



add them to an existing unit at the Employer's facility.<sup>2</sup> The existing unit into which the Petitioner seeks to add the new classifications is referred to as the "Craft Unit."<sup>3</sup> The Craft Unit is defined as:

Operator Plant Trainee, Mechanical Plant Trainee, Electrical and Electronic Plant Trainee, Plant Services Tech II, Plant Services Tech I, I&C Technician (Instruments and Controls), Electrical Technician, Electrician, Mechanical Technician, Mechanic, Instrument Mechanic, Nuclear Operator A, Nuclear Operator B, Auxiliary Operator, Radwaste Operator, Utility Person, Carpenter-Painter, Storekeeper B, Storekeeper C, and Storekeeper D.

Entergy Operations Inc. ("Employer") objects to the addition on the grounds that the petitioned-for classifications do not share a sufficient community of interest with the Craft Unit classifications. However, as explained more fully below, I find that the two groups share such a community of interest because the Craft Unit is essentially a production and maintenance unit and the petitioned-for classifications are essentially maintenance employees.

As an additional matter, the Employer claims the Lab Technicians, Chemistry (herein called "Chemistry Lab Technicians"), are professional employees and that, pursuant to the Act, they are entitled to vote on whether to be included in a unit with non-professional employees. As explained more fully below, I agree with the Petitioner and find that they are not professional employees.

---

<sup>2</sup> This type of election is commonly referred to as an *Armour-Globe* election. See *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

<sup>3</sup> "Craft Unit" is not a legal description but how the parties refer to that unit and it will be referred to as such herein.

## **II. Preliminary Findings**

### **A. Stipulations**

The parties have stipulated, and I hereby find:

The Employer is a corporation engaged in the production of electrical power at its facility in Port Gibson, Mississippi, known as Grand Gulf Nuclear Station (“Grand Gulf”). Annually, the Employer purchases and receives at Grand Gulf, directly from points outside the State of Mississippi, goods valued in excess of \$50,000. Also, annually, the Employer, purchases services valued in excess of \$50,000, which are furnished to the Employer at Grand Gulf directly from points outside the State of Mississippi.

The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

There is no contract bar or any other bar to an election.

### **B. Other Preliminary Findings**

The Employer is an employer within the meaning of Section 2(2) of the Act. The Employer is engaged in commerce and affects commerce within the meaning of Section 2(6) of the Act. Grand Gulf is the only facility involved in this matter.

### **C. Rulings of the Hearing Officer**

During the hearing, the Employer requested to keep the record open to call the Manager of Grand Gulf’s Radiation Protection Department, a witness the Employer deemed critical but whom they had trouble contacting because of his participation in a planned outage at Grand Gulf. That request was denied by the Hearing Officer.

Subsequent to the close of the record, the Employer filed a written Request for Special Permission to Appeal Rulings of the Hearing Officer, Including Premature Closure of the Hearing and Motion to Reopen the Hearing to Adduce Evidence of a Lack of Community of

Interest Between RP Technical employees and the Existing Craft Unit Positions. The Employer argues the record must be reopened because, without the testimony of the witness, a determination cannot be made because the record is not complete. However, the record contains sufficient evidence concerning the issues for me to make a determination.

Further, the Employer had ample time (12 days from the service of the Notice of Hearing) to contact the individual, who is employed by, and within the control of, the Employer, and arrange for his appearance at the hearing. Moreover, on the record the Employer's attorney could not guarantee the witness' appearance at the hearing on the subsequent day. For these reasons, the Request and Motion are denied and the Hearing Officer's ruling is affirmed.

The other rulings of the Hearing Officer are also free from prejudicial error and are also affirmed.

### **III. Issues**

The two issues before me are: 1) whether the petitioned-for classifications share a sufficient community of interest with the Craft Unit classifications such that they may be added to the Craft Unit; and 2) whether the Chemistry Lab Technicians are professional employees as defined by the Act.

#### **A. Summary of the Petitioner's Position**

Although not specified in the Petition, at the hearing the Petitioner confirmed that it seeks to represent the petitioned for employees by adding them to the existing Craft Unit. The Petitioner asserts that the petitioned-for classifications share a community of interest with the Craft Unit classifications based primarily on the interaction among them. As for the Employer's assertion that the Chemistry Lab Technicians are professional employees, the Petitioner argues they are not professional employees as defined by the Act because the work they perform is

guided by strict protocols and procedures and that the stated job qualifications do not require a prolonged advance course of study. In any event, the Petitioner has agreed to proceed to an election in any unit found appropriate.

**B. Summary of the Employer's Position**

Regarding community of interest, the Employer maintains the petitioned-for classifications lack a community of interest with the classifications in the Craft Unit. The Employer points to, among other factors, different supervision, different job duties and different qualifications as well as limited interaction between them. Instead, the Employer maintains that the petitioned-for classifications should be in a separate unit.

Additionally, as for the Chemistry Lab Technicians, the Employer maintains that, given their educational requirements, other training requirements, and intellectual work, as well as their use of judgment and discretion, they are professional employees as defined by the Act. As such, they should be given the opportunity to decide whether to be included in a unit with nonprofessional employees. See *Sonotone*, 90 NLRB 1236 (1950).

**IV. Facts**

**A. The Employer's Business and Facility**

The Employer, together with its related corporate entities, is in the business of generating, transmitting, and selling electrical power. The only facility at issue in the current matter, however, is Grand Gulf, one of several nuclear powered electric generating plants owned and operated by the Employer.

Grand Gulf is located in Port Gibson, Mississippi. There are approximately 650 employees working at Grand Gulf. The facility is divided into a number of buildings, including the reactor building, the control room building, the turbine building, the rad waste building, the administrative building and the water chemistry building, among others.

## **B. The Employer's Organizational Structure<sup>4</sup>**

The Employer's operations are divided into a number of functional departments. The heads of all departments report directly to the Plant Manager. The employees in the petitioned-for classifications work in the Chemistry Department and the Radiation Protection Department.

### **1. Chemistry Department**

The head of the Chemistry Department is the Manager. The Supervisor A, Chemistry, and the Supervisor B, Chemistry, report to the Manager. Also reporting to the Manager is an Administrative Assistant.

Ten Chemistry Lab Technicians (named in the petition) report to the Supervisor A, Chemistry; five Specialists, Chemistry, and one Specialist/DPIC, Chemistry, report to the Supervisor B, Chemistry.

### **2. Radiation Protection Department**

The head of the Radiation Protection Department is the Manager. The Superintendent, RP Operations, the Supervisor, ALARA/Technical Support, and the Supervisor, RP Support, report to the Manager. Reporting to the Superintendent, RP Operations, are three Supervisors, RP Operations. Twenty-two Technicians, Radiation Protection (named in the Petition and herein called "RP Technicians"), report to the three Supervisors, RP Operations.

Two Specialists, ALARA, and two Technicians, ALARA, report to the Supervisor, ALARA/Technical Support. Six Junior Technicians, Deconner/RP, one Specialist, Rad Waste Material Control, two Specialists, Radiation Protection Support, and four Technicians, Radiation Protection Support (named in the Petition and herein called "RP Support Technicians") report to the Supervisor, RP Support.

## **C. Bargaining History of the Parties**

---

<sup>4</sup> Organizational charts were provided by the Employer and they are Employer's Exhibits 1 and 2.

There is a history of bargaining between the parties concerning several units at Grand Gulf. The Petitioner has represented the Craft Unit since 1988. The Employer reports that the bargaining relationship between the parties concerning the Craft Unit has been exceptionally cooperative and successful. Additionally, the Petitioner has represented a unit of administrative employees and a unit of planners since 2006. A unit of guards is represented by the United Government Security Officers of America, Local 36.<sup>5</sup>

**D. The Employees' Job Duties and Qualifications**

The Petitioner seeks to add the three petitioned-for job classifications to the Craft Unit.

**1. Summary of the Job Duties of Select Classifications in the Craft Unit**

The plant is operated by Operators. There are two types of Operators: Nuclear Operator A ("NO-A") and Nuclear Operator B ("NO-B"). Generally, NO-As work in the control room while NO-Bs work in the plant area. NO-As are licensed Reactor Operators. Radwaste Operators are responsible for handling the radioactive waste.

The Instrument and Control (I&C) Technicians are responsible for maintaining and calibrating the instruments and controls in the plant. Electricians perform work on the electrical components in the plant while Mechanics perform work on the mechanical components in the plant. The Store Keepers are responsible for maintaining the inventory of supplies and disbursing them when requisitioned.

---

<sup>5</sup> All four current collective-bargaining agreements were introduced into the record: Employer's Exhibit 7 (Craft Unit), Exhibit 8 (Administrative Specialists), Exhibit 9 (Planners), and Exhibit 10 (Guards).

## **2. Job Duties and Qualifications of the Chemistry Lab Technicians**

The Chemistry Department works to prevent or control the corrosion of the pipes and other equipment containing the various fluids (gas and liquid) used during operations. The 10 Chemistry Lab Technicians are responsible for maintaining correct chemical concentrations in those fluids. They do this by obtaining samples of the fluids, performing the appropriate analysis to determine the levels of the chemicals, and initiating the appropriate remedial action if the levels are not within the established parameters.

To be hired as a Chemistry Lab Technician, an individual must meet the criteria set out in Employer's Exhibits 3 and 4. An individual must have a general knowledge of chemistry, a general knowledge of the composition of the chemicals and fluids used in the operations, as well as a general knowledge of data analysis. Though not required, all of the Chemistry Lab Technicians currently employed at Grand Gulf have either a bachelor's degree in chemistry or a related field, or training/experience with the US Navy's Nuclear Power School. Included in the requirements for employment are requirements set out by the Nuclear Regulatory Commission (NRC), as explained in Exhibits 3 and 4. Once their on-the-job training is complete, Chemistry Lab Technicians are expected to be able to perform their assigned tasks without assistance. There is no special certification necessary to work as a Chemistry Lab Technician.

In determining what samples to take and when, Chemistry Lab Technicians generally follow set procedures, protocols and schedules. Occasionally, if the need exists, Chemistry Lab Technicians may deviate from the schedule but they would generally first consult with a supervisor before making a significant deviation.

Samples are taken from two types of sites. The first, and most common, is a designated sample point, which is an apparatus on the equipment designed for sample-taking. The second is

a site at which there is no designated sample point and to obtain a sample from that site, the Chemistry Lab Technician must be accompanied by an Operator to assist. This interaction between the Chemistry Lab Technician on duty and an Operator occurs about five times per shift and lasts five to ten minutes.

Once the sample is obtained, the Chemistry Lab Technician performs the appropriate analysis. The Chemistry Lab Technicians perform their analyses in the Chemistry Lab, which is located in the Water Chemistry building. Chemistry Lab Technicians spend about 75% of their time performing these analyses. They do not decide for themselves which test would be best but, rather, follow designated procedures to conduct the appropriate tests for any given analysis. The analyses are performed using equipment designed for the purpose and they are the only employees who use that equipment. The Chemistry Lab Technicians perform several hundred different types of analyses using 20 to 25 pieces of equipment. Chemistry Lab Technicians must know how to perform each analysis properly and operate each piece of equipment correctly. Further, the Chemistry Lab Technicians, as the name implies, use equipment and other supplies common in chemistry labs: beakers, pipettes, graduated cylinders, etc.

According to Employer witness Glenn Pierce, who worked as a Chemistry Lab Technician at another of the Employer's nuclear powered plants, and is currently the Manager of Training and Development there, much of the work performed by the Chemistry Lab Technicians is performed pursuant to set procedures and protocols. However, when "unusual things" happen to which the Chemistry Lab Technicians must respond and there is no set procedure or protocol, which is rare, they use their "knowledge, skills and experience" in responding.

For any given fluid, there are set parameters for the proper level of any given chemical. If the level of the chemical is within the set parameters, no remedial action is required. If, however, the chemical level is outside of the parameters, remedial action is required. With either result, the Chemistry Lab Technician must enter the data into the computerized data management system (for which they are trained). If a Chemistry Lab Technician suspects the validity of a result, he may retest the sample or, if he feels it is necessary, acquire a new sample.

If a chemical level is close to being outside of a parameter, but is still within it, the Chemistry Lab Technician has the discretion to respond as if the level is outside of the parameter. One of the factors considered by the Chemistry Lab Technician in such a case is whether there is an overall trend in the levels and the pace of that trend. Thus, Chemistry Lab Technicians must be able to spot trends in the testing results and recognize their significance. For example, while a level may be close to a parameter but within it, if the level has remained constant, adjusting the level simply so that it is more within the parameters might not be an efficient course of action. On the other hand, if the level has been trending upward, it might, or might not, be advisable to adjust the level immediately instead of waiting until after it exceeds the parameter. Such determinations are based, at least in part, on the training, experience and judgment of the Chemistry Lab Technicians.

If a level is outside of set parameters, the Chemistry Lab Technician reports this to a supervisor for remedial action but sometimes the Chemistry Lab Technician may be able to take at least some remedial action on his or her own. For example, if a chemical level is below normal because of leakage, and the appropriate remedial action (at least in the short term) would be to add more of the chemical to the correct level, then the Chemistry Lab Technician adds the chemical. Sometimes, however, depending on the system, adding chemicals to a system requires

coordination with the Control Room, staffed by Operators who are members of the Craft Unit, because the act of adding the chemical may affect the operation of the system. Further remedial action to address the cause of the leakage would be addressed by way of the normal protocols and procedures.

As part of their work, Chemistry Lab Technicians must comply with several quality control requirements. For example, they must adhere to the “chemical hygiene plan,” which involves assuring that the chemicals are properly used and stored. Further, they must inspect and maintain the accuracy of, i.e., calibrate, the equipment used to conduct the analyses. Generally, the equipment is designed to be easily calibrated in that there are calibration controls on the outside of the device as opposed to there being a need to open it and manually manipulate the components; however, it is not easy in the sense that it cannot be performed without the necessary expertise. Calibrations are performed by analyzing a fluid with a known level of a chemical and adjusting the equipment until it accurately measures the level of the chemical in the fluid. The Chemistry Lab Technicians repair their own equipment, if possible. All of these quality control requirements are devised and maintained by the Chemistry Department, with the involvement of the Chemistry Lab Technicians themselves.

The supplies used by the Chemistry Lab Technicians are kept in the Store Room, which is staffed by the Store Keepers, who are members of the Craft Unit. When needed, supplies are requisitioned by either a Chemistry Lab Technician or the Chemistry Department’s Administrative Assistant, who is a member of the Administrative Specialists unit, one of the other units at Grand Gulf represented by the Petitioner. The requisition is either sent electronically or delivered by hand. The requisitioned supplies are then delivered to the

department by one of the Store Keepers (sometimes dropped off, sometimes handed to someone).

### **3. Job Duties and Qualifications of the RP Technicians**

The goal of the Radiation Protection Department is to prevent or limit the amount of ionizing radiation exposure to people and equipment. The 22 RP Technicians contribute to this goal in a number of ways. First RP Technicians instruct, or “brief,” any employees entering a radiologically controlled area (RCA). An RCA is any part(s) of the facility containing radioactive material. Second, RP Technicians monitor employees as they leave an RCA to ensure they are not contaminated. Third, RP Technicians inspect or “survey” the facility looking for radiation where it is not expected to be or where it is higher than it is expected to be.

Whenever an individual enters an RCA, they are issued a “radiation work permit” (RWP). The RWP lists the requirements of entering into the particular area the employee is entering. Before entering, an employee is “challenged” by an RP Technician and the employee must demonstrate that he is aware of, and in compliance with, the requirements of the RWP. This “brief” takes five to ten minutes. Once an employee leaves the RCA, he must be rebriefed whenever he returns to it, even if only a few moments later.

Occasionally, depending on the circumstances, RP Technicians accompany Operators or other employees as they perform work on the equipment to continually monitor radiation levels. If radiation levels exceed safe or established levels, the RP Technician instructs the employees to leave (the RP Technician leaves as well). As individuals leave an RCA, they pass through a scanner, operated by RP Technicians, which detects any radiological contamination.

To inspect for radiation, RP Technicians travel throughout the facility and use a number of meters and instruments, depending on the type of radiation or expected radiation level. RP

Technicians must know which equipment to use for a given task and there is a proper piece of equipment for each task; they do not decide which meter or instrument is best for any given task. The equipment used by the RP Technicians is kept in the RP Technicians' own lab and the RP Technicians calibrate their own equipment. However, if their equipment needs repair, they send it to a central repair facility located at another nuclear power plant owned by the Employer.

When inspecting for radiation, RP Technicians generally follow a plan or schedule; they do not simply decide that a particular area should be surveyed. While deviations are possible, any significant deviations are discussed with management. Once a source of radiation is found, it is documented on a survey map and communicated to management. While they work throughout the facility, RP Technicians are based in the administrative area of the facility. RP Technicians spend only about 30% of their time out in the plant area taking samples to minimize their time in the RCA.

The RP Technicians are responsible for monitoring and maintaining the dosimeters worn by anyone who enters an RCA. Dosimeters are devices that measure the amount of ionizing radiation present and either sound an alarm when the radiation exceeds a given level or keep a cumulative record of the total amount of radiation to which the wearer has been exposed over a given time frame, or both. Every individual entering an RCA is assigned a dosimeter, either permanently or temporarily, depending on the frequency with which the individual enters RCAs. The RP Technicians are also responsible for monitoring and maintaining the electronic database containing information pertaining to the cumulative levels of radiation to which employees have been exposed.

Within the Radiation Protection Department, there is a group of employees called the ALARA (which stands for "as low as reasonably achievable"). The purpose of this group is to

determine the type and degree of radiation shielding or other protection necessary to minimize the level of radiation exposure to workers in any given situation. For example, they may determine that a lead shield is necessary while working in a particular area while only a protective suit is necessary for another. These determinations then become part of the Radiation Work Permits (discussed previously). The individuals in this group have additional training and experience. The ALARA group accepts feedback from other departments.

Also, at least one RP Technician serves on the FIN Team (FIN stands for “fix it now”). An Operator, four Mechanics, three Electricians, and four I&C Technicians, all of whom are in the Craft Unit, a Planner/Supervisor, and an RP Technician are on the FIN Team. The FIN Team is the only multi-skilled group at Grand Gulf. The FIN team receives assignments from the Planning staff by way of the Planner/Supervisor on the team. Other than for the Planner/Supervisor, who does not generally rotate out of the group, work on the FIN Team is full-time, though temporary, as employees rotate in and out of the group.

As with the Chemistry Department and other departments, many of the supplies used by the RP Technicians are kept in the Store Room, which is staffed by the Store Keepers.

To be hired as an RP Technician, an individual must meet the criteria set out in Employer’s Exhibits 5 and 6. Included in the requirements are requirements set out by the NRC. Generally, entry level RP Technicians do not have degrees or advanced training prior to being employed. After on-the-job training, RP Technicians are expected to be able to perform their assigned tasks without assistance.

#### **4. Job Duties and Qualifications of the RP Support Technicians**

The four RP Support Technicians perform the same functions as the RP Technicians except they provide coverage for the employees who work with radioactive waste. Accordingly,

in addition to having the same qualifications as the RP Technicians, the RP Support Technicians must also be familiar with the regulations and procedures for the transportation and storage of such waste.

## **5. Other Terms and Conditions of Employment**

The employees in the Chemistry Department and the employees in the Radiation Protection Department each have their own break room, separate from other employees' break areas. Some of the other break areas are shared by multiple classifications.

All employees wear uniforms consisting of pants and colored shirts. The color of the shirt indicates the department in which the employee works. The color assigned to each department is decided by local management and is not consistent throughout the Employer's other facilities.

Work shifts vary among classifications and many classifications work around the clock. The starting times of the shifts vary. On weekdays, the Chemistry Lab Technicians work around the clock on 8-hour rotating shifts while, on weekends, they work rotating 12-hour shifts. On weekdays, one Chemistry Lab Technician works nine hours so he may attend the Operations briefing. Operators work round-the-clock 12-hour shifts all week. Other employees in the Operations department, as well as laborers and warehouse employees, work round-the-clock 8-hour rotating shifts.

At the beginning of each Operations shift, there is a meeting in the Operations control room attended by representatives of the Operations, Chemistry, and Radiation Protection departments, as well as the emergency response organization.

## **6. Crossover and Interchange**

About 25 years ago, an employee who was originally hired in the Operations Department and then worked in the Radiation Protection Department for two years, transferred back to Operations. He is now a Nuclear Operator A.

At one time, certain administrative assistants worked in the Operations Department but, when those positions were eliminated in 1989 or 1990, one of the assistants transferred to the Radiation Protection Department and another assistant transferred to the Chemistry Department and became a Chemistry Lab Technician (it is unknown what position(s) the person who transferred to the Radiation Protection Department has/had).

Between 2007 and 2011, the Employer transferred two individuals from the Operations Department to the Chemistry Department. The Employer determined these individuals were better suited to work in the Chemistry Department and they possessed the necessary background from the US Navy to switch.

There were at least three RP Technicians who became Chemistry Lab Technicians, one in 1992, one in 1994, and the other at an unknown time. Another individual has transferred between the RP Department and the Chemistry Department a number of times in the past four or five years.

There are no instances when any of the petitioned-for classifications perform the duties of the other classifications named in the petition, or perform the duties of any of the classifications in the Craft Unit, without first being reassigned to the appropriate department.

## V. Analysis and Findings

As explained more fully below, I find that the petitioned-for classifications – Chemistry Lab Technicians, RP Technicians, and RP Support Technicians – share a community of interest with the classifications in the Craft Unit because the Craft Unit is essentially a production and maintenance unit and the petitioned-for employees are essentially maintenance employees. Further, as explained more fully below, I find that the Chemistry Lab Technicians are not professional employees.

### A. Appropriateness of Adding the Petitioned-For Classifications to the Craft Unit

The Board's *Armour-Globe* doctrine permits a group of employees to join an existing unit if they vote to do so. It is not necessary that the new employees themselves make up an appropriate unit. See, e.g., *Maryland Dry Dock Company*, 50 NLRB 363 (1943). The only test is whether the new employees and the existing unit's employees share a community of interest and constitute an identifiable, distinct segment so as to comprise an appropriate voting group. *Warner-Lambert Company*, 298 NLRB 993 (1990).

In determining if employees share a community of interest, generally, the Board considers a number of factors, including: functional integration, common supervision, the nature of their skills and functions, interchangeability and contact among each other, work locations, general working conditions, and fringe benefits. See, e.g., *Continental Baking Company*, 99 NLRB 777 (1952) and *Perry Broadcasting*, 300 NLRB 1140 (1990). However, in limited instances, the Board has determined that some types of units are presumptively appropriate.

For example, the Board has long held that a production and maintenance unit is presumptively appropriate. *Wright Plastic Products*, 247 NLRB 635, 643 (1980). The employees in a particular production and maintenance unit may perform a wide variety of

functions, have varying degrees of skills, are sometimes made up of a number of traditional crafts and, depending on the size or operations of the facility, some of them may have little to no contact with each other, and yet the unit is appropriate.

In the current matter, the Craft Unit is essentially a production and maintenance unit. The Craft Unit includes all of the employees who operate the equipment to produce the Employer's product and the employees who maintain that equipment. Thus, it would be appropriate to include the petitioned-for classifications in the Craft Unit if they are reasonably considered to be production or maintenance employees. Based on their duties, discussed below, I find they are maintenance employees.

The job of the Chemistry Lab Technicians is, essentially, to keep the fluids in the machines in proper working order. Further, by controlling and minimizing corrosion caused by the fluids, the Chemistry Lab Technicians effectively maintain the machines themselves. As for the RP Technicians, they also play a role in safely maintaining the equipment. Controlling radiation protects the employees who keep the equipment in proper working order. Moreover, if the equipment is contaminated, even if it still functions, it stands to reason that it cannot be safely operated. Thus, while these classifications are not found in most production facilities, the petitioned-for classifications, despite their unique function, are, nevertheless, maintenance employees and are properly included in the Craft Unit.

On the other hand, the Employer claims the petitioned-for employees are not maintenance employees. In doing so, the Employer asserts:

The Craft Unit employees' primary duties relate to the actual production of energy (such as the Operators) or the repair of the machinery used for such production (the maintenance classifications). In other words, whether operating the machinery or fixing it, the overwhelming majority of work being performed by the employees in the positions covered by the Craft Unit is conducted on the production machinery for the purpose of using a nuclear reactor to produce electrical power.

However, while the Board has never defined the classifications that make up a production and maintenance unit, the Employer's portrayal of such a unit, in this matter, is unnecessarily constrained.

The Employer seems to draw a distinction between the machines and the fluids within them ("In as simple a manner possible, the positions in the Craft Unit run or upkeep the machines of production"). However, such a distinction is without reason. That the Chemistry Lab Technicians perform maintenance on the fluids as opposed to the reactors or the turbines does not diminish their role in maintaining the equipment. For example, the steam generated by the reactor that spins the turbines is as integral to the production of electricity as the reactors and the turbines.

The Employer also points out that the petitioned-for employees do not use hammers, wrenches, pliers or similar tools. However, the record does not reflect that such tools are used routinely by the Craft Unit or by the Craft Unit to the exclusion of others. The record does establish, however, that Craft Unit employees in this nuclear facility use sensitive electrical and technical equipment and controls, including gauges and meters.

Further in this regard, concerning the Employer's assertion that "the overwhelming majority of work" being performed by the Craft Unit employees is "for the purpose of using a nuclear reactor to produce electrical power," while the majority may be "overwhelming," a majority is not all. The Employer's argument implicitly admits there are classifications in the Craft Unit that do not meet the Employer's own interpretation of a production and maintenance unit. I note that the Craft Unit includes Store Keepers and Radwaste Operators, and neither classification operates or works on the equipment.

Still further in this regard, and to address contentions by the Employer concerning the dissimilarities between the classifications in the Craft Unit and the petitioned-for classifications, there are no more dissimilarities between them than there are between the classifications in the Craft Unit themselves. For example, the Craft Unit contains Operators as well as Carpenters and Painters. More to the point, the record indicates that the Operators have more in common with the petitioned for classifications than with Store Keepers, for example, who are also included in the Unit. Such dissimilarities among classifications in a production and maintenance unit are not uncommon and are thus not dispositive in this matter. *See, e.g., Mallinckrodt Chemical Works*, 162 NLRB 387 (1966) (denying craft severance from production and maintenance unit).

In its brief, the Employer cites *America's Best Quality Coatings Corporation*, 313 NLRB 470 (1993) ("*AMBQC*"), in which the administrative law judge (ALJ) upheld the challenged ballot of a chemist because of a lack of a community of interest with the proposed unit of production, maintenance and warehouse employees. However, the Employer's reliance on the case is misplaced. In *AMBQC*, the ALJ noted there was no interaction at all between the chemist and the other employees and that she worked in a different building separate from them. In the current matter, however, the petitioned-for employees have some degree of interaction with the Craft Unit classifications and, while they are based in separate buildings, the petitioned-for classifications work throughout the facility. Second, while there are similarities between the *tasks* performed by the chemist in *AMBQC* and the Chemistry Lab Technicians, there is a great deal of difference between their *functions*. The chemist in *AMBQC* performs chemical analysis on and monitors the facility's waste water, water that was leaving the plant and is, at that point, no longer part of the production process. Thus, unlike the Chemistry Lab Technicians, who perform analyses on fluids that are, at that time, being used in the production process, the

chemist in *AMBQC* was not performing maintenance work, as are the Chemistry Lab Technicians.<sup>6</sup>

As a final matter, the Employer asserts that, because the parties have had a long history of cooperative bargaining concerning the Craft Unit, it would be “improper” to disturb it by adding the petitioned-for classifications. However, while the Board generally declines to sever production and maintenance units when there has been a stable bargaining history, that is not the issue herein. Instead of severing the unit, the Petitioner is seeking to add additional maintenance employees to it. Therefore, while there may be differences between the two groups of employees in terms of supervision, pay, and other working conditions, they are, nevertheless, properly included together in a production and maintenance unit.<sup>7</sup>

#### **B. The Chemistry Lab Technicians Are Not Professional Employees**

Section 9(b)(1) of the Act prohibits the Board from determining a unit including both professional and nonprofessional employees to be appropriate unless a majority of the professional employees vote for inclusion in the mixed unit. See also *Sonotone*, 90 NLRB 1236 (1950). Under Section 2(12) of the Act, the term “professional employee” means:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual

---

<sup>6</sup> I note further that the Board itself did not decide the issue of the chemist, only the ALJ. Thus, the case, even if it favored the Employer’s position, lacks precedential value.

<sup>7</sup> I note, as a final matter, that production and maintenance units including such classifications are not uncommon in the industry. See, e.g., the bargaining units in: *Exelon Generation Company*, 347 NLRB 815 (2006); *PECO Energy Company*, 322 NLEB 1074 (1997); *Arizona Public Service Company*, 310 NLRB 477 (1993).

instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

While I find that the Chemistry Lab Technicians meet the third criterion, they do not meet the first, second and fourth criteria, and thus are not professional employees.

Most of the work performed by the Chemistry Lab Technicians is not intellectual; rather it is routine mental work. It does not require the *consistent* exercise of judgment or discretion. While there are occasions in which a Chemistry Lab Technician will use judgment or discretion, those occasions are sporadic, not consistent.

The collection of samples is conducted according to a schedule. Samples are collected at the location where such samples are collected and in the manner they are collected; the Chemistry Lab Technician does not determine the best place to collect a sample and he does not determine the best manner to collect it. In some instances, he requires the assistance of an Operator. Finally, nothing in the record suggests the Chemistry Lab Technicians evaluate the quality of the samples once they are collected.

As for the actual testing, it is automated, i.e., performed by machines. The record does not suggest the Chemistry Lab Technicians prepare the sample or do anything more than simply place it inside of the testing machine and initiate the analysis.

Once the automated portion of the testing is complete, while the record suggests there is some element of judgment or discretion occasionally exercised at this point, there is little in the way of intellectual work that is done. The record shows that a Chemistry Lab Technician may determine that a test result is invalid and may decide to retest the sample or collect a new one; however, nothing in the record suggests this is an intellectual endeavor as opposed to a routine mental matter.

As for other aspects of their work, the record shows that the Chemistry Lab Technicians, as a group, participate in developing a number of protocols to be followed by their department (such as the Chemical Control Program) but, again, the record provides insufficient facts to conclude that this is an intellectual endeavor. Further, while the Chemistry Lab Technicians are responsible for some data management, other than being able to spot trends in the data, this is not intellectual work but, rather, routine mental work, and requires little discretion or judgment. Most of the data management work is simply maintaining a computerized database of test results.

While the Chemistry Lab Technicians calibrate their own equipment and perform repairs, such work, while it may be skilled and mental, is not intellectual. There are numerous trades and crafts that perform such work and are not considered professionals, see, e.g., the Employer's I&C Technicians. Thus, while the Chemistry Lab Technicians are highly trained and highly skilled, they do not perform work of an intellectual nature and do not exercise consistent judgment and discretion.

In its brief, the Employer cites *Group Health Association*, 317 NLRB 238 (1995) to show that the Chemistry Lab Technicians are professional employees. In *Group Health Association*, the Board determined that medical technologists ("Med Techs"), as a classification, are

presumed to be professional employees. However, while there are similarities between the Med Techs and the Chemistry Lab Technicians, it is the differences that are noteworthy.

First, I note that Med Techs must have at least a bachelor's degree while Chemistry Lab Technicians do not. While the Employer's current staff is composed of individuals who have degrees or training from the US Navy's Nuclear Power School, the lack of a degree *requirement* is a significant difference between the two groups. Further in this regard, Med Techs are required to be certified by the American Society of Clinical Pathologists (ASCP), while Chemistry Lab Technicians are not required to have such a certification. In addition to a bachelor's degree, certification also requires three to five years of clinical experience or training in an accredited program.

Second, and most importantly, I note that Med Techs exercise significantly more judgment and discretion, and engage in more intellectual endeavors, than the Chemistry Lab Technicians. For example, Med Techs perform a number of tests manually, without the use of machines. While not every Med Tech working for this particular employer performs all of the manual tests, nevertheless, as Med Techs they are expected to be able to do them. Further, while both groups employ machines in at least some part of their testing, Med Techs also perform visual, non-quantitative inspections of samples prior to automated testing. Further, some Med Techs consult with physicians suggesting other tests and even the appropriate antibiotics to be administered.

The Employer points out that, in *Group Health Association*, the Board made a point of explaining that the use of automation does not diminish the intellectual aspect of the Med Tech's work:

We do not believe that the existence of rigid routines and protocols that medical technologists must follow for testing diminishes the intellectual nature of their work or obviates the need for independent judgment and discretion.

The Board did not, however, say that automated work was intellectual or required judgment and discretion. Rather, the Board's finding is that the automated aspect of some of the Med Tech's work does not diminish the intellectual aspects of the rest of it. Med Techs perform significant non-automated testing work while there is little, if any, non-automated testing work (or other work that is not directed by procedures and protocols) performed by the Chemistry Lab Technicians. Thus, because of the foregoing, I find that the Chemistry Lab Technicians do not satisfy the first and second criteria of Section 2(12).

As for the third criterion, whether the output produced or the result accomplished can be standardized in relation to a given period of time, I find that the Chemistry Lab Technician's satisfies the criterion. As noted by the Board in *Group Health Association*, laboratory testing procedures, whether manual or automated, are not readily standardized because of the unique characteristics of each individual specimen and laboratory testing equipment.

Finally, as for the fourth criterion, I find that Chemistry Lab Technicians do not require knowledge of an advanced type in a field of science customarily acquired by a prolonged course of specialized intellectual instruction and study. While the Chemistry Lab Technicians are highly trained and highly skilled, this is not the standard. Many jobs require extensive training and skills but, nevertheless, do not require the type of education envisioned by Section 2(12). While all of the Employer's current Chemistry Lab Technicians possess either a bachelor's degree in chemistry or related field, or training/experience from the US Navy's Nuclear Power School, I note that these are not requirements of the job (only desired attributes). I further note that the Employer updated its qualifications for Chemistry Lab Technicians as recently as

November 11, 2013, but did not take the opportunity to make them requirements (see Employer's Exhibit 4). I see this as an acknowledgement by the Employer that, while such an education may be highly desirable, it is not *required*, as envisioned by Section 2(12). Thus, I find that the position of Chemistry Lab Technician does not meet the fourth criterion and they are not professional employees within the meaning of Section 2(12) of the Act.

## **VI. Conclusion**

In conclusion, I find that the petitioned-for employees are maintenance employees for purposes of collective bargaining and may be added to the Craft Unit if they so choose. Further, I find that the Chemistry Lab Technicians are not professional employees. I am, therefore, directing an election in the following group, and asking them the following questions:

1. Do you wish to be included with the Plant Services Tech I and II, I&C Technicians, Electrical Technicians, Electricians, Mechanical Technicians, Mechanics, Instrument Mechanics, Nuclear Operators A and B, Auxiliary Operators, Radwaste Operators, Utility Persons, Carpenter-Painters, Storekeepers B, C and D, Operator Plant Trainees, Mechanical Plant Trainees, and Electrical & Electronic Plant Trainees currently represented by the International Brotherhood of Electrical Workers Local 605 at the Grand Gulf Nuclear Station in a unit for the purposes of collective bargaining?

The choices on the ballot will be "Yes" or "No".

2. Do you wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers Local 605?

The choices on the ballot will be "Yes" or "No".

If a majority of the employees vote “yes” to the first question, indicating a desire to be included in a unit with the current existing unit, they shall be so included. If, on the other hand, they do not vote for inclusion, their votes on the second question will be separately counted to decide whether they want to be represented by the Union on the ballot in a separate unit.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Electrical Workers, Local 605/985. 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.

#### Eligibility to Vote

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, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. 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.

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 US 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.). 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 on or before **March 24, 2014**. 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 this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to 504-589-4069. 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, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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 three (3) working 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 five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

**RIGHT TO REQUEST REVIEW**

Under the provision 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by **March 31, 2014**.

SIGNED and DATED at New Orleans, Louisiana this 17<sup>th</sup> day of March, 2014.

  
\_\_\_\_\_  
**M. KATHLEEN MCKINNEY**  
**REGIONAL DIRECTOR, REGION 15**  
**NATIONAL LABOR RELATIONS BOARD**  
**600 SOUTH MAESTRI PLACE, 7<sup>TH</sup> FLOOR**  
**NEW ORLEANS, LOUISIANA 70130-3408**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**WAIVER**

IN THE MATTER OF \_\_\_\_\_  
*(Name of Case)* *(Number of Case)*

PURSUANT TO SECTION 102.67 AND 102.69 OF THE RULES AND REGULATIONS OF THE NATIONAL LABOR RELATIONS BOARD, THE UNDERSIGNED PARTY WAIVES ITS RIGHT TO REQUEST REVIEW OF OR FILE EXCEPTIONS TO THE REGIONAL DIRECTOR'S AND/OR HEARING OFFICER'S

\_\_\_\_\_ IN THE ABOVE-  
*(Name of document or applicable documents)*

CAPTIONED MATTER \_\_\_\_\_ OR  CHECK IF DOCUMENT NOT YET ISSUED  
*(Date of document)*

\_\_\_\_\_  
*(Name of Party)*

BY \_\_\_\_\_  
*(Name of Representative)*

\_\_\_\_\_  
*(Title)*

DATE \_\_\_\_\_

ATTACHMENT

There is attached hereto a Waiver (Form NLRB-4480). This waiver is enclosed for the convenience of the parties who wish to waive their right to request a review. Receipt of a waiver from all parties will enable this office to schedule an election at an early date. In the event any party does not wish to waive, and intends to request review of this decision, they are hereby advised that they must file a request for review with the Board in Washington, D. C., within 14 calendar days from the receipt of this decision. See 102.67 of the Board's Rules and Regulations.