

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

**DIRECTSAT USA**

**Employer**

**and**

**Case 13-RC-113677**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL UNION 21**

**Petitioner**

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**DECISION AND  
DIRECTION OF ELECTION**

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Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.<sup>1</sup>

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<sup>1</sup> 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 in this case.

## I. THE ISSUE AND THE PARTIES' POSITIONS

The single issue presented during the hearing was whether the petitioned-for unit of full-time and regular part time Installation/Service Technicians (Technicians) at the Employer's Mokena, Illinois, facility constitutes an appropriate unit for purposes of collective bargaining under Section 9(b) of the Act.

The Union's position is that the single-plant unit of Technicians at Mokena is appropriate under the Act.

The Employer takes the position that the petitioned-for unit is not appropriate without the inclusion of the Technicians at the Employer's Elk Grove Village, Illinois, facility. The Employer's argument is that the two facilities are so closely integrated as to negate a separate identity for the Technicians at the Mokena plant.

## II. DECISION

For the reasons discussed in detail below, I find the petitioned-for unit to be appropriate. Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

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3. The Petitioner is a labor organization within the meaning of the Act.
  4. There is no collective-bargaining agreement covering any of the employees in the unit sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.
  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.

Eligible to vote are all full-time and regular part-time Installation/Service Technicians employed by the Employer at its facility located at 9951 W 190th St, Mokena, IL 60448, but excluding all other employees, confidential employees, guards, and supervisors as defined in the Act.

### **III. ANALYSIS**

The Employer, DirectSat USA, a Delaware Corporation, with an office and place of business in Mokena, Illinois, is engaged in the business of providing service and installation of satellite television equipment for DirecTV Inc.

#### **The Employer's Operations**

DirectSat (or Employer) is an installer and servicer of internet and video providers, the largest of which is DirecTV, a video provider offering several hundred channels. DirectSat is operated as a "satellite division" by its parent corporation, Unitek Global Services (Unitek), which has its corporate headquarters in Blue Bell, Pennsylvania. Unitek also operates a cable division and an internet division.

#### Central Control of Operations

Unitek houses all its corporate records, including individual employee performance and personnel files, in Pennsylvania, and centrally determines for all its divisions, including DirectSat:

- employment and personnel policies;
- wage and benefit policies;
- ultimate hiring of technicians;
- serious disciplinary actions taken beyond verbal warnings;
- ultimate termination of technicians;
- approval of personnel transfers from one office to another;
- supply purchases.

Specifically with respect to DirectSat, Unitek and DirecTV together use an internet-based program called the FS Scheduler, to assign customer work. When DirecTV receives a call or an installation, an upgrade, or a service order, the information is entered into the FS Scheduler database that then seeks an appropriate technician positioned to handle the work efficiently: a technician whose is physically close to the service-call site, has the skills necessary to perform the job, and is available to take the call within the customer-service time targets set by DirectSat. Thus Technician work assignments are also controlled centrally, though with input from local DirectSat Service Area managers regarding the skills and availability of the Technicians based in that Area.

### The IL01 and IL06 Service Areas in Chicago, Illinois

The geographical region that DirectSat covers is divided into separate Service Areas. Each Service Area has a General Manager and, underneath that person, a team of supervisors who oversee the work of that Service Area's Technicians.

When DirectSat began its operations in the Chicago area in 2006, it established a single Service Area to cover the City of Chicago. In 2009, DirectSat – finding that its facility was inadequate to meet its needs and unable to find a single, suitable alternative facility – decided that it would be better served by dividing that single Service Area into two, which are now designated as IL01 and IL06. IL01, with its headquarters in Mokena, Illinois, covers roughly the southern half of the City of Chicago, and IL06, with its offices in Elk Grove Village, Illinois, covers the northern half. In all, five Service Areas, including IL01 and IL06, comprise the Chicago Designated Market Area.

As in other Service Areas, the Technicians in IL01 and IL06 often do not leave from and return to a central office; rather, the Technicians are permitted to drive the Company vehicles home following their last assignment of the day and, then, to drive directly from their homes to their first work assignment of the next day. The Technicians

maintain contact with their Supervisors and GM through their cell phones and by means of their updates to the FS Scheduler.

The IL01 Technicians and the IL06 Technicians, separately, attend trainings, participate in weekly and occasional Service Area staff meetings, and meet with Supervisors or the GM at their home facilities in Mokena and Elk Grove Village, respectively.

The boundaries of these Service Areas are semi-permeable, in that corporate efficiency principles may require technicians to occasionally take service calls that geographically lie in adjacent Service Areas. In such cases, the Technicians continue to be supervised and managed through their home Service Area. No evidence was presented on the record of any significant or frequent occurrences of Technicians from one of these two Service Areas communicating needs or problems directly to a Supervisor or GM from the *other* Service Area, even when working within the catchment of that other Service Area.

Quality control, on the other hand, is performed by personnel from the Service Area in which work is completed. If, for example, a General Manager from IL06 has concerns about the work of a Technician based in IL01 who completed a job in IL06's Service Area, that General Manager would report these specific concerns to the management of IL01.

The Employer provided evidence that, in any given month, a percentage of Technicians – ranging from 13.5% to 38.5% - employed either at IL01 or at IL06 crossed over into the other Service Area to complete at least one service call. The Employer also acknowledged that some IL01 and IL06 Technicians may likewise complete work assignments in any of the other surrounding Service Areas, though this happens at a markedly lower percentage than is found between IL01 and IL06.

## The Employer's Burden

The Board has held that a single-plant unit within a multi-plant enterprise is “presumptively appropriate” and, the Seventh Circuit, citing an opinion from the Fourth Circuit, has further held that in order “[t]o disqualify a unit, the employer must establish ‘not that another unit is more appropriate, but that the unit selected is utterly inappropriate.’” *Kmart Corporation v. National Labor Relations Board*, 174 F.3d 834, 838 (7th Cir. 1999).

In 2011, the Board lined out its approach going forward with respect to single-facility units and challenges to their appropriateness as bargaining units:

We . . . take this opportunity to make clear that, when employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in a group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit *share an overwhelming community of interest* with those in the petitioned-for unit.

*Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, 12-13 (2011); *enf'd.*, *Kindred Nursing Centers East, LLC* [f.k.a. Specialty Healthcare and Rehabilitation Center of Mobile] *v. National Labor Relations Board*, Nos. 12-1027/1174 (6th Cir. August 15, 2013) (emphasis added).

The Board examines a number of factors in determining whether a single-facility bargaining unit is inappropriate because it wrongly excludes employees at another site or sites. These factors, no one of which is dispositive, include substantial evidence of:

- centralized control of labor relations and operations;
- a concomitant absence of local autonomy;

- centralization of hiring decisions;
- centralization of decisions to discipline or terminate employees;
- similarity of employee working conditions, job functions, and skill sets;
- significant employee interchange;
- housing of administrative records in one of the facilities;
- common supervision;
- absence of a local manager or responsible employee at each facility;
- de minimus distance between the facilities;
- bargaining history, if any, between the employer and a unit that includes but has not been limited to the single facility.

*See, among others, WeCare Transportation LLC*, 353 NLRB 65 (2008); *Trane*, 339 NLRB 866 (2003); *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002); *R&D Trucking, Inc.*, 327 NLRB 531 (1999). *Ore-Ida Foods*, 313 NLRB 1016 (1994).

### **The Employer's Arguments**

The Employer mounted two primary arguments in its efforts to rebut the presumed appropriateness of the proposed unit of IL01 Technicians as a single-facility bargaining unit: (1) the centralization of operations in Unitek's Pennsylvania offices has virtually dispelled local autonomy in the IL01 office in Mokena; and (2) the integration of the operations of the IL01 and IL06 offices means that IL01 does not possess an identity apart from IL06.

#### IL01 Possesses Sufficient Local Autonomy to Have a Single-Facility Bargaining Unit<sup>2</sup>

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<sup>2</sup> In cases where the Board has taken into account the centralization of operations in a facility other than the proposed single-facility unit in determining bargaining-unit scope, either of two situations invariably pertains: (1) the employer is claiming that the *only* appropriate unit must be system-wide (see, for contrasting outcomes before the Board, *Communications Satellite Corporation*, 198 NLRB 1204 (1972) (employer, headquartered in Washington, DC, and centrally operating seven earth stations, argued unsuccessfully for a system-wide unit designation), *discussed infra*, and *National Telephone Company, Inc.*, 215 NLRB 176 (1974) (employer who leased, installed, and maintained commercial telephone equipment in East Hartford, CT, prevailed in arguing for a unit comprised of installers at all eight of its eastern division facilities)), or (2) one of the facilities that the employer claims must be included is the single site of centralized operations and record-keeping (see, *Bowie Hall Trucking, Inc.*, 290 NLRB 41 (1988) (Board

The Board has found that a relatively modest degree of local autonomy is sufficient to defeat an Employer's claim that a single-plant unit is inappropriate as a collective-bargaining unit.

In *Bowie Hall Trucking, Inc.*, 290 NLRB 41 (1988), the Board overruled a Regional Director who had issued a Decision and Direction of Election for a unit larger than the one here proposed by the Petitioner. The Board found great centralization of the Employer's operations, including "a central dispatch system at [headquarters] that schedules the movement of drivers and equipment" at *all* its terminals. *Id.*

However, the Board also found that "although central management has the final authority with respect to hiring and major disciplinary actions, the [local] terminal manager conducts the initial screening for new hires and is consulted with respect to major disciplinary decisions." *Id.* at 43. See also *Communications Satellite Corporation*, 198 NLRB 1204, 1205 (1972) for the Board's holding that a single-plant unit is appropriate, even though employees were hired centrally, because "they are hired for permanent assignment to a particular earth station location," and because of the presence of local managers at each site, including the one petitioned for.

The organizational structure at DirectSat virtually mirrors that at Bowie Hall Trucking and at Communications Satellite. Although DirectSat's policies and ultimate control over hiring, transfers, serious disciplinary actions, and terminations are centralized at DirectSat's Pennsylvania headquarters, IL01 is staffed with its own General Manager and with a team of Supervisors.

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denied employer's claim that, among other facilities, the terminal housing the corporate records and where the corporate directors conducted business must be included in an appropriate unit, discussed *infra* and *Trane*, 339 NLRB 866 (2003) (Board sustained employer's argument that a second facility, a satellite of the company, must be included for the bargaining unit to be appropriate)).

IL01's local Managers "build out" the profile for each IL01 Technician – the skills, the availability, and the work radius (which increases or decreases based on overall work volume) – and enter each profile into the FS Scheduler. IL01 Supervisors daily monitor IL01 Technicians' information, location, and job progress online.

Employee evaluations and job actions are *initiated* by these supervisory persons, directly impacting the job opportunities and working conditions of these employees – employees who are "hired for permanent assignment to a particular . . . location." Any disciplinary actions or recommendations for discharge are likewise initiated at the local level.

The degree of local autonomy exercised by the managers of DirectSat's IL01 site is easily that of local managers at Bowie Hall Trucking and Communications Satellite. Therefore, the Employer's arguments based on the mere fact that both IL01, like IL06, is subject to centralized control in Pennsylvania does not rebut the presumed appropriateness of IL01 Technicians having a bargaining unit separate from IL06's.

#### IL01 and IL06 Facilities not Sufficiently Merged so as to Negate IL01's Separate Identity

In *Dixie Belle Mills*, the Board held that "unless such [single-] plant unit has been so effectively merged into a more comprehensive unit by bargaining history, or is so integrated with another as to negate its identity, it is an appropriate unit even though another unit, if requested, might also be appropriate." *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). There being no bargaining history involving IL01 or IL06, the remaining investigation under *Dixie Belle Mills* is to determine whether the IL01 and IL06 are so integrated that the separate identity of IL01 is negated.

First, the Employer's contention notwithstanding, history itself plainly argues in a direction diametrically the *opposite* of integration: the Employer, in 2009, created a

separate Service Area, and what was formerly IL01 is now two Service Areas – IL01 and IL06. Far from a merger, this was a severance leading to two distinct entities that have both existed as separate DirectSat Service Areas for a longer period of time (2009 to the present) than as one Service Area (2006 to 2009).

The Employer provided data showing that, in the course of one month, as many as 38.5% of employees employed in one Service Area (IL01 or IL06) crossed over the geographic boundary of the other Area to complete at least one service call. Yet this data lacks a broader context of what percentage of all service calls these Technicians finished in a Service Area different than the one they were hired to. For example, if the IL06 Service Area employs 50 Technicians, and in one month's time, 38 of these Technicians (40%) closed one job in the IL01 Service Area, that may be only 38 out of thousands of service calls.

In *New Britain Transportation Co.*, 339 NLRB 397 (1999) – a case cited by both Parties in their post-hearing briefs – the Board examined the employer's assertion that, over the course of five months, there were over “200 instances of temporary employee interchange” among three of its facilities. *Id.* at 398. The Board found that the assertion of these 200 instances “lacks any context and, thus, is of little evidentiary value because the Employer did not present evidence on the percentage of the total number of routes and charters” that involved such temporary interchange. *Id.*

Moreover, in *Bowie Hall Trucking*, 290 NLRB 41 (1988) the Board held that the employer's testimony that “80 percent of [the single-facility unit in question's] local or road drivers pass to or through one of the other terminals” was not evidence of the *interchange* of employees among Bowie's terminals. *Id.* at 43.

The fact that work done by Technicians – even as many as 80% – assigned to one Service Area might take those employees into another Service Area in the course of their

work does not equate to the employees being interchangeable between Service Areas. Furthermore, even when, for example, a Technician from IL01 closes a job in IL06's territory, that Technician nevertheless remains supervised at all times by management personnel from IL01.

The Employer cites *WeCare Transportation, LLC*, 353 NLRB 65 (2008) to draw a parallel between the truckers at the two facilities that the Board chose to treat as an integrated unit and the Technicians at IL01 and IL06. Yet *WeCare* is distinguishable in several notable respects. First, the facility in Weedsport, New York – that the Board determined should be joined to the proposed single-facility bargaining unit in Canaan, New York – housed all administrative and personnel records and corporate documents. Moreover, a formal hiring committee for both facilities was based at Weedsport, and all major disciplinary decisions for drivers at either facility took place there. *Id.*

Second, managers at the Weedsport facility determined a dispatch schedule where they freely assigned Canaan drivers to run Weedsport routes when they determined the need arose. In a period of just three months, Canaan drivers were assigned to Weedsport routes nearly 470 times; Weedsport drivers, however, were never assigned to Canaan routes. *Id.* at 66. The Board found that the Canaan drivers did not constitute an appropriate, single-facility bargaining unit, given the non-reciprocal control exercised by through the Weedsport facility over the Canaan employees.

Neither IL01 nor IL06 house corporate records, nor does one facility dispatch the Technicians of the other facility. In fact, Technicians are dispatched through DirectSat's centralized FS Scheduler software. The fact that DirectSat utilizes certain software capabilities in specifically scheduling the IL01 and IL06 Technicians does not alter the fact that such decisions are not made locally by either Service Area in Chicago.

Even though Technicians from IL01 and IL06 regularly transgress the boundaries of each other's Service Areas in the course of performing their work, this is insufficient to demonstrate that the identities of the IL01 and IL06 facilities are thereby merged to the extent that IL01 has no identity independent of IL06, and the Employer has not rebutted the presumed appropriateness of IL01 Technicians as a single-facility bargaining unit.

#### **IV. CONCLUSION**

Based on the foregoing and the entire record therein, I have found that the single-facility unit proposed by the Petitioner constitutes an appropriate bargaining unit under Section 9 of the Act. I therefore direct an immediate election.

#### **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 will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers Local Union 21. 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 on or before **January 10, 2014**. 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 312-886-1341. 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 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 Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 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.

## **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,

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<sup>3</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570.  
This request must be received by the Board in Washington by January 17, 2014.

DATED at Chicago, Illinois this 3<sup>rd</sup> day of January, 2014.

***/s/ Peter Sung Ohr*** \_\_\_\_\_

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