is two supervisory levels removed. Thus, the employees who work at the two DT facilities report to a director of DT services, director of production or director of transportation, all of whom, in turn, report to the chief program officer, who reports to the executive officer-administration and services. The DT facilities have significant local autonomy over labor relations. The petitioned-for skill trainers are separately supervised by their respective case managers and directors of DT services, who hire, fire, evaluate, and discipline employees at their facility. Based on these factors, there is insufficient support for a multi-facility unit. See, *Cargill, Inc.*, 336 NLRB 1114 (2001) (the Board majority found "significant local autonomy of labor relations sufficient for a single unit."). See also, *Bashas', Inc.*, 337 NLRB 710, 711 (2001). Moreover, while wages and benefits may be similar or identical for each job classification at the two facilities, "uniform wages and fringe benefits and interdependence of facility operations are not controlling in determining the appropriateness of a single-facility unit." *AVI Foodsystems, Inc.*, 328 NLRB 426, 430 (1999).

With respect to employee interchange and contact, the evidence shows that the only consistent interchange and contact among employees is the bi-annual in-service training for all employees including supervisors and managers. The other occasions when new hires at both

facilities may undergo orientation together is minimal. The only evidence of interchange is when the Alton director of DT services filled in while the Swansea director of DT services position was vacant, and this occurred only 3 times in 12 years, and both parties agree that this director is a supervisor. The only other evidence of working contact was when a truck driver, who works at both facilities, performed production work at the Swansea facility for part of a day. Interchange of this degree is not significant and "does not approach the degree of interchange typically present in cases where the Board has found it to be significant." *New Britain Transportation Co.*, 330 NLRB at 398. See *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000) (finding it significant that there was neither substantial employee interchange nor significant functional integration between two facilities that is distinguishable from other facilities); *Fraser Engineering Company, Inc.*, 359 NLRB No. 80, slip op. at 2 (2013) (two groups of employees have limited contact and interchange, and only rarely perform functionally integrated work).

Additionally, there is limited functional integration as the customer contracts are designated to a particular facility for completion and the clients receiving developmental training are assigned to a specific location. Other than the truck drivers who are responsible for picking up and delivering materials and customer products to both facilities, no other employees perform work outside or unrelated to their DT facility. Thus, the record does not show that the Swansea and Alton DT facilities are functionally integrated operations. Rather, the record shows, and I conclude, that the Swansea DT facility operates independently of the Alton facility. See *Fraser Engineering Company, Inc.*, supra, slip op. at 10 (the two groups work on separate projects where the work process does not flow from one group to another); *Bashas', Inc.*, supra at 711.

The only significant connections among the two facilities are the Employer's licensing and review by the State of Illinois, and a similarity in skills, functions, and working conditions of the employees. It is well-established that a single-facility unit, such as the one being sought

here, is a presumptively appropriate unit unless it has been so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. *D&L Transportation*, supra at 160.

Lastly, the fact that the Alton and Swansea facilities are 30 to 40 miles apart weighs against a finding that a multi-facility unit is appropriate. Cf. *Globe Furniture Rentals, Inc.*, 298 NLRB 288, 290 (1990) (noting geographic proximity among employer's five stores a factor in finding multi-facility unit appropriate where the furthest distance between any two stores was 25 miles and the shortest distance was 5 miles.)

While acknowledging that certain factors may exist that favor a finding that the single-facility presumption has been rebutted, the Employer has failed to establish that the employees at the Swansea and Alton facilities share an "overwhelming community of interest". *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 15 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

The Employer contends that the petitioned-for unit is a fractured unit, that there is "no rational basis for excluding [other job classifications] while including [designated] classifications in the Unit." The Employer relies on the holding in *Odwalla, Inc.*, 357 NLRB No. 132 (2011), for this contention. However, *Odwalla* is distinguishable. In *Odwalla*, the Board found that there was no legitimate basis for excluding the merchandisers from the unit where the merchandisers had more in common with some of the classifications in the unit than did the route service representatives, another classification that made up a majority of the unit. The Board found that the recommended unit did not track any lines drawn by the employer, such as department, classification, function, supervision, or methods of compensation, but rather aggregated varied classifications. Here, the petitioned-for unit tracks a very specific group – the skill trainers at the Swansea facility who are the only employees at the facility supervised by the case managers and the director of DT services and whose job duties

straddle both of the Employer's purposes: completion of production contracts and developmental training of the clients. All of the other job classifications have different supervision and duties that are directed to one or the other of the Employer's business purpose, not both. Contrary to the Employer's contention, the petitioned-for unit is not fractured since there is a rational basis for excluding the Alton facility employees and the other classifications at the Swansea facility from the petitioned-for skill trainers based on the lack of employee interchange, functional integration, and common supervision, all of which existed in *Odwalla*.

For the foregoing reasons, I find that the record evidence is insufficient to rebut the presumption favoring a single-facility unit where the Employer has not shown that the interests of employees at the Swansea DT facility have merged with those employees at the Alton DT facility. Accordingly, I conclude that the single-facility unit at the Swansea, Illinois facility is an appropriate unit.

III. UNIT COMPOSITION

The Petitioner seeks only to represent the skill trainers. The Employer contends that the unit should also include the production coordinator, job coach, truck drivers, and bus drivers as they share a community of interest with the skill trainers.³ For the reasons set forth below, I find that the skill trainers do not share an overwhelming community of interest with the production coordinator, job coach, truck drivers, and bus drivers at the Swansea DT facility and these classifications are appropriately excluded from the single-facility unit.

A. Case Authority

The Board's procedure for determining an appropriate unit under Section 9(b) is to first examine the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Wheeling Island Gaming*, 355 NLRB 637 fn. 2 (2010); *Boeing Co.*, 337 NLRB 152,

³ Where I have found that a single-facility unit at the Swansea DT facility is appropriate, I find it unnecessary to discuss employees at the Alton DT facility.

153 (2001). In making a determination as to whether a petitioned-for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioner be an appropriate unit for collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or most appropriate unit. *Wheeling Island Gaming*, supra; *Overnite Transportation Co.*, 322 NLRB 723 (1996) (citations omitted); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) ("There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate'") (emphasis in the original). Even if the Employer demonstrates that a larger unit including all or some of its unrepresented employees was appropriate, that would not establish that the petitioned-for unit is inappropriate. "The Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate." See *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964).

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 1 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), the Board returned to the application of its traditional community of interest approach to determining unit appropriateness. The Board further clarified that "in cases in which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interest is nevertheless inappropriate because it does not contain additional employees, the burden is on the party so contending to demonstrate that the excluded employees share an overwhelming community of interest with the included employees." *Id.*

"It follows inescapably that demonstrating that another unit containing the employees in the proposed unit plus others is appropriate, or even that it is more appropriate, is not sufficient to demonstrate that the proposed unit is inappropriate. More must be shown." *Specialty Healthcare and Rehabilitation Center of Mobile*, supra at slip op. 12. "[T]hat the excluded employees share a community of interest with the included employees does not, however, mean

there may be no legitimate basis upon which to exclude them." Rather, there may be more than one appropriate unit. *Id.*, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008) The Seventh Circuit has agreed, "[I]t is not enough for the employer to suggest a more appropriate unit; it must 'show that the Board's unit is clearly inappropriate.'" *Id.*, citing *Dunbar Armored, Inc., v. NLRB*, 186 F.3d 844, 847 (7th Cir. 1999) (quoting *NLRB v. Aaron's Office Furniture*, 825 F.2d 1167, 1169 (7th Cir. 1987)).

In determining whether the requisite community of interest exists among all of the Employer's employees, the Board considers such factors as: the degree of functional integration; employee skills; interchangeability and contact among employees; common supervision; and similarities in wages, hours, fringe benefits and other working conditions. *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995); *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981). See, *United Rentals, Inc.*, 341 NLRB 540 (2004). No one of the above factors has controlling weight and there are no per se rules to include or exclude any classification of employees in any unit. *Airco, Inc.*, 273 NLRB 348 (1984).

B. Discussion of Relevant Factors

1. Functional Integration, Employee Skills, Interchangeability and Contact Among Employees

Each job classification has its own specific role. The production coordinator coordinates, monitors, and oversees completion of the customers' contracts, which is performed by the skill trainers and clients. However, the production coordinator is not responsible for the clients' training and development. Rather, the skill trainers are responsible, through guidance and direction of the case managers, for providing instruction and modeling for the clients as well as performing production tasks alongside the clients. The bus drivers are responsible for transporting the clients to and from the facility, and the truck drivers' duties are limited to picking up and delivering production materials. The job coach serves as a liaison between the clients and community employment and has no input into production other than to ensure a

client's vocational training is progressing.

Other than one recent partial day when a truck driver assisted with production, the employees do not perform each other's job duties. Furthermore, there was only one example of interchange when a production coordinator transferred to a skill trainer position. With respect to contact, the production coordinator and the skill trainers perform their duties at the Swansea DT facility and have frequent contact on the production floor. The bus drivers have contact with the production coordinator and skill trainers when they drop off or pick up the clients at the facility, but they are not typically on the production floor. The truck drivers' contact is similarly limited to dropping off or picking up materials at the facility; and where they do this work for both the Swansea and Alton DT facilities, the truck drivers are at the Swansea facility less often than the bus drivers. There is no evidence that the truck drivers and bus drivers have any contact with each other. The job coaches perform a majority of their duties outside the facility working with clients who have been placed on jobs in the community or who are learning interviewing, test taking, and other skills for finding employment. There is no evidence that the job coaches have any contact with the production coordinator, the truck driver or the bus drivers, and their contact with the skill trainers at the facility is limited to checking with them on the progress of a client's development.

2. Common Supervision and Wages, Benefits, and Other Working Conditions

Other than at the highest levels of management, the executive officer-administration and services and chief program officer, which are two supervisory levels removed from the operations at the DT facilities, there is no common supervision among the classifications the Employer contends should be included in a unit with skill trainers. The skill trainers are supervised by case managers and, in turn the director of DT services. The truck drivers and bus drivers are supervised by the transportation supervisor and, in turn, the director of transportation. The production coordinator is supervised by the director of production. The job coach is

supervised by the SEP coordinator, but it is not clear to whom the coordinator reports.

Each classification has different starting wage rates. The skill trainers starting wage rate is \$8.45 per hour, the job coaches start at \$8.70, the bus drivers start at \$10.50, the production coordinators start at \$12, and the truck drivers start at \$15 per hour. Employees receive annual pay increases ranging from 2 to 4 percent based on their performance evaluations. Due to separate supervision, the evaluations and wage increases are not standardized for all employees.

All employees, except the bus drivers, are full-time employees and receive the Employer's "salary benefit package," which is the same as that received by supervisors and managers. The part-time bus drivers receive a lesser benefits package. With respect to other working conditions, all full-time employees generally work the same hours, attend the same bi-annual in-service training, and are subject to the same employee personnel manual.

C. Analysis

Although a majority of the job coach's duties take place away from the facility, the record shows that there is some working contact among certain of the employees at the Swansea DT facility. In addition, their benefits and working conditions are similar, with the exception of the bus drivers due to their part-time status. It is more significant, however, that there is no common supervision among the employees, their wage rates are different, their roles in the Employer's operation are sufficiently distinct, and there is no regular interchange among employees. The petitioned-for skill trainers perform job duties that relate to the Employer's dual purposes of completing customer production contracts and providing developmental and vocational training to disabled individuals in the community. These are ancillary functions but not integral to each other. Thus, the production coordinator and the truck drivers' duties are limited to the Employer's production purpose while the bus drivers and the job coach's duties are limited to the Employer's developmental training purpose.

Only the bus drivers and truck drivers are commonly supervised. The skill trainers, production coordinator, and job coaches all have different supervision. There is a significant pay difference of almost \$4 to \$5 per hour between the skill trainers and the production coordinator and truck drivers and a \$2 per hour difference between the skill trainers and the part-time bus drivers. Because the bus drivers are part-time employees they receive a lesser benefit package than the other employees. Lastly, the job coaches perform a majority of their duties outside the DT facility and have no contact with the production coordinator or either type of driver.

In light of this evidence, particularly the lack of common supervision, lack of overlap in job purpose, and different wage rates, I conclude that the Employer has not met its burden of showing that the classifications share an “overwhelming” community of interest as set forth in *Specialty Healthcare and Rehabilitation Center of Mobile*, supra. See, *Bradley Steel, Inc.*, 342 NLRB 215 (2004) (Detailers properly excluded from the unit where they had limited contact with production employees, there was no interchange, separate work areas and separate supervision.); *United Operations, Inc.*, 338 NLRB 123 (2002) (Other than similarity of personnel policies and work rules the HVAC employees were in a separate department, had distinct skills and job functions, performed distinct work with little overlap, little contact, no significant interchange, higher wages and separate supervision).

IV. CONCLUSIONS AND FINDINGS

Based on 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 here.

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

4. The Petitioner claims to represent certain employees of the Employer.

5. 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.

6. 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 skill trainers employed by the Employer at its Swansea, Illinois facility, EXCLUDING production coordinator, job coaches, bus drivers, truck drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

V. 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 in this unit will vote on whether or not they wish to be represented for the purposes of collective bargaining by Teamsters, Automotive, Petroleum and Allied Trades, Local Union 50. The date, time, and place of the election will be specified in the Notice of Election that the 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 immediately prior to 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 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. Those 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 in the unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). 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, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **December 2, 2013**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request

for review affect the requirement to file the 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,⁴ by mail, or by facsimile transmission at (314) 539-7794. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, 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 of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 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.

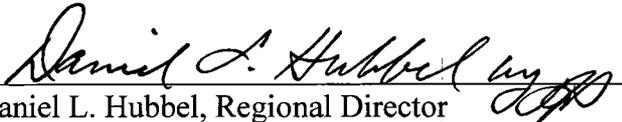
VI. RIGHT TO REQUEST REVIEW

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

⁴ To file the eligibility list 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.

must be received by the Board in Washington, by **December 9, 2013**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁵ but may not be filed by facsimile.

Dated November 25, 2013, at St. Louis, Missouri.


Daniel L. Hubbel, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63013-2829

⁵ 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.