

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

In the Matter of
DOMINION NUCLEAR CONNECTICUT, INC.
Employer <sup>1</sup>
and
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 457, AFL-CIO
Petitioner

Case 01-RC-106263

**DECISION AND DIRECTION OF ELECTION**

International Brotherhood of Electrical Workers, Local 457 (IBEW) seeks to represent a unit of production and maintenance employees employed by Dominion Nuclear Connecticut, Inc. (DNC) at Millstone Power Station (Millstone), a nuclear power plant in Waterford, Connecticut. The petitioned-for unit includes about 341 employees employed in the Nuclear Operations Department, Maintenance Department, Radiological Protection and Chemistry Department, and Supply Chain Department in the following 22 classifications:

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

Control operator (MP)  
Nuclear plant equipment operator (MP)  
Lead nuclear fuel handler (MP)  
Nuclear mechanic I, II, and III (MP)  
Nuclear electrician I, II, and III (MP)  
Nuclear instrument technicians T2 and T3  
Nuclear instrument technician  
Instrument technician II and Instrument technician III  
Senior nuclear instrument technician  
Nuclear maintenance technician  
Senior nuclear generation test services technician  
Health physics technician  
Nuclear chemistry technician  
Senior nuclear chemistry technician  
Stockhandler and lead stockhandler

DNC has stipulated to the inclusion of these classifications (petitioned-for or included employees), with the exception of nuclear electrician I and instrument technician II, which are currently vacant. DNC would also include 463 employees in 83 additional classifications (disputed employees), on the ground that the petitioned-for unit does not constitute a well-defined administrative segment of DNC and would cause undue disturbance to DNC's operations, and that the disputed employees share an overwhelming community of interest with the employees in the petitioned-for unit.<sup>2</sup>

IBEW seeks to exclude the disputed classifications based on their lack of community of interest with the petitioned-for employees and, in certain cases, because of their status as professional employees, technical employees, managerial or quasi-managerial employees, supervisory employees, office clerical employees, or because they report to or are paid by a different corporate

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<sup>2</sup> In its post-hearing brief, DNC withdrew its claim that the Coordinator, Nuclear Site FFD & Access should be included in the unit. Accordingly, that position is no longer disputed.

entity than DNC or have an instructor-student relationship with employees in the petitioned-for unit.

There is no history of collective bargaining at Millstone. In 2002, IBEW filed a petition to represent a production and maintenance unit at Millstone, which resulted in a Decision and Direction of Election (2002 DDE). IBEW asserts in some instances that the conclusion in this case should mirror that of the 2002 DDE. Because the record reflects that there have been numerous changes in DNC's organizational structure and operations since 2002, I decline to rely on the 2002 DDE as a basis for my conclusions.

For the reasons set forth below, I find that the petitioned-for unit is inappropriate, as it does not conform to a well-defined administrative segment of DNC's operations. However, I reject DNC's assertion that the unit must include all of the disputed classifications. I find, instead, that a unit consisting of production and maintenance employees in those organizations that report directly to Millstone's plant manager, with certain exclusions, is the smallest appropriate unit that conforms to a well-defined administrative segment at Millstone. Accordingly, I shall direct an election in a unit composed of production and maintenance employees employed in Nuclear Operations Support, Nuclear Maintenance, Nuclear Outage and Planning, Nuclear Site Services, all of which report to the plant manager, along with employees in the Training Department, one of the "matrixed" groups that reports to the Plant Manager as its local manager at Millstone.

The petition in this case was filed under Section 9(c) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

**I. DNC's Motion to Dismiss for Lack of Jurisdiction is Denied.**

DNC moved to dismiss the representation petition, arguing that the Board lacked a quorum and could not, therefore, hear the petition in the first instance or delegate its authority to hear the petition to the Regional Director. That motion is denied.

As an initial matter, DNC is incorrect that the Board lacks jurisdiction to hear this petition. The Decision and Direction of Election, as well as any resulting certification, will be issued under the auspices of a Board with five fully confirmed members.<sup>3</sup> See 159 Cong. Rec. S6049-S6051 (daily ed. July 30,

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<sup>3</sup> Furthermore, DNC's argument, citing *NLRB v. New Vista Nursing & Rehabilitation*, 719 F.3d 203 (3d Cir. 2013), *petition for reh'g filed*, Nos. 11-3440, 12-1027, 12-1936 (July 1, 2013), fails to account for the decision of the Eighth Circuit in *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 794-95 (8th Cir. 2013) (rejecting *New Vista* court's conclusion that appointments clause challenges address the Board's jurisdiction). See also *City of Arlington v. FCC*, 133 S. Ct. 1863, 1868-71 (2013)

2013). All five members were sworn in as of August 12, 2013. See <http://www.nlr.gov/news-outreach/news-story/national-labor-relations-board-has-five-senate-confirmed-members> (last visited Apr. 23, 2014).

Moreover, the Regional Director's handling of the representation case is unaffected by any issue concerning the composition of the Board. In the absence of a Board quorum, the Regional Director has the authority to process the petition under the Board's 1961 delegation of its decisional authority in representation cases. That delegation has never been withdrawn. *STG Int'l, Inc.*, 2013 WL 1786666 at \*1, n.1.

Finally, any assertion that delegees may not exercise delegated authority fails to account for the Supreme Court's decision in *New Process Steel, LP v. NLRB*, 130 S.Ct. 2635 (2010). In *New Process*, the Supreme Court, refusing to rely on language in the D.C. Circuit's *Laurel Baye*<sup>4</sup> decision, stated that its "conclusion that the delegee group ceases to exist once there are no longer three Board members to constitute the group does not cast doubt on the prior delegations of authority to nongroup members, such as the regional directors or the general counsel." 130 S.Ct. at 2643 n.4. Indeed, since *New Process*, four Courts of Appeals have held that valid prior delegations of Board authority survive a loss of Board quorum. See *Kreisberg v. Healthbridge Mgmt., LLC*, 732 F.3d 131, 140 (2d Cir. 2013); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir.

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(explaining that, because the question in a challenge to agency action "is always whether the agency has gone beyond what Congress has permitted it to do, there is no principled basis for carving out some arbitrary subset of such claims as 'jurisdictional.'").

<sup>4</sup> *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469, 475 (D.C. Cir. 2009).

2011), *cert. denied* 132 S.Ct. 1821 (2012); *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844, 853 (5th Cir. 2010); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011).

Thus, DNC's argument that the Board and the Regional Director lack jurisdiction to process the representation petition is incorrect, and DNC's motion is denied.

## **II. BACKGROUND FACTS**

### **A. DNC's operations at Millstone**

Dominion Resources, Inc. (DRI), with headquarters in Richmond, Virginia, is a holding company that currently owns four nuclear power plants, including Millstone. DRI acquired Millstone in 2001 and formed DNC as a wholly owned subsidiary to operate it.

Millstone is the largest generator of electricity in New England, producing about 40 to 45 percent of Connecticut's electricity needs. The plant includes three nuclear reactors, designated Units 1, 2, and 3, on a 500-plus acre site. Unit 1 was permanently shut down in 1998, but DNC must continue to operate its spent fuel cooling system. Units 2 and 3 are active pressurized water reactors licensed to operate until 2035 and 2045 respectively.

The entire site is referred to as the Owner Controlled Area (OCA). Employees and visitors must go through a vehicular checkpoint to gain access to the OCA. Certain areas inside the OCA are designated as the Protected Area, which is surrounded by physical and electronic fences. Those employees who are permitted in the Protected Area must swipe a badge and go through metal

detectors to gain access. Some areas, including the Control Rooms from which the reactors are operated, are designated as Vital Areas to which access is further restricted. Access to Vital Areas is limited to those individuals who need to enter. Employees in both petitioned-for and disputed classifications may have access to particular Vital Areas. Other areas are designated as the Radiologically Controlled Area (RCA), an area in which employees may be exposed to potentially contaminated material requiring certain safeguards for their protection.

Certain areas inside the Protected Area are referred to as the Power Block, i.e., the industrial setting that includes the main components for operating the reactors. DNC employees sometimes refer to the working in the Power Block as working in “the field.” The Power Block includes the Control Rooms from which the reactors are operated, the containment structures that house the reactor vessels in which water is heated, the turbine buildings, where steam rotates turbines that ultimately generate electricity that is sent out to the grid via transformers, the switchyards, and the emergency diesel generator buildings. It includes buildings that house auxiliary plant systems, intake structures that draw water from the Long Island Sound to cool the units, the outfall area and discharge canal from which water is discharged into the Long Island Sound, a fuel building that houses the spent fuel pool, and service buildings that house shops used by employees who maintain the reactors. Conditions inside the Power Block may be dangerous, dirty, noisy, and poorly lit. Hazards include radiation contamination, inhalation hazards, steam hazards, tight confined

spaces, rotating equipment, and temperatures that can reach 105 to 110 degrees.

According to DNC, the Power Block refers not to buildings but rather to the equipment used to generate power and for safe shutdown of the plant, which is found both inside and outside of numerous buildings. Both petitioned-for and disputed classifications work on such equipment. The main maintenance shop, the electricians' shop, and one of the instrument and control shops are in the Power Block. A second maintenance shop, a second instrument and control shop, and the chemistry and health physics shops where many of the petitioned-for employees spend much of their time are not part of the Power Block. The Power Block, Protected Area, and Vital Areas are not coextensive. Most but not all portions of the Power Block are inside the Protected Area. For example, the switchyard and discharge canal are part of the Power Block but outside the Protected Area. Some but not all portions of the Power Block are considered to be vital areas. For example, the turbine buildings are in the Power Block but not deemed a Vital Area.

The buildings at Millstone are numbered. Buildings that are part of Unit 1 are in the 100 series, Unit 2 buildings are in the 200 series, and Unit 3 buildings are in the 300 series; all of these buildings are within the Protected Area. Buildings in the 400 series, where many of the disputed employees work, are

office buildings.<sup>5</sup> Buildings in the 500 series include office buildings, training facilities, and warehouses, all of which are outside the Protected Area.

DNC shuts down each of the two operating reactors once every 18 months for refueling, typically for 30 to 40 days. During these outages, DNC also performs certain maintenance work that can only be performed when the units are off-line. Every department has representatives at the Outage Control Center, the outage headquarters located in Building 475. Workers in every department participate in outage work. In many cases workers perform work other than their usual work during outages and, in some cases, workers who do not usually work within the Power Block work inside the Power Block alongside the petitioned-for employees during outages. During outages, DNC forms “super crews” that work 12-hour shifts, and DNC brings in over 1000 contractors and staff from other facilities to help. Planning for the next outage begins as soon as an outage is over.

Millstone is licensed and highly regulated by the Nuclear Regulatory Commission (NRC), which has three resident inspectors in Building 475. It is also regulated by other Federal agencies, including the Federal Energy Regulatory Commission, OSHA, the Environmental Protection Agency, the Department of Homeland Security, and by various State agencies. Finally, it is regulated by the Institute of Nuclear Power Operations (INPO), an organization created by the industry after the Three Mile Island incident to promote safety and

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<sup>5</sup> DNC’s then-Director of Safety and Licensing testified that buildings in the 400 series are inside the Protected Area, although HR Generalist Joseph Costa testified that Building 441, where he works, is outside the Protected Area.

reliability at nuclear power plants. INPO inspects nuclear power plants, including Millstone, every two years, accredits its training programs, and alerts power plants of issues at one station that may impact the region or industry, such as the Fukushima accident in Japan.

**B. DNC's organizational structure**

There are about 1100 employees at Millstone, about 170 of who are managers or supervisors. The highest-ranking manager at Millstone is Site Vice President Steve Scace.

Plant Manager Wayne Adams, who reports to Scace, oversees Nuclear Operations Support, Nuclear Maintenance, Nuclear Outage and Planning, and Nuclear Site Services. These four groups are engaged in the operation and maintenance of the plant. The petitioned-for unit includes some but not all classifications in Nuclear Operations Support and Nuclear Maintenance, i.e., control operators, nuclear plant equipment operators (PEOs), and lead nuclear fuel handlers in Nuclear Operations Support, and various classifications of maintenance workers in Nuclear Maintenance. IBEW seeks no employees in Nuclear Outage and Planning or Site Services. DNC seeks to include additional classifications in all four of these groups that report to the Plant Manager.

Director of Safety and Licensing Lori Armstrong,<sup>6</sup> who reports to Scace, oversees Licensing Compliance, Organizational Effectiveness, Radiological Protection and Chemistry, and Nuclear Procedures Operations, which provide

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<sup>6</sup> Former Director of Nuclear Safety and Licensing Richard McManus testified at the hearing. DNC asserts in its post-hearing brief that Armstrong replaced him in July 2013, which was after the close of the hearing.

ancillary services to the plant. IBEW seeks to include some but not all of the classifications in the Radiological Protection and Chemistry group, i.e., health physics technicians, nuclear chemistry technicians, and senior nuclear chemistry technicians. IBEW seeks no other employees in the groups that report to the Director of Safety and Licensing, while DNC seeks to include additional classifications in all four of the groups that report to Armstrong.<sup>7</sup>

Other groups at Millstone are supervised by, and in some instances paid by, another subsidiary of DRI, Dominion Resources Services, Inc. (DRS), located at the Innsbrook Technical Center in Glen Allen, Virginia. These groups, referred to as “matrixed” groups, are headed by managers who report directly to a supervisor for their organization at DRS in Virginia and also report on a “dotted line” basis to a local manager at Millstone. These groups include Nuclear Engineering, IT Client Services, Training, Records Management, Environmental Lab, Emergency Preparedness, and Supply Chain. With the exception of Engineering, these groups provide services that are ancillary to plant operations and maintenance. Among these groups, IBEW seeks to include some but not all of the classifications in the Supply Chain organization, i.e., stockhandlers and lead stockhandlers, but seeks no employees in the other matrixed groups. DNC seeks to include additional employees in all of the matrixed groups.

Among the matrixed groups, the top managers at Millstone for IT Client Services, Records Management, the Environmental Lab, and Emergency

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<sup>7</sup> The Director of the “Excellence Team,” Sonny Stanley, also reports directly to Scace and oversees three groups, but it does not appear that either party seeks to include any employees who report to Stanley.

Preparedness report to Millstone's Director of Nuclear Safety and Licensing as their local manager. However, the Manager of Nuclear Training reports directly to the Plant Manager as his local manager. The record does not reveal who the local manager is for the Supply Chain or Engineering organizations.<sup>8</sup>

### **C. Community of interest factors**

#### **1. Duties, skills, and training**

Most of the employees in the petitioned-for unit perform physical work that requires the use of tools and equipment and specialized training.<sup>9</sup> However, as discussed below, a few employees in the petitioned-for unit, such as the control operators and PEOs in the Operations Maintenance Advisor and Operations Support groups, perform administrative tasks in an office setting rather than physical tasks.

The disputed employees generally perform various types of administrative work rather than physical work. However, some of the disputed employees within the plant manager's group have some of the same qualifications as employees in the petitioned-for unit.

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<sup>8</sup> According to Employer Exhibit 5, Director of Engineering Jeff Semancik has a "dotted line" relationship directly to Site Vice President Scace and is at the same level as the Plant Manager, Director of Safety and Licensing, and Director of the Excellence Team. According to Petitioner's Exhibits 17 and 17(a), the Director of Engineering no longer appears as one of the individuals reporting directly to Scace, and none of the organizational charts submitted into evidence indicate to whom he reports as his local manager.

<sup>9</sup> Many tasks performed at Millstone may be performed only by an employee who has a specific "qualification" to perform it, which is achieved by completing an accredited training program. There may be hundreds of qualifications associated with a given classification; for example, there are about 300 qualifications for instrument and control (I&C) technicians. Not all employees in the same classification have the same qualifications.

## 2. Work environment and dress code

Most of the production and maintenance employees in the petitioned-for unit spend the majority of their time working in the Power Block, an environment that may be hazardous, uncomfortable, and dirty, but not all workers in the petitioned-for unit work in the Power Block. Stockhandlers work in warehouses outside of the Power Block areas, and control operators and PEOs in the Operations Maintenance Advisor and Operations Support groups work in an office setting in Building 475.

The only employees at Millstone who wear uniforms are control operators, who are included, as well as unit supervisors and shift managers, who have been excluded from the unit by stipulation. All of them wear khaki pants; shift managers and unit supervisors wear navy blue collared shirts, while control operators wear maroon collared shirts.

Most of the petitioned-for production and maintenance employees wear jeans, tee shirts, and work shirts, and they are required, when they work in the Power Block, to use personal protective equipment (PPE), such as hard hats, safety glasses, hearing protection, hard-toed shoes, gloves, and protective face masks. They have access to locker rooms and showers that are not used by the disputed employees.

Employees in the disputed classifications generally work in office buildings, such as Building 475 and 437, and consequently wear business casual clothing. Some of them, including planners, engineers, and nuclear technical

specialist IIIs, spend part of their time in the Power Block. When they do so, they must wear PPE, and some of them wear jeans.

### 3. Hours of work and coverage by NRC fatigue rules

Among the employees in the petitioned-for unit, control operators and PEOs who operate the reactor units provide “on shift” coverage 24 hours a day in 12-hour shifts. The various maintenance employees in the petitioned-for unit work four ten-hour days, Monday through Thursday, with a rotating evening shift and call-in duty for off hours. Some of the included employees, such as control operators and PEOs in the Operations Maintenance Advisor group and fuel handlers, work four ten-hour days, Monday through Thursday, as do most of the disputed employees. During outages, the majority of employees, both included and disputed, work either day or night 12-hour shifts.

Millstone is required to comply with NRC rules that limit the hours worked by employees at a nuclear power plant, commonly referred to as “fatigue rules.” These rules are designed to ensure that workers are not fatigued when performing safety-sensitive work. The rules apply to “covered work” rather than to particular classifications. Covered work includes safety-sensitive work, such as work performed on diesel generators, safety injection components, turbines, the steam system, and reactor safety electronics.

Most of the employees in the petitioned-for unit perform the type of work that is covered by the fatigue rules, while most of the disputed employees perform work that is not covered by the fatigue rules. There are some exceptions, as the petitioned-for unit includes some employees whose work is

not covered by the fatigue rules, i.e., control operators and PEOs who work in the Operations Maintenance Advisor group, and stockhandlers. A few disputed employees, e.g., engineers, perform covered work at times.

#### 4. Wages and benefits

All job classifications, job descriptions, hires, pay ranges, and pay levels for new employees are approved by “Corporate,” i.e., DRS. All employees at Millstone are subject to the same policies and receive the same benefit package.

The wage range for the employees in the petitioned-for unit overlaps that of many of the disputed classifications. Starting annual pay for the petitioned-for employees ranges from \$47,300 for a nuclear mechanic I to \$79,000 for a control operator. The annual starting salaries of numerous disputed classifications fall within the same range, with a few lower and several higher.<sup>10</sup>

All DNC employees are eligible for merit increases and for bonus payments through an annual incentive program. All of the employees in the petitioned-for unit are eligible for the lowest tier bonus in the incentive program, 8.5 percent. Numerous disputed classifications are also eligible for an 8.5 percent incentive bonus, although some of them are eligible for higher bonuses

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<sup>10</sup> Among the disputed classifications reporting to the Plant Manager, the starting salaries of the following classifications fall within the range of starting salaries in IBEW’s proposed unit: nuclear toolkeeper, coordinator contract services II, vehicle management specialist, nuclear construction specialist, nuclear scheduler, senior nuclear designer, nuclear planner, senior nuclear construction specialist, maintenance coordinator, senior nuclear scheduler, and nuclear technical specialist III.

of 10, 12.5, and 15 percent.<sup>11</sup>

#### 5. Eligibility for overtime pay

All employees in the petitioned-for unit are covered by the Fair Labor Standards Act (FLSA) for purposes of the requirement to pay them overtime pay, i.e., they are “non-exempt” from the FLSA. Some but not all of the disputed positions are classified as exempt for purposes of the FLSA.<sup>12</sup>

DNC pays overtime pay to FLSA-exempt employees who work under the Plant Manager only in circumstances when it has approved a “qualifying event,” which includes Outages.

### **III. THE APPLICABLE LEGAL STANDARD**

#### **A. Unit Scope Analysis**

IBEW asserts that *Specialty Healthcare & Rehabilitation of Mobile*, 357 NLRB No. 83 (2011) provides the appropriate legal test to be applied in this case. Under that test, when a union petitions for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments,

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<sup>11</sup> Among the disputed employees who report to the Plant Manager, eight classifications are eligible for the same 8.5 percent incentive bonus, four classifications are eligible for a 10 percent incentive bonus, six classifications are eligible for a 12.5 percent incentive bonus, and one classification is eligible for a 15 percent incentive bonus.

<sup>12</sup> Among the disputed classifications reporting to the Plant Manager, the following are exempt from the FLSA: coordinator-contract services II, vehicle management specialist, nuclear construction specialist, senior nuclear construction specialist, maintenance coordinator, senior controls specialist, nuclear technical specialist III, nuclear maintenance specialist, nuclear workweek coordinator, nuclear engineer III, nuclear outage specialist, unit outage coordinator, and nuclear specialist.

Among the disputed classifications reporting to the Plant Manager, the following are non-exempt from the FLSA: process assistant IV, administrative assistant III, nuclear toolkeeper, nuclear scheduler, senior nuclear scheduler, senior nuclear designer, nuclear planner, senior nuclear planner, and senior reactor operator-in-training.

functions, work locations, skills or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the group 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.<sup>13</sup>

However, the Board specifically acknowledged that it has created various presumptions in specific industries, including the public utility industry, and stated that its holding in *Specialty Healthcare* was not intended to disturb such rules.

*Specialty Healthcare*, slip op. at 7, fn. 17 and at 13, fn. 29.

DNC contends that its status as a public utility warrants the application of the Board's standard for that industry, rather than *Specialty Healthcare*. The Board has long held that a systemwide unit is optimal in the public utility industry, because of the public's immediate and direct interest in the uninterrupted maintenance of the essential services that only this industry can provide. The rationale is that public utilities are characterized by highly integrated and interdependent operations and that, if the Board does not require comprehensive units, labor disputes or stoppages at any one facility could have a domino effect across the entire utility, halting the provision of essential services to the public. *Verizon Wireless*, 341 NLRB 483, 484 (2004); *PECO Energy Co.*, 322 NLRB 1074, 1079 (1997); *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973).

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<sup>13</sup> Id., slip op. at 12-13.

For the following reasons, I reject IBEW's claim that *Specialty Healthcare* applies in this case. Rather, I find that DNC is the type of employer to which the "public utility" presumption applies and that, therefore, the standard for unit determination in *Specialty Healthcare* is not applicable.

IBEW argues, first, that the public utility presumption should not be applied in this case because Millstone generates electricity for resale to other suppliers, such as Connecticut Light and Power, and does not itself deliver electricity directly to consumers. It asserts that, because there are other sources of electricity in the market and Millstone is not the sole source of energy supply for the public, the concern about uninterrupted maintenance of essential services to the public, which is the basis for the preference for systemwide units in this industry, is not present.

This argument has no merit, as the Board has applied the "public utility" presumption in several cases involving employers that, like DNC, were not themselves public utilities, but which supplied oil or gas to public utilities or other entities that sold fuel directly to the public. *Alyeska Pipeline Service Co.*, 348 NLRB 779, 781 (2006)(applying the presumption to an employer who was not the direct vendor of crude oil to the public but was relied on as the source of supply for public utilities); See also, *Tennessee Gas Pipeline*, 254 NLRB 1031, 1031 (1981); *Colorado Interstate Gas Co.*, 202 NLRB 847, 847 (1973); *Michigan Wisconsin Pipe Line Co.*, 194 NLRB 469, 469 (1971).

IBEW argues, second, that the public utility presumption in favor of system-wide units is irrelevant here, as the presumption applies only to the

question of which of multiple facilities within a public utility's operations must be grouped together for a unit to be appropriate, whereas in this case, there is only one facility at issue.

There appears to be at least one case, however, where the Board applied the public utility test to a public utility operating a single facility. *Deposit Telephone Co.*, 328 NLRB 1029 (1999).<sup>14</sup> In any event, the same considerations over the public's interest in the maintenance of essential services at a multi-facility public utility or supplier should apply with equal force to a public utility or supplier that operates a single plant.

Accordingly, I shall apply the legal standard applicable to public utilities. The Board's preference for a systemwide public utility or supplier is expressed as a rebuttable presumption, which does not foreclose the possibility of finding a smaller unit to be appropriate. The Board will find less than systemwide units appropriate where "compelling evidence" shows that collective bargaining would be a feasible undertaking, i.e., where 1) employees in the petitioned-for smaller unit share a substantial community of interest, 2) the boundaries of the requested unit conform to a well-defined administrative segment and could be established without undue disturbance to the company's ability to perform necessary functions, and 3) there is no opposing bargaining history on a broader basis.

*Alyeska Pipeline Service Co.*, supra at 780-781.

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<sup>14</sup> Dominion's assertion that *Alyeska Pipeline Service Co.*, supra, is such a case, has no merit. In *Alyeska*, the Board applied the systemwide presumption to an operation consisting of an 800-mile oil pipeline that led to a terminal, with seven pump stations located at intervals along the pipeline. In rejecting a petitioned-for unit limited to employees at the terminal, the Board did not describe the operation as a single facility, nor would that have made sense, in light of the hundreds of miles between the terminal and the pump stations at issue.

## **B. Unit Scope Conclusion**

Applying the public utility standard, I find that the petitioned-for unit is inappropriate, because the boundaries of the unit do not conform to a well-defined administrative segment of DNC's operations. Thus, IBEW seeks to represent employees in only two of the four subgroups that report to the Plant Manager, and some but not all of the classifications within each of those three subgroups. Moreover, IBEW seeks to represent employees in only one of the four subgroups that report exclusively to Director of Safety and Licensing Armstrong - the Radiological Protection and Chemistry group - and only three but not all of the classifications within that subgroup. Finally, IBEW seeks to represent two but not all of the classifications in the Supply Chain group, a stand-alone group that is administratively separate from those organizations that report either to the Plant Manager or the Director of Safety and Licensing.

However, application of the systemwide presumption does not necessarily mandate the conclusion, as DNC contends, that the only appropriate unit must include all employees working at Millstone, except for stipulated exclusions. In applying the systemwide presumption in *PECO Energy Co.*, supra at 1080-1081 and 1081, fn. 2, the Board held that the term "systemwide" does not necessarily mean all employees of the employer, and noted that a production and maintenance unit is still presumptively appropriate. There, the Board approved a unit of production and maintenance employees at a nuclear power plant, notwithstanding the employer's request for a system-wide unit, where the

boundaries of the production and maintenance unit conformed to a well-defined administrative segment.

As IBEW has expressed its willingness to proceed to an election in any unit found appropriate by the Regional Director, I shall approve an alternative unit that, in my view, does constitute a well-defined administrative segment of DNC's organization, i.e., the grouping of employees who report ultimately to the Plant Manager. I find that the employees in this group, in which the vast majority of the petitioned-for classifications are clustered, share a substantial community of interest in that they are the most directly involved in the actual operation and physical maintenance of the plant. As further explained below, their work is functionally integrated. I also note that some of the disputed employees within the Plant Manager grouping share common first or second level supervision with employees in the petitioned-for unit. Although many of the employees that I am adding to the unit from the Plant Manager grouping perform administrative tasks in an office setting rather than physical work, and generally work four ten-hour days, that is also true of certain employees in the petitioned-for unit. There is no reason to believe that this grouping, which tracks administrative lines drawn by DNC, presents any obstacle to DNC's ability to provide its service to the public. Finally, there is no history of collective bargaining on a broader basis.

Thus, I shall include in the unit, absent exclusion on other grounds, production and maintenance employees employed in Nuclear Operations Support, Nuclear Outage and Planning, Nuclear Maintenance, and Nuclear Site

Services, all of which are overseen by the Plant Manager.<sup>15</sup> I shall also include employees in the Training Department, one of the matrixed groups that reports to the Plant Manager as its local manager at Millstone.

Employees who work in any other organizations at Millstone shall be excluded.<sup>16</sup> Thus, employees who work in organizations supervised either exclusively or on a “dotted line” basis by the Director of Nuclear Safety and Licensing – Radiation Protection and Chemistry,<sup>17</sup> Organizational Effectiveness, Licensing, Procedures, Emergency Preparedness, Records Management, IT Client Services, and the Environmental Lab, shall be excluded from the unit.

I shall also exclude employees in the remaining matrixed organizations at issue: Engineering and Supply Chain.<sup>18</sup> I note that the record does not reveal whether or not the Engineering and Supply Chain groups are supervised locally by the Plant Manager.

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<sup>15</sup> The parties have stipulated, and I find, that about 243 employees in 92 classifications shall be excluded from the unit. Those stipulated exclusions, insofar as they are employed in the four departments that I have included in the unit, are listed in the unit description exclusions at Appendix B.

<sup>16</sup> In light of my determination to exclude all employees who do not work in groups that report to the Plant Manager, I need not reach the Union’s various alternative bases for excluding some of them, e.g., that they are employed by a different corporate entity.

<sup>17</sup> Accordingly, the petitioned-for health physics technicians, nuclear chemistry technicians, and senior nuclear chemistry technicians in the Radiation Protection and Chemistry group shall be excluded from the unit.

<sup>18</sup> Accordingly, the petitioned-for stockhandlers, and lead stockhandlers in the Supply Chain group shall be excluded from the unit.

#### **IV. UNIT PLACEMENT DETERMINATIONS**

##### **A. Nuclear Operations Group**

###### **1. Overview**

The Nuclear Operations group is responsible for operating the two working nuclear reactors, Unit 2 and Unit 3, and their auxiliary systems, as well as for managing Unit 1, which has been shut down. Nuclear Operations employs about 220 people. The supervisors and managers for Nuclear Operations have offices in Building 475, an office building that houses many departments.

Manager of Nuclear Operations Scott Smith reports to the Plant Manager. Nuclear Operations has several subgroups. The largest subgroup, Shift Operations, is responsible for operating the reactors and the plant. Within the Shift Operations group for each unit there is also an Operations Maintenance Advisor (OMA) group that coordinates and schedules maintenance tasks. Also within Shift Operations, each unit has a License School group headed by a Mentor who is responsible for personnel in training to obtain an NRC operating license.<sup>19</sup>

Apart from Shift Operations, three other groups in Nuclear Operations report directly to Manager of Nuclear Operations Smith. The Fuel Handling group is responsible for disassembling and reassembling the reactors and auxiliary systems when it is necessary to refuel them and for maintaining fuel handling equipment. Operations Support is responsible for the administrative aspects of Operations, such as corrective action reports, performance

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<sup>19</sup> It does not appear that either party seeks to include License School Mentors in the unit, so they shall be excluded from the unit.

improvement plans, and human performance issues. Finally, Training Liaison Joe Bergin is the liaison between Nuclear Operations and the Training Department.<sup>20</sup>

## 2. Shift Operations

The largest group in Operations, Shift Operations, is headed by an Operations Manager for Unit 2 and an Operations Manager for Unit 3, both of whom report to Manager of Nuclear Operations Smith. Underneath each Operations Manager is a Supervisor for Nuclear Shift Operations. Five shift managers for each unit are each responsible for a crew and report, in turn, to the Nuclear Shift Operations supervisor for their unit. Each crew is composed of a shift manager, two to three unit supervisors, two to four control operators, three to five nuclear plant equipment operators (PEOs), and a shift technical advisor. The crews, referred to as “on-shift” workers, provide coverage 24 hours a day, seven days a week. Each crew works a rotating five-week schedule that includes rotating 12-hour shifts from 6 a.m. to 6 p.m. and 6 p.m. to 6 a.m., a certain number of days off, and four days of training per five-week cycle. The work of these “on-shift” crew members is covered by the NRC fatigue rules.

### a. Included control operators in Shift Operations

Millstone employs 32 petitioned-for control operators. Many but not all of them are assigned to the on-shift crews in Shift Operations. Those control operators who work on-shift must be licensed by the NRC as reactor operators (ROs). Shift managers and unit supervisors, who have been excluded from the

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<sup>20</sup> It does not appear that either party seeks to include the training liaison in the unit, so that position shall be excluded from the unit.

unit by stipulation, must be licensed by the NRC as senior reactor operators (SROs).<sup>21</sup> They all work in one of the Control Rooms for each unit, the “nerve center” of the unit, a glassed-in oval room that contains a horseshoe arrangement of control boards with alarms, lights, gauges, and switches. The control operators sit in front of the controls, at desks with computer screens, monitoring the plant. A unit supervisor sits at a desk behind the control operators, with a bank of procedures. Further behind, there is a desk for the shift technical advisor and an empty spot where the shift manager may sit.

The primary function of the control operators is to start, operate, and shut down the reactors and other systems in the plant. One control operator monitors the reactor, while the other one monitors the rest of the plant systems, including the steam generators, feed pumps, turbines, circulating water system, electrical systems, and switchyard equipment. They read and interpret the dials, gauges, recorders, audio signals, and signal lights on the control board. They take switching orders and perform switching and tagging operations on electrical systems and switchyard equipment.

Control operators are required to have a high school diploma or GED, an RO license, and experience as a PEO.<sup>22</sup> They must meet certain minimum training and experience requirements specified by the American National

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<sup>21</sup> Thus, the terms control operator and RO are sometimes used interchangeably, and the terms shift manager, unit supervisor and SRO are sometimes used interchangeably.

<sup>22</sup> Many retain their PEO qualifications, so it is not uncommon for control operators to work as PEOs when more than two control operators are on a shift that requires only two control operators.

Standard Industrial (ANSI). The on-shift control operators wear khaki pants and a maroon, collared shirt.

b. Included nuclear plant equipment operators (PEOs) in Shift Operations

Millstone employs 81 petitioned-for PEOs. Many but not all PEOs are assigned to the rotating on-shift crews. On-shift PEOs work largely in the Power Block, where they start up, operate, inspect, and shut down primary and secondary plant systems. PEOs start their shift by participating in a turnover from the PEO on the prior shift. Then, for the first few hours of their shift, they make rounds of their assigned part of the Power Block, obtaining readings from meters and gauges, making adjustments, and looking for abnormalities in plant equipment. After completing their rounds, they spend the rest of the shift performing surveillance testing of plant equipment and tagging procedures for the safety of workers who will be working on equipment. Their work includes performing tests on protective devices and safety systems, filter pre-coating operations, cleaning water strainers, oil strainers, and condensers, and changing cartridge filters. They also drain pipes, attend to vents and valve lineups, and manipulate systems so that instrument technicians can install gauges and flow meters. In addition to their role on the shift crews, PEOs function as fire brigade members and as emergency response personnel.

On-shift PEOs perform physical work, using pipe wrenches, valve drills, small motor devices, hand-cranking tools, ladders, and hand-held electronic devices that record readings. They wear jeans and must wear personal protective equipment while they work. When PEOs work in the field, they are

required to get a briefing from a health physics technician when entering the RCA, and a health physics technician must accompany them in certain areas to monitor conditions. They use lockers, showers, and changing rooms after dirty jobs.

When they are not working in the field, PEOs who work on-shift sit as a group at desks above or in back of the Control Rooms. These desks have computers and a docking station used to upload readings. During outages, some on-shift PEOs are moved off-shift, where they are part of “Tiger Teams” that do leak rate testing, work on a Surveillance Team that aligns the system for flow rates; drain, vent and tag systems for the safety of maintenance workers; or make sure that certain tanks have the correct level of water.

PEOs are required to have a high school diploma or GED. In order to become a PEO, they must complete five months of initial training, followed by a year of on-the-job training to become fully qualified.<sup>23</sup> They are required to have classroom training one week out of five when the reactors are on-line.

c. Disputed nuclear engineer IIIs and nuclear technical specialist IIIs who function as Shift Technical Advisors in Shift Operations

Since the well-known nuclear accident at Three Mile Island, the NRC has required that each on-shift crew include a Shift Technical Advisor (STA), who is responsible for independently assessing plant response and advising the

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<sup>23</sup> The organization chart for Nuclear Operations indicates that there are fourteen “not fully qualified” PEOs assigned to Units 2 and 3. The record does not reflect the parties' positions regarding their inclusion or exclusion. I find that PEO trainees should be included in the unit. *Johnson's Auto Spring Service*, 221 NLRB 809 (1975)(Board will include trainees in bargaining units, even though the contemplation of permanent tenure is subject to satisfactory completion of an initial trial period).

Operations crew if the plant is operating appropriately. STAs work in the Control Room with the rest of the shift crew and also tour certain areas of the plant. Among their duties, they monitor the plant's intake of circulating water and weather reports, update the plant's risk profiles based on equipment out of service, and review procedures. A station log entry, submitted into evidence as a typical interaction, indicates that a control operator asked the STA, who was a nuclear engineer III, for advice about a pump speed reduction to lower the temperature, and the STA recommended a certain reduction in speed.

The role of an STA is an assignment, rather than a job classification, and STAs have other job classifications. Manager of Nuclear Operations Smith testified that STAs must have an engineering degree and that some nuclear engineer IIIs function as STAs.<sup>24</sup>

Smith also testified that there may be some nuclear technical specialists who function as STAs, and Supervisor of Operations Support Hugh McKenney testified that a nuclear technical specialist III in his group, Ken Hajnal, sometimes works as an STA. Notwithstanding Smith's testimony that STAs must have an engineering degree, the job description for nuclear technical specialist IIIs does not require an engineering degree, and there was testimony that nuclear technical specialists do not have engineering degrees.

The record does not reveal whether there are any nuclear engineer IIIs or nuclear technical specialist IIIs who work exclusively as STAs, or the frequency

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<sup>24</sup> Smith also testified that SROs with an engineering degree may also perform the role of STA. This presumably includes shift managers and unit supervisors, who are SROs, and who have been excluded from the unit by stipulation of the parties.

with which engineer IIIs or nuclear technical specialist IIIs who have other jobs function as STAs.

Nuclear engineer III is the highest level in a progression of engineer classifications. The job description for the position states that it includes senior to technical expert engineers, able to perform difficult and complex work requiring knowledge of the subject matter and significant experience within functional assignment area. Nuclear engineer IIIs are required to have a four-year engineering degree from an accredited engineering program or a four year degree in physics, chemistry or math and a post-graduate engineering degree. In addition, some but not all engineer IIIs hold or have previously held a professional engineer license, although an engineer's license is not required for all nuclear engineer III positions.

IBEW seeks to exclude all engineers, including engineer IIIs, *inter alia*, on the ground that they are professional employees. Under Section 2(12) of the Act, in order to qualify as a professional, an employee must perform work of a predominantly intellectual and varied character, involving the consistent exercise of discretion and judgment. The work must be of such a character that the output produced cannot be standardized in relation to a given period of time, and it must require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. *Avco Corp.*, 313 NLRB 1357 (1994). The Act defines a professional employee in terms of the work performed rather than in terms of individual qualifications. Although educational

background does not control, the Board examines educational background for the purpose of deciding whether the work of the group satisfies the "knowledge of an advanced type" requirement. If a group of employees consists primarily of individuals with professional degrees, the Board may presume that the work requires "knowledge of an advanced type." Conversely, if few in the group possess the appropriate degree, it follows that the work does not require the use of advanced knowledge. *Id.*

The Board has consistently found that employees with professional engineering degrees working in specialized fields of engineering qualify as professionals. *Id.* at 1358. I find that the nuclear engineer IIIs who function as STAs are professional employees, and I shall exclude them from the unit. I note that nuclear engineer IIIs are required to have an engineering degree and that some of them hold a professional engineer's license, supporting the presumption that their work requires knowledge of an advanced type.

IBEW seeks to exclude nuclear technical specialist IIIs on the ground that they are professionals or at least technical employees who do not share a community of interest with the petitioned for employees. The job description for nuclear technical specialist IIIs states that they provide expert technical support, direction and advice in analyzing and evaluating plant systems, equipment and programs. They are required to possess in-depth knowledge of the design and operation of complex systems and equipment and of engineering theories and principles. A bachelor's degree is preferred for the position but is not required, and they are not required to hold a professional engineer's license. In the

Engineering Department, which I have excluded from the unit, there are nuclear engineer IIIs and nuclear technical specialists IIIs who in some instances perform the same job function, but have different job classifications based on whether or not they possess an engineering degree. The nuclear technical specialists IIIs earn around \$10,000 less per year than nuclear engineer IIIs. Nuclear technical specialist IIIs are exempt employees for purposes of the FLSA and are eligible for a 12.5 percent annual incentive bonus.

I find that nuclear technical specialist IIIs are not professionals, as they are not required to have an engineering degree or even a bachelor's degree. As for their technical status, technical employees are defined as employees who do not meet the strict requirements of the term "professional employees" as defined in the Act but whose work is of a technical nature, involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools, or through special courses. *Audiovox Communications Corp.*, 323 NLRB 647 (1997). The Board does not automatically exclude technical employees from units of production and maintenance employees, however. Rather, it determines the unit placement of such employees based on the community-of-interest factors, such as regular contact with unit employees and the degree to which their jobs are functionally integrated into the basic production process. *Virginia Mfg. Co.*, 311 NLRB 992, 993 (1993).

I find that nuclear technical specialist IIIs who function as STAs are technical employees, in that they perform work of a technical nature that requires

substantial independent judgment and which requires specialized training, preferably in college. Notwithstanding their technical status, I find that they share a sufficient community of interest with the other production and maintenance employees to warrant their inclusion in the unit. In this regard, they work closely together with the on-shift control operators, operating the units in the Control Room on the same 12-hour, round the clock shifts.

d. Disputed SROs-in-training in Operations

Shift Operations for each unit includes a License School headed by a Mentor who reports to the Operations Manager for his or her respective unit. The Mentors are responsible for both ROs-in training<sup>25</sup> and for SROs-in-training, a disputed classification of employees who are in training to receive an SRO license from the NRC. SROs-in-training are in line to become unit supervisors, an excluded classification, once they receive their license. Some are control operators who are upgrading their license; others do not have prior experience as control operators and must work closely with control operators to gain the experience needed to sit for the licensing exam. SROs-in-training may be in this job classification for 18 months to three years. This includes 12 months working on-shift before taking classes, followed by a three month course in the fundamentals of basic engineering and operating principles, followed by an 18-month course in power plant operations, including use of control room simulators

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<sup>25</sup> The record does not reveal the parties' positions with respect to ROs-in-training. Like the "not fully qualified" PEOs, these ROs-in-training, i.e., control operator trainees, shall be included in the unit. *Johnson's Auto Spring Service*, supra.

and time on-shift. During outages, SROs-in-training work as helpers to PEOs, in order to become familiar with the plant.

I find that the SROs-in-training, who are in line to become unit supervisors, are akin to management trainees. The Board excludes management trainees from bargaining units where, as here, the essential and overriding interest of the trainees is their goal of qualifying for a management position. *Nationsway Transport Service*, 316 NLRB 4, 5 (1995); *Short Stop, Inc.*, 192 NLRB 1260, 1261, fn. 11 (1971). As their interests are more closely identified with management, the SROs-in-training shall be excluded from the unit.

### 3. Operations Maintenance Advisor group

Although Millstone has an Outage and Planning group and a Maintenance Department, discussed below, that together plan and execute maintenance tasks, each of the two reactor units also has an Operations Maintenance Advisor (OMA) group within the Operations Department that is also involved in the planning, coordination and scheduling of maintenance tasks. The OMA group in Operations assists in the maintenance process, because this group has particular expertise about the plant and which components may be safely taken out of service at a given time. Each OMA group is headed by a supervisor called the OMA, who reports to the Operations Manager for each unit. The OMA groups employ control operators, PEOs, nuclear technical specialist IIIs, and unit supervisors. The OMA employees work in an office setting in Building 475. They all work “off-shift,” meaning that they are not assigned to one of the Shift Operations crews. They work ten hours a day, Monday through Thursday.

The OMAs have teams that are referred to as Ops Work Control Groups. As an example of OMA's role in the maintenance process, when equipment must be "tagged out," i.e., isolated so that it may be safely worked on by maintenance employees, planners in the Outage and Planning group do a first pass with respect to which components must be tagged out. The tagging plan is then sent to the Maintenance Department for approval, which involves a first-line supervisor or mechanic "walking down" the job and concurring. Then, a "tag preparer" in the Ops Work Control group "writes" the tagging instructions and develops a diagram of the components to be tagged, using a CAD program, and a nuclear technical specialist III in the OMA group reviews it to ensure that it is correct. Finally, an on-shift control operator or PEO from Shift Operations actually hangs the tags so that the maintenance work may begin.

a. Included control operators and PEOs in the OMA group

The petitioned-for control operators and PEOs in the OMA groups review "work packages" to ensure that the appropriate tag downs and plant configurations are in place before maintenance is performed. Thus, these control operators and PEOs, unlike on-shift control operators and PEOs, do administrative rather than physical work. The work performed by these off-shift control operators and PEOs is not covered work for purposes of the fatigue rules.<sup>26</sup>

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<sup>26</sup> Some of the off-shift control operators have maintained their qualifications to "stand watch" and go back on shift to cover for absent control operators.

b. Disputed nuclear technical specialist IIIs in the OMA group

The OMA group also employs nuclear technical specialist IIIs, a disputed classification. The nuclear technical specialist III title in Operations was created eight years ago for control operators who prefer to come off-shift and not maintain their operator's license. Thus, at least some of the nuclear technical specialist IIIs in the OMA group are former control operators, although it is not clear from the record whether all of them are former control operators. Nuclear technical specialist III Gary Sturgeon, formerly a control operator or SRO for Unit 1, works with a planner and nuclear mechanic to coordinate and plan work for Unit 1. Nuclear technical specialist III Tony Rossi does tagging reviews full-time. Nuclear technical specialist IIIs John Fillion and Brian Kelly schedule maintenance work, coordinating daily with, among others, the petitioned-for instrument and control (I&C) technicians, nuclear mechanics, and on-shift control operators. PEO David Brochu and nuclear technical specialist III Andy Samson, both former control operators, have different titles but perform the same duties, scheduling work and doing tagging approval.

As noted above, IBEW seeks to exclude nuclear technical specialist IIIs on the ground that they are professionals or at least technical employees who do not share a community of interest with the petitioned-for employees. As with the nuclear technical specialist IIs who work as STAs, I find that nuclear technical specialist IIIs in the OMA group are technical employees who share a community of interest with the petitioned-for employees that warrants their inclusion. They share common immediate supervision with the included control operators and

PEOs who work in the OMA group. Many of them are former control operators, and they perform some of the same duties as control operators in the OMA group, such as tagging reviews. They work the same schedule as the off-shift control operators and PEOs, and all of the OMA workers, included and disputed, perform work that is not covered by the fatigue rules.

#### 4. Operations Support

Operations Support is responsible for certain administrative aspects of Operations. It is headed by Supervisor Hugh McKenney, who reports directly to Manager of Nuclear Operations Smith. This group employs unit supervisors, nuclear technical specialist IIIs and/or nuclear engineer IIIs, control operators, and PEOs, all of whom work off-shift. They support the on-shift crews with trouble shooting plans, event response, corrective action reports, performance improvement plans, and plans to improve human performance. All of them have access to the Control Rooms. Some of the Operations Support personnel have offices just outside of the Control Rooms for each unit, and some work in Building 475.

##### a. Included control operators and PEOs in Operations Support

The petitioned-for control operators in Operations Support perform administrative tasks, such as scheduling the on-shift control operators to insure adequate coverage, conducting “Apparent Cause” investigations, and working on corrective actions and troubleshooting plans.

Some of the petitioned-for PEOs in Operations Support procure small pieces of equipment and tools. One ensures that the labels for pieces of

equipment meet design requirements and are properly printed and located. Two PEOs are Corrective Action Coordinators, making sure that corrective actions are completed timely. One PEO in Operations Support does “Apparent Cause” evaluations.

Some of the control operators and PEOs in Operations Support are expected to fill in for “on-shift” control operators and PEOs when they are absent, but otherwise they are considered to be “off-shift” personnel.

b. Disputed nuclear technical specialist IIIs and nuclear engineer III in Operations Support

Operations Support employs at least two nuclear technical specialist IIIs (Mark Miner and Ken Hajnal) a disputed classification. Miner is a former SRO who now works in Operations Support handling corrective actions and process improvement assignments. He works with control operators and IT to develop reporting protocols so that data is displayed in a way that helps Operations make decisions. Hajnal works sometimes as an STA and sometimes off-shift in Operations Support as the Human Performance Coordinator. He helps improve employee performance with tools for self-checking, peer-checking, and verification of processes, and he also investigates human performance issues.

One subgroup of Operations Support, called Operations Human Performance Team, is composed of a control operator, two unit supervisors, and Morris Sanders, who also works as an STA for Unit 2. It is unclear whether Sanders is classified as a nuclear engineer III or nuclear technical specialist III. This group focuses on human performance issues and works with management and shift crews to align their expectations.

IBEW seeks to exclude nuclear engineer IIIs on the ground that they are professionals, and to exclude nuclear technical specialist IIIs on the ground that they are professional and/or technical employees who do not share a community of interest with the petitioned-for employees. For the reasons set forth above, I find that the nuclear technical specialist IIIs in Operations Support are technical employees who share a sufficient community of interest with the included employees to warrant their inclusion in the unit. I note that they share common immediate supervision with the petitioned-for control operators and PEOs in Operations Support. Nuclear technical specialist III Miner performs one of the same duties as the control operators and PEOs, i.e., handling corrective actions, and all perform administrative duties for Operations and work off-shift.<sup>27</sup>

#### 5. Fuel Handling group in Operations

The Fuel Handling group is responsible for disassembling and reassembling the reactors and auxiliary systems when it is necessary to refuel, and for maintaining fuel handling equipment. The fuel handling group is headed by Fuel Handling Supervisor Mike Dolishney, who reports directly to Manager of Nuclear Operations Smith.

Nine lead nuclear fuel handlers, a petitioned-for classification, report to Dolishney. They are the only employees in this group. Dolishney works in Building 475, while the fuel handlers work in the condensate polishing facility between Units 2 and 3.

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<sup>27</sup> However, if Sanders is, in fact, a nuclear engineer III, he shall be excluded as a professional employee.

Fuel handlers are responsible for handling the nuclear fuel for all three units on site, which is considered a dangerous job. During refueling outages, they disassemble and reassemble the reactor system and auxiliary systems. They go into the reactor cavities and use heavy hydraulic wrenches to loosen studs and disconnect pipes that carry the water that cools the reactor. Along with a vendor, they drive cranes into the reactor pool to remove spent fuel and move it to a dry cask storage area, where it is put into concrete casks and into the spent fuel pool. Fuel handlers spend 90 to 95 percent of their time in the RCA.

During non-outage periods, fuel handlers offload new fuel from trucks and insert it into a pool. They repair tools, which must be kept inside the contaminated area. They use wrenches, sockets, ratchets, hammers, sledge hammers, razor knives, screw drivers, pliers, chain hoists, slings, and shackles.

A high school diploma or GED is preferred for this position, and fuel handlers are required to have five years of operations and refueling outage-related experience, such as an RO license or background in reactor engineering. Initial training for fuel handlers is a week-long class in maintenance fundamentals, after which they must become qualified in fuel-handlings tasks through on-the-job training.

Fuel handlers work “off-shift,” four ten-hour days, Monday through Thursday, from 6:30 a.m. to 4:30 p.m., but during outages they switch to rotating between day and night shifts. Their work is covered work for purposes of the fatigue rules. They use the locker rooms inside the Protected Area.

## **B. Outage and Planning Group**

### **1. Overview**

The Outage and Planning group is responsible for scheduling and planning all maintenance work. It is headed by Outage and Planning Manager George Marshall, who reports to the Plant Manager. Outage and Planning is subdivided into four groups, each of which has its own supervisor. The Outage group schedules and plans work to be done during outages, while the On-Line group schedules and plans work to be done while the Units are on-line. Once a piece of maintenance work is placed in the schedule, the I&C/Electrical Planning group and the Mechanical Planning group prepare work packages with instructions that are used by the I&C technicians, electricians, and mechanics who will actually perform the maintenance work.

In this group, DNC seeks to include nuclear schedulers, senior nuclear schedulers, nuclear planners, senior nuclear planners, unit outage coordinators, nuclear outage specialists, nuclear technical specialist IIIs, nuclear workweek coordinators, and a nuclear specialist. IBEW seeks to exclude all of these employees due to a lack of community of interest and, in some cases, their managerial status.

Most of the disputed Outage and Planning employees work in cubicles in an office setting, either in Building 475 or Building 437, and they wear office attire. They generally work four ten-hour days, Monday through Thursday, although many of them work 12-hour shifts, seven days a week, during outages.

## 2. Disputed senior nuclear schedulers and nuclear schedulers in Outage and Planning

Maintenance work at the plant is generated either by an automated preventive maintenance schedule or by a “condition report” (CR). Anyone at the plant may file a CR noting a problem, which is electronically forwarded to any groups that might be affected and to an Operations Review Team of managers and supervisors who meet daily to review and prioritize CRs received the day before. Those CRs that require immediate attention are sent to a group called the Fix-It-Now team. Lower priority CRs are referred to a Work Control Team, which is chaired by a scheduling supervisor and is composed of planners and schedulers as well as representatives from various maintenance and engineering groups. The Work Control Team further categorizes and prioritizes the work. Work required as a result of an equipment failure or problem is directed to the work management system and prioritized based on how critical or safety-related it is and whether it needs to be done on-line or during an outage. CRs that suggest an enhancement to a procedure or ask a question are directed to the Corrective Action System.

Work that goes into the work management system is assigned to a senior nuclear scheduler, who determines when a deficiency should be addressed in the overall schedule. Work is scheduled in a system called the T process, in which work is scheduled out to 24 weeks. For example, the workweek 24 weeks out is referred to as T-24. At T-16, the schedulers review the total workload to make sure they have the personnel and resources needed to execute all the work, and the OMA group in Operations gets involved to make sure that if a

component is down for repairs, there is another system available. At T-12, the schedulers and planners meet to make sure the parts have been ordered, and so on, until execution of the repair at T-0.

It appears that there are senior nuclear schedulers in both the nuclear outage group and the nuclear on-line group.<sup>28</sup> Senior nuclear schedulers are responsible for slotting the work into the right workweek and for “resource loading” the maintenance personnel who will actually perform the work. They are frequently in contact with planners and the craft involved to refine the scope of the work, how long the work will take, and what resources are required. There are several senior nuclear schedulers, and each one is responsible for a particular unit and craft, such as electricians, I&C technicians, mechanics, welders, and so on. They interact frequently with the “craft coordinators” from the particular maintenance group for which they are responsible. It appears that the craft coordinators with whom they interact are individuals who have been excluded from the unit, such as Assistant Supervisor Instrumentation and Controls Kevin Long, Nuclear Maintenance Supervisor Gary Tourigny, and Nuclear Maintenance Supervisor Ray Losier.

There are two nuclear schedulers in the nuclear outage group and one in the nuclear on-line group. They update and administer the schedules that have been prepared by the senior nuclear schedulers to make sure the work is completed as scheduled. The nuclear schedulers in the outage group also assist the nuclear outage specialists in formulating some of the outage schedules.

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<sup>28</sup> Employee Jim Doran’s formal classification is senior nuclear planner but, nonetheless, he functions as a senior nuclear scheduler in the Nuclear On-Line group.

The senior nuclear scheduler and nuclear scheduler positions are classified as non-exempt for purposes of FLSA overtime requirements. Both senior nuclear schedulers and nuclear schedulers are eligible for an 8.5 percent annual incentive bonus. An associate's degree is preferred for both positions.

IBEW seeks to exclude senior nuclear schedulers and nuclear schedulers on the ground of lack of community of interest, as they work in an office setting, and most of the individuals with whom the schedulers have contact in the Maintenance Department are supervisors rather than petitioned-for employees. I find that those factors are outweighed by the fact that the Outage and Planning Department in which they work is part of the administrative segment that reports to the Plant Manager; if the Outage and Planning employees are excluded from the unit, the unit will not constitute a well-defined administrative segment as required in the public utility industry. Further, the work of the senior nuclear schedulers and nuclear schedulers is an indispensable and integral part of the maintenance process. I also note that their salary, incentive bonus tier, and FLSA status is the same as that of the petitioned-for employees in the Operations and Maintenance Departments. Finally, there are several petitioned-for off-shift control operators and PEOs who, like the schedulers, work in an office setting and work a four-ten schedule. Accordingly, the senior nuclear schedulers and schedulers shall be included.

3. Disputed senior nuclear planners and nuclear planners in Outage and Planning

All of the employees employed by the I&C/Electrical and Mechanical subgroups within Outage and Planning are nuclear planners and senior nuclear

planners. Employees in the two classifications (collectively nuclear planners) perform the same type of work, but senior nuclear planners are more experienced and are qualified to work on more complex work packages.

Nuclear planners prepare work packages for the maintenance employees who will be performing the work. They receive an assignment to generate a work package at T-16. They first review the history of the work order, drawings of the affected component, and applicable procedures. They visit the relevant maintenance shop to review something called a “Loop Folder.” In many cases they physically “walk down” the component to observe it first hand and ascertain any hazards, although 75 percent of the work does not require a “walkdown.” They spend about five hours per week doing walkdowns to look at a job, sometimes accompanied by a maintenance supervisor or maintenance employee. Just a few maintenance employees are assigned to do walkdowns with planners, so the planners’ interaction with unit employees is limited to those individuals.

Nuclear planners contact Operations to ensure that the correct tagging will be done so that the power supply to the affected component is cut off while the work is performed. They order the parts necessary to perform the work. By T-9, they complete the work package, a lengthy document with instructions for the mechanic, electrician, I&C technician, or nuclear generation services technician to follow while performing a repair. A binder containing the work package is delivered to a room in Building 437 and withdrawn as necessary. Control operators and PEOs review the work packages before they are finalized.

Nuclear planners interact frequently with the various maintenance employees who perform the work they have planned. I&C/Electrical Supervisor Jim Epps testified that his nuclear planners spend 25 percent of their time working with the craft department and that one nuclear planner spends 35 percent of his time working with nuclear generation test technicians. A nuclear planner who prepares work packages with respect to the intake of ocean water interacts with the two mechanics who perform this work about twice a week, sometimes by e-mail or phone. Some maintenance employees testified, on the other hand, that they do not work with planners and contact their own supervisor if they encounter a problem with a work package.

Two nuclear planners from the I&C/electrical group and one from the mechanical group work on the Fix-It-Now (FIN) Team. The FIN team includes maintenance supervisors, as well as valve mechanics, weld mechanics, control operators, I&C technicians, and electricians. They work in Building 110, near Unit 2. The rest of the nuclear planners and senior nuclear planners work in Building 437.

These classifications are non-exempt under the FLSA, and nuclear planners usually work five to ten hours of overtime per week. They are eligible for an 8.5 percent annual incentive bonus. During outages, they work 12-hour shifts, seven days a week.

An associate's degree is preferred but not required for both positions. Nuclear planners are required to have certain qualifications in order to prepare

specific types of work packages, e.g., they need certain qualifications to prepare a package for welding work.

IBEW seeks to exclude nuclear planners for lack of community of interest. I find that the nuclear planners share a sufficient community of interest with employees in the petitioned-for unit to warrant their inclusion. Like the nuclear schedulers, they work within the same administrative segment as the petitioned-for employees. The work of the nuclear planners and maintenance department employees is functionally integrated, as nuclear planners prepare the work packages necessary for the maintenance employees to begin any maintenance job. The nuclear planners have contact with maintenance employees about maintenance jobs during walkdowns and on other occasions, and those on the FIN team work closely with maintenance employees. Their incentive bonus tier and FLSA status is the same as that of the included employees in the Operations and Maintenance Departments, and their salaries are similar. Although they work in an office setting pursuant to a four-ten schedule, unlike most of the petitioned-for employees, there are several off-shift control operators and PEOs who work a similar schedule in an office setting.

#### 4. Disputed nuclear workweek coordinators in Outage and Planning

Three nuclear workweek coordinators work in the On-Line subgroup of Outage and Planning and report to the On-Line supervisor. Workweek coordinators serve as the project manager for a particular work week and are responsible for implementing maintenance activities scheduled for that week. They typically assume responsibility about six weeks prior to the workweek at

T-6. The weeks are assigned by rotation, and each coordinator is responsible for every fifth week. They act as a single point of contact for coordination of the week's activities and coordinate emergent work into the on-line schedule. They prepare viable schedules and ensure they are "manpower loaded" to optimum levels. They conduct risk reviews, using computer software that analyzes the risk level to the plant of taking certain equipment or systems out of operation in order to conduct the work. They conduct pre- and post-work week meetings. They interact principally with nuclear schedulers and nuclear planners as well as with others who have been excluded from the unit, such as the "craft coordinators" described above, operations shift managers, operations unit supervisors, and the outage maintenance advisors. They have some contact with off-shift control operators.

Workweek coordinators are required to have a bachelor's degree or an equivalent combination of education and directly related nuclear power plant experience, and proven experience leading teams or major projects. They must have knowledge of plant specifications, methods, and procedures for the performance of mechanical, electrical, I & C, and computer systems maintenance functions. A current or previously held SRO license or certificate is preferred but not required.

The workweek coordinators are exempt from FLSA overtime requirements and are eligible for a 15 percent annual incentive bonus.

IBEW seeks to exclude workweek coordinators on the ground that they are managerial employees and that they lack a community of interest with the petitioned-for employees.

It is well established that employees will be excluded from the unit as managerial employees only if they formulate and effectuate management policies by expressing and making operative decisions of their employer or have discretion in the performance of their jobs independent of the employer's established policy. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *Reading Eagle Co.*, 306 NLRB 871 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991). The party seeking to exclude individuals as managerial has the burden of coming forward with evidence necessary to establish such an exclusion. *Lemoyne-Owen College*; 345 NLRB 1123, 1128 (2005); *Montefiore Hospital & Medical Center*, 261 NLRB 569, 572 fn. 17 (1982).

I find that nuclear workweek coordinators should be included in the unit. As for their managerial status, IBEW has presented no evidence that the workweek coordinators formulate and effectuate management policies or have discretion independent of DNC's established policies. There is no other basis to exclude them. The nuclear workweek coordinators work within the administrative segment that I have found to be appropriate. As for their community of interest with unit employees, although most of their contact is with maintenance supervisors rather than with rank-and-file maintenance employees and they are eligible for a higher incentive bonus, I find that the function of the workweek coordinators is such an integral part of the maintenance process that they are

properly included in a production and maintenance unit. Further, they work closely with the nuclear schedulers and nuclear planners that I have included in the unit.

#### 5. Disputed nuclear specialist in Outage and Planning

In addition to the three individuals with the workweek coordinator title, nuclear specialist Dale Brodsky, who is classified as a nuclear specialist due to a historical anomaly, also functions as a workweek coordinator in the On-Line subgroup. The job description for the nuclear specialist title carried by Brodsky states that a bachelor's degree is preferred and that a SRO/RO or STA license/certification is desirable. Nuclear specialists are exempt from the FLSA and eligible for a 15 percent annual incentive bonus.

I shall include nuclear specialist Brodsky in the unit, as he performs the same duties as the workweek coordinators I have included in the unit. The fact that his job title is different is not a basis to exclude him.<sup>29</sup>

#### 6. Disputed unit outage coordinators in Outage and Planning

The nuclear outage subgroup employs two unit outage coordinators, one for each unit. Jeff Beebe is the unit outage coordinator for Unit 2, while the position for Unit 3 is currently open. Unit outage coordinators plan, schedule and prepare to execute a refueling outage or forced outage, as necessary. They make sure the plan is appropriately scheduled, evaluated for risk, and executable as written. They coordinate and conduct pre-outage readiness meetings and

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<sup>29</sup> Notwithstanding that he has the same title as nuclear specialist Dale Brodsky, the parties have stipulated, and I find, that nuclear specialist Michael O'Connor in the Outage and Planning Department shall be excluded from the unit as a statutory supervisor.

planning meetings. According to their job description, during outages, they may perform the role of “OCC Shift Outage Manager.” They interact primarily with scheduling, planning, operations, and engineering supervisors.

The unit outage coordinator position is classified as exempt under the FLSA. Unit outage coordinators are much more highly paid than the petitioned-for employees, with a starting annual salary of \$96,900, and they are eligible for a much higher 15 percent annual incentive bonus. A bachelor’s degree is preferred for the position. Unit outage coordinators must have or have held an SRO license or certificate on a “PWR.”

IBEW asserts that unit outage coordinators should be excluded as managerial employees and for lack of community of interest with petitioned-for employees. In the absence of any evidence that the unit outage coordinators formulate and effectuate management policies or have the requisite discretion to act independent of DNC policies, IBEW has failed to meet its burden of establishing that the unit outage coordinators are managers. As for their community of interest, I recognize that unit outage coordinators work in an office setting, are higher paid than other unit employees, and enjoy a higher bonus tier. Nonetheless, as with the other Outage and Planning employees, these factors are outweighed by their placement within the administrative segment that reports to the Plant Manager, and by the fact that their work is such an integral part of the maintenance process. I shall include them in the unit.

## 7. Disputed nuclear outage specialists in Outage and Planning

Five nuclear outage specialists in the Outage subgroup assist the unit outage coordinators. According to their job description, they coordinate with other plant departments on pre-outage planning activities and outage implementation. They identify work that can be implemented in advance of scheduled outages, such as erection of temporary scaffolds or structures. They coordinate set-up of facilities, lifting and rigging activities, space allocations, and material and equipment laydown plans for the yard and containment building. They develop five-year outage plans, conduct daily pre- and post-outage meetings, and prepare detailed weekly, monthly, and end-of-outage reports.

Each of the five nuclear outage specialists is responsible for a specific aspect of the outage. Nuclear outage specialist Pat Jacksin is responsible for steam generator work. He works with the maintenance employees who actually physically remove and disassemble the steam generators and with the Operations employees who prepare the steam generators for access. On the first day or two of outages, he acts as the “point of contact” as workers go in and out of the containment structure.

Marshall testified that Roger Wymouth, the nuclear outage specialist who serves as the reactor containment coordinator, has contact with both supervisory and non-supervisory employees in Operations and Maintenance, although the example Marshall gave involved interaction with the craft coordinators from maintenance to make sure that the toolboxes used by mechanics and electricians are “on-loaded” into the containment structure. Nuclear outage

specialist Scott Tripp generates the overall outage schedule and has contact with Operations and Maintenance employees, such as SROs and craft coordinators, when he updates the schedule during outages. One nuclear outage specialist does planning, budget, and general support work for the Outage group. Nuclear outage specialist Jim Kong has expertise in information systems and has developed data bases to facilitate scheduling outages. Kong is the Department's Corrective Action Coordinator and also does "apparent cause" evaluations of anomalies in certain processes at the plant.

Nuclear outage specialists are required to have a high school diploma or GED. Although no college degree is required for the job, Kong has a master's in information systems. Nuclear outage specialists are exempt from FLSA overtime requirements, and their position in the 12.5 percent tier for annual incentive bonuses.

IBEW seeks to exclude nuclear outage specialists for lack of community of interest with the petitioned-for employees. I find, as with the other Outage and Planning employees, that they should be included in the unit due to their placement within the administrative segment I have found to be appropriate, and because their work is so functionally integrated with that of the Maintenance Department and Operations Department. I note that two of them, Jacksin and Wymouth, appear to have regular work-related contact with non-supervisory employees in Operations and Maintenance.

#### 8. Disputed nuclear technical specialist III in Outage and Planning

Outage and Planning employs Carl Zorn, a nuclear technical specialist III in the Nuclear Outage subgroup. Zorn oversees contractors who perform turbine work during outages. When the units are on-line, he works in Building 475. During outages, he works out of a trailer located on the turbine deck. Zorn works closely with maintenance supervisors regarding turbine activities. Marshall testified that non-supervisory maintenance employees will call Zorn with questions about the turbine, but the record does not reveal how frequently this occurs. Zorn also represents Outage and Planning on the Maintenance Rule Advisory Committee.

As noted above, a bachelor's degree is preferred for the nuclear technical specialist III position. Zorn's position is exempt from FLSA requirements, and he is eligible for a 12.5 percent annual incentive bonus.

IBEW asserts that Zorn lacks a sufficient community of interest to be included in the unit. Although Zorn works primarily with contractors and maintenance supervisors, I shall include him in the production and maintenance unit due to his placement within the administrative segment that reports to the Plant Manager, and the fact that his function is an integral part of plant maintenance.

### **C. Nuclear Maintenance**

#### 1. Overview

The Nuclear Maintenance department is responsible for maintaining and repairing all plant equipment. Manager of Nuclear Maintenance Anthony Conant,

who heads this group, reports to Plant Manager Adams. Six groups, each headed by its own supervisor, report to Conant. Most of those groups have lower level supervisors who are the immediate supervisors of the maintenance employees.

Five of the six subgroups in the Maintenance department employ only petitioned-for maintenance employees. The mechanical group headed by Supervisor of Nuclear Maintenance David Knopf employs only nuclear mechanics and nuclear maintenance technicians. The instrument and control (I&C) group headed by Supervisor of Nuclear Maintenance Tyrone Hughes employs only various categories of nuclear instrument technicians. The electrical group headed by Supervisor of I&C Chad Robertson employs only nuclear electricians and senior generation test services technicians. A fourth group headed by Supervisor of Nuclear Maintenance Timothy Reyher employs nuclear mechanics, a nuclear instrument technician, and a nuclear electrician.

A fifth group headed by Nuclear Specialist Guy Blackburn staffs the FIN team, which performs emergent maintenance work that is generated by condition reports. Blackburn also supervises a security team that maintains Millstone's security equipment, such as motion sensors and monitoring devices. Blackburn's group employs nuclear mechanics, nuclear instrument technicians, and nuclear electricians.

The sixth Maintenance subgroup, called Maintenance Business Support, is headed by Supervisor of Nuclear Maintenance George McGovern. Maintenance Business Support employs a petitioned-for nuclear electrician III, a

petitioned-for nuclear mechanic III, four petitioned-for instrument technician IIIs, and seven disputed employees who will be discussed below.

2. Included maintenance employees in the five subgroups headed by Supervisors Knopf, Hughes, Robertson, Reyher, and Blackburn

With the exception of those maintenance employees who work exclusively on the plant's security system, the petitioned-for maintenance employees work primarily in the Power Block.<sup>30</sup> They all work four ten-hour days, Monday through Thursday from 6:30 a.m. to 4:30 p.m., with a rotating evening shift from 2:30 p.m. to 12:30 a.m. They are assigned call-in duty to cover off hours. Their work can be dirty. They wear jeans and personal protective equipment and use the Millstone locker rooms and showers. They must possess radiation worker qualifications and wear dosimeters to monitor the doses of radiation they receive. They are generally required to maintain unescorted plant access qualifications and Station Emergency Response Organization qualifications.

The work of these employees is generally covered by the fatigue rules and they are all covered by the FLSA overtime requirements. All of the petitioned-for maintenance employees are eligible for an 8.5 percent annual incentive bonus.

a. Included nuclear mechanics I, II, and III in Maintenance

Nuclear mechanics perform preventive and corrective maintenance on mechanical components. Their work is physical in nature. They identify system abnormalities and diagnose the probable cause. They inspect, repair, test, adjust, calibrate, install and remove power plant equipment such as turbines,

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<sup>30</sup> The security maintenance employees interact primarily with contractors, but they are integrated into the maintenance shop during outages.

heat exchangers, pumps, fans, and rotating equipment; rig and lift major components such as pumps and motors; and dispose of waste or hazardous materials resulting from system maintenance. They also do welding.

The nuclear mechanic I, II, and III positions are a progression within the same classification. The nuclear mechanic IIIs are the most senior-level mechanics in the series and must be able to handle the most complex mechanical work. A high school diploma or GED is preferred for all three levels. Nuclear mechanics must maintain qualifications to work on specific components.

b. Included nuclear maintenance technicians in Maintenance

Nuclear maintenance technicians perform work similar to that of nuclear mechanics. They maintain and repair air-operated or motor-operated valves. They are trained and qualified to perform electrical connections, valve actuator overhauls, and valve repairs. Other skill sets needed are proficiency in positioner overhaul and calibration, solenoid valve replacements, compressions fittings, copper tubing fabrications, and/or installation and testing of QSS sensors. An associate's degree is preferred for the position, and the job requires significant experience as a nuclear mechanic III, nuclear electrician III, or nuclear instrument technician.

c. Included nuclear electrician IIs and IIIs in Maintenance

The nuclear electrician II and III classifications are a progression within the

same job series.<sup>31</sup> Nuclear electricians perform electrical work associated with the construction, installation, and maintenance of complex electrical equipment and plant systems. They interpret complex wiring diagrams and blueprints; install control board and switchboard wiring; and perform electrical work on circuit breakers, motors, pumps, heaters, and batteries. During outages, they enter the containment structures to maintain the large fan motors that help cool the fuel rods.

Electricians perform physical work and use hand and power tools. When not in the plant, they work in the electrical shop. In addition to the usual personal protective equipment, they sometimes wear electrical flash gear, i.e., a protective suit with a face mask that protects them from flashes.

A high school diploma or GED is preferred for this classification, with knowledge of electrical work such as experience gained in a high school technical program. Nuclear electrician IIs and IIIs are required to possess certain minimum qualifications. Additionally, at least two years of related experience is required for a nuclear electrician II and four years of related experience is required for a nuclear electrician III.

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<sup>31</sup> As noted above, IBEW seeks to include in the unit the title of nuclear electrician I, the entry-level classification in this series. DNC does not currently employ any employees in this classification, and the title appears on a list of disputed positions. I shall not make a determination with respect to the nuclear electrician I classification, as it is the Board's policy not to pass on vacant positions. *Milwaukee Children's Hospital Association*, 255 NLB 1009, 1013 fn. 9 (1981); *Taylor Hospital*, 218 1188, 1189 fn. 4 (1975); *Trans World Airlines, Inc.*, 211 NLRB 733, 734 (1974).

- d. Included nuclear instrument technician T2s, nuclear instrument technician T3s, nuclear instrument technicians, and senior nuclear instrument technicians in Maintenance

Nuclear instrument technician T2, nuclear instrument technician T3, nuclear instrument technician, and senior nuclear instrument technician (collectively I&C technicians) are four classifications within the same job series, with the nuclear instrument technician T2 being the entry level job in the series.

I&C technicians test, calibrate and repair power plant equipment, including pneumatic, electronic, and microprocessor based systems. They work on instruments and controls in the reactor, rod control, and nuclear instrumentation systems. They are based in the I&C shop in Building 317.

An associate's degree is preferred for the position. I&C technicians undergo several years of on-the-job training before they are qualified to work on their own.

- e. Included senior nuclear generation test services technicians

Senior nuclear generation test services technicians, referred to as GTS technicians, test, calibrate, troubleshoot and repair complex electrical equipment in the plant, such as relays, meters, timers, transducers, transformers, power inverters, switchgears, emergency generators, and other motors. They perform high voltage insulation testing of certain equipment and perform surveillances to ensure that the plant does not trip when the voltage drops.

The position requires a high school diploma or GED, and an associate's degree is preferred. GTS technicians must complete initial and on-the-job

training. They are required to maintain qualifications in a variety of electrical and mechanical disciplines. The GTS technicians have offices in Building 317, but also work in the plant.

f. Disputed unit outage coordinators

At the hearing, Maintenance Manager Conant testified that Maintenance Supervisor James Reigles is a qualified supervisor who serves as an “outage coordinator,” and I&C Supervisor Hughes testified that all of the coordinators are also supervisors. Based on this testimony, IBEW asserts in its post-hearing brief that the classification of unit outage coordinator in the Maintenance Department should be excluded as supervisory or quasi-managerial or on the ground of lack of community of interest.

An exhibit listing disputed positions indicates that there are two unit outage coordinators. As noted above, there are two unit outage coordinators in the Outage and Planning group whom I have included in the unit. In its post-hearing brief, DNC did not argue for inclusion of unit outage coordinators in the Maintenance Department or even mention the existence of such a classification in the Maintenance Department.

It appears from the testimony cited that, if such a title exists in the Maintenance Department, it refers to a role played by excluded maintenance supervisors during outages rather than to an actual classification in the Maintenance Department. Accordingly, I shall not include the title of unit outage coordinator in the Maintenance Department.

g. Disputed senior controls specialists

Operations Manager Smith testified that senior controls specialists work in the I&C Department, which is part of the Maintenance Department, but there was no other testimony about them. No job description for the position was submitted into evidence, nor does the title appear on any of the Maintenance Department organizational charts that were submitted into evidence.

A list of disputed positions that was submitted into evidence includes five senior controls specialists, and senior controls specialists are also included in another exhibit that indicates their salary, FLSA status (exempt), and annual incentive tier (12.5 percent).

IBEW seeks to exclude the senior controls specialists for lack of community of interest. In its post-hearing brief, DNC did not assert that the senior controls specialists should be included in the unit or even mention this classification. As there is insufficient evidence about senior controls specialists to permit me to make a determination about their inclusion, I shall permit employees with this title to vote subject to challenge.

3. Maintenance Business Support

The Maintenance Business Support group, headed by Supervisor of Nuclear Maintenance George McGovern, performs support functions for the Maintenance Department rather than actual maintenance work. Two supervisors under McGovern oversee some of this group's employees. First-line supervisor Mike Pettengill oversees four petitioned-for instrument technician IIIs in the Measure and Test Equipment Shop. First-line supervisor Nancy Grillo oversees

the Tool Warehouse, Tool Crib, and Rigging groups, which includes two petitioned-for nuclear mechanics III, one disputed maintenance coordinator, and two disputed nuclear toolkeepers.

Five other employees each report directly to McGovern: a petitioned-for nuclear electrician and the following four disputed employees: one nuclear engineer III, two nuclear maintenance specialists, and one nuclear technical specialist III.

a. Included instrument technicians III in Maintenance Business Support

Four petitioned-for instrument technician IIIs work in the Measure and Test Equipment Shop in Building 433, reporting to Supervisor Pettengill in the Maintenance Business Group. This position is the highest level of a three-level job series.<sup>32</sup>

Instrument technician IIIs inspect, test, repair, calibrate, and install instruments such as flow meters, pressure gauges, thermometers, regulators, and similar components. An associate's degree is preferred for the position.

b. Employees in the Tool Warehouse, Tool Crib and Rigging Group in Maintenance Business Support

Five employees in the Tool Warehouse, Tool Crib, and Rigging Group report to Supervisor Nancy Grillo in the Maintenance Business Group. As noted above, two of them are petitioned-for nuclear mechanic IIIs, one is a disputed maintenance coordinator, and two of them are disputed nuclear toolkeepers.

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<sup>32</sup> IBEW also seeks to include the position of instrument technician II, which is currently vacant and appears on a list of disputed classifications. As with the electrician I position, because of the Board's policy not to pass on vacant positions, I shall not make a determination with respect to the instrument technician II classification.

i. Disputed maintenance coordinator

Maintenance coordinator Jerry Picardi works in Building 428, a very large warehouse that provides tools and equipment for the Maintenance Department. Picardi is responsible for purchasing equipment for the tool cribs, maintaining inventory, and managing the warehouse budget. He also has an office in Building 434. He issues tools and equipment to maintenance employees and supervisors. He works with the tool crib attendants to ascertain what equipment is needed in the tool cribs. His job duties require him to be qualified to operate a hand truck and forklift.

Picardi works four ten-hour days, Monday through Thursday. His position is exempt from the overtime requirements of the FLSA. He is eligible for an annual incentive bonus of 12.5 percent.

IBEW asserts that the maintenance coordinator should be excluded as a managerial or quasi-managerial employee, apparently on the basis of his authority to purchase equipment and to manage the warehouse budget. IBEW has failed to meet its burden of establishing Picardi's managerial status, in the absence of any record evidence about the degree of discretion he enjoys in making purchases or managing the budget. Moreover, the Board has found that buyers who are in a position to commit the employer's credit are not managerial when their discretion and latitude for independent action must conform to employer guidelines or when they must on occasion clear decisions with higher company authorities. *The Washington Post Company*, 254 NLRB 168, 189 (1981); *Sampson Steel and Supply*, 289 NLRB 481 (1988) (warehouse

supervisor who can purchase items to remedy supply shortages in the warehouse and recommended purchase of large warehouse saws held not to be managerial, where his purchases are a routine part of his duty to maintain a supply inventory and his advice was that of a knowledgeable employee).

IBEW also asserts that the maintenance coordinator does not share a community of interest with the petitioned-for employees, as he has different skills, there is no evidence of interchange with unit employees, and he has different terms of employment. I find those factors to be outweighed by the fact that Picardi's work is an integral part of the maintenance process, which cannot proceed without the tools and equipment he provides for the maintenance crews. Further, Picardi shares common first-level supervision with two included nuclear mechanic IIIs who also report to Nuclear Maintenance Supervisor Grillo. Accordingly, the maintenance coordinator in the Maintenance Business Support group shall be included in the unit.

ii. Disputed nuclear toolkeepers and included nuclear mechanic IIIs

The Maintenance Business group employs two nuclear toolkeepers and two nuclear mechanic IIIs, all of whom report to Nuclear Maintenance Supervisor Grillo. One nuclear toolkeeper, Kevin Flannery, works in Warehouse 9, located in Building 409, which is the repository for tools that need to be decontaminated and stored. Flannery decontaminates and organizes tools that have been used during an outage, with assistance from nuclear mechanics and health physicists.

It appears that the second nuclear toolkeeper, Roger Charmichael, works as a tool crib attendant. There are two tool cribs, one in the Unit 2 maintenance

shop in Building 211, and one in the Unit 3 maintenance shop in Building 323, a large room with a counter. Each tool crib is staffed by one person who signs out tools to the maintenance employees.

The job description for nuclear tool keepers states that they also conduct inventory checks, verify that tools are functioning upon return, make minor repairs to tools, and assist with the rigging testing and inspection program. A high school diploma or GED is preferred for the position, and the position requires an advanced radiation worker qualification.

As noted above, two nuclear mechanic IIIs, Mike Moran and Paul Wilson, also report to Grillo. Moran works primarily in the Rigging Loft, which involves inspecting and staging rigging. Wilson works both in the rigging area and in the tool cribs.

Nuclear toolkeepers earn about the same pay as nuclear mechanic Is and, like the rest of the petitioned-for employees, they are eligible for an 8.5 percent incentive bonus and are non-exempt for purposes of FLSA.

Although nuclear toolkeepers are not among IBEW's petitioned-for classifications, and the classification appears on a list of disputed positions, IBEW did not address this classification in its post-hearing brief. I find that the nuclear toolkeepers should be included in the unit, as their function of decontaminating and distributing tools to maintenance employees is an integral part of the maintenance process. Further, the nuclear toolkeepers share common first-level supervision with two included nuclear mechanics, and both

nuclear toolkeeper Carmichael and nuclear mechanic Wilson work in the tool cribs.

c. Employees who report directly to McGovern in Maintenance Business Support

Five individuals report directly to McGovern: one agreed-upon nuclear electrician III, and four disputed employees: a nuclear engineer III, two nuclear maintenance specialists, and a nuclear technical specialist III.

i. Included nuclear electrician III in Maintenance Business Support

Samuel Laurion serves as the “Check Tech” in the Maintenance Business Support group, meaning that he looks for ways to prevent human error by observing maintenance employees working in the field and attending group self-evaluation meetings to look for trends. His job title is nuclear electrician III, a classification included by stipulation. Laurion previously worked as a nuclear electrician in the Electrical Maintenance Group. He has a bachelor’s degree and is working toward a master’s degree. He works in an office setting in Building 475.

Notwithstanding that Laurion’s job title, nuclear electrician III, has been included by stipulation, Laurion does not appear to function as a nuclear electrician, and the record is unclear as to whether or not he is a professional employee. Accordingly, I shall permit Laurion to vote subject to challenge.

- ii. Disputed nuclear engineer III and nuclear maintenance specialist who serve as Department Corrective Action Coordinators for the Maintenance Department

Nuclear engineer III Karen Carberry serves as the Department Corrective Action Coordinator (DCAC) for the Maintenance Department's mechanical and valve group, while nuclear maintenance specialist William Davidowsky performs the same role for the Maintenance Department's electrical and I&C groups. Both report directly to McGovern.

The role of DCACs is to review adverse conditions and evaluate processes to prevent similar errors in the future. They do "apparent cause" evaluations to determine the apparent cause of a procedural error and develop a corrective action plan to prevent a recurrence of the error. Depending on the issue, they work with mechanics, electricians, and I&C technicians, as well as engineers, planners, and procedure writers to correct problems. Davidowsky also spends 20 percent of his time as the Maintenance Department Re-Work Coordinator, investigating instances in which the same component has needed repair in what seems to be too short a period of time. He does this by reviewing the computerized work order system and other corrective action reports.

During outages, Davidowsky serves on the Performance Improvement Team, composed of electricians, engineers, and Organizational Effectiveness employees, to perform observations in the field and identify problems. During outages, Carberry is the Maintenance Department representative to the Condition Report Review Team, made up of supervisors and one engineer.

Carberry has a bachelor's degree in engineering, although an engineering degree is not required to be a DCAC. She works in Building 475, an office building, where she spends 90 percent of her time. She works five eight-hour days, Monday through Friday. Her work is not covered by the fatigue rules. Her dress is business casual. Nuclear engineer IIIs are FLSA exempt. The salary for this position ranges from \$84,100 to \$136,600 per year, and nuclear engineer IIIs are eligible for a 12.5 percent incentive bonus.

The job description for the nuclear maintenance specialist classification states that a bachelor's degree is preferred. The record does not reveal whether Davidowsky has such a degree. Davidowsky spends the overwhelming majority of his time at his desk. He works four ten-hour days, Monday through Thursday, and is FLSA exempt. His dress is business casual.

IBEW would exclude Carberry because she is a professional and/or "quasi-managerial" employee, or on the ground that she does not share a community of interest with the petitioned-for employees. IBEW would exclude Davidowsky as a quasi-managerial employee who also lacks a community of interest with the petitioned-for employees.

There is insufficient evidence to exclude Carberry from the unit as a professional employee. Although her title is nuclear engineer III and she has a bachelor's degree in engineering, the DCAC position does not require either an engineering degree or a bachelor's degree of any kind. In the absence of a degree requirement, this position does not satisfy the criterion for professional status, which requires knowledge of an advanced type. Mere possession of a

college degree does not necessarily establish professional status. *Community Health Services*, 259 NLRB 362, 363 fn. 7 (1981).

There is also no evidence in support of IBEW's claim that Carberry and Davidowsky are "quasi-managerial." Although they have somewhat different terms and conditions of employment from many of the petitioned-for employees in that they perform administrative work in an office setting, I find that they have a sufficient community of interest to be included in the unit. Their work is an integral part of the maintenance process, and they have contact with petitioned-for employees regarding the correction of errors in maintenance procedures.

iii. Disputed nuclear maintenance specialist who functions as the Preventive Maintenance Program Coordinator

Nuclear maintenance specialist Dave Phaneuf reports to McGovern in the Maintenance Business Group and serves as the Preventive Maintenance Program Coordinator for the Maintenance Department.<sup>33</sup> Phaneuf meets weekly with engineers and planners to review prior preventive maintenance work orders in order to determine the frequency of ongoing preventive maintenance. He gets feedback from mechanics, electricians, and I&C technicians about the appropriate frequency of preventive maintenance, mostly from their comments in work packages, but sometimes face-to-face with those maintenance employees,

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<sup>33</sup> At the hearing, Supervisor of Nuclear Maintenance George McGovern testified that Phaneuf's title is "maintenance nuclear specialist," while Manager of Nuclear Maintenance Anthony Conant testified that Phaneuf's title is "nuclear specialist," a different title that is also disputed. In their post-hearing briefs, DNC referred to Phaneuf as a nuclear maintenance specialist, while IBEW referred to him as a nuclear specialist. As it appears likely that Phaneuf's immediate supervisor is more familiar with his correct title than the head of the Maintenance Department, I have considered him to be a nuclear maintenance specialist.

on an as-needed basis. The record does not reveal how frequently that occurs. Phaneuf also arranges the work of a vendor that performs encapsulations on valves.

The job description for nuclear maintenance specialists states that a bachelor's degree is preferred. The record does not reveal whether Phaneuf has a college degree, but he was a nuclear mechanic III in the Maintenance Department until he transferred to this position about a month before the hearing. Nuclear maintenance specialists are exempt from FLSA requirements and eligible for a 12.5 percent incentive bonus.

IBEW asserts that Phaneuf should be excluded on the ground that he is a "quasi-managerial" employee and for lack of a community of interest with the petitioned for employees. There is no evidence to support the contention that he is a "quasi-managerial" employee. I find that Phaneuf's work is so functionally integrated with that of the maintenance employees as to warrant his inclusion in the production and maintenance unit. See *PECO Energy Co.*, supra at 1088, in which the Board included technical assistants in a production and maintenance unit at two nuclear power stations who, like Phaneuf, were responsible for the preventive maintenance programs, because their duties were functionally integrated with plant maintenance. Like Phaneuf, it does not appear that the technical assistants in *PECO* performed any physical work; they spent two thirds of their time in their offices and around the site engineering area, and their duties included monitoring preventive maintenance schedules to ensure that maintenance was performed on time, developing the procedures for the

preventive maintenance program, and preparing reports for management assessing the reliability of equipment. In further support of Phaneuf's inclusion in the unit, I note that he recently transferred to this job from a unit position as a nuclear mechanic III.

iv. Disputed nuclear technical specialist III in Maintenance Business Support

Nuclear technical specialist III Frederick Meehan, who also reports directly to McGovern, is primarily responsible for overseeing a vendor that disassembles, repairs, and reassembles the turbines and generators in Units 2 and 3, work that is generally performed during outages. Meehan works primarily with the Engineering and Outage and Planning groups. During non-outage periods he works as a project manager for maintenance activities performed by mechanics, electricians, generation test services technicians, and vendors.

As noted above, a bachelor's degree is preferred for this position, although the record does not reveal if Meehan possesses this degree. Nuclear technical specialists IIIs are exempt for purposes of FLSA and are eligible for a 12.5 percent annual bonus.

IBEW seeks to exclude Meehan as a quasi-managerial employee who does not share a community of interest with the petitioned-for employees. There is insufficient evidence to establish his managerial status and, although Meehan works primarily with contractors, I shall include him in the production and maintenance unit because his job function relates directly to plant maintenance.

## **D. Nuclear Site Services Group**

### **1. Overview**

Nuclear Site Services (Site Services), part of the administrative segment under the Plant Manager, is responsible for construction, modification, and maintenance of buildings, roads, sewers, and electrical and water systems at Millstone, primarily for those buildings that are outside the Power Block.<sup>34</sup> Site Services is overseen by Manager of Nuclear Site Services Steven Heard, who reports to Plant Manager Adams.

Employees in the following five groups report to Heard through lower level supervisors:

Nuclear Construction Electrical and I&C, supervised by Supervisor of Nuclear Construction David Cook, is responsible for capital improvement projects. This group employs two disputed nuclear electricians IIIs and three disputed senior nuclear construction specialists.<sup>35</sup>

Nuclear Construction Mechanical and Civil, supervised by Supervisor of Nuclear Construction Neil Madden, is responsible for capital improvement projects. This group employs seven disputed employees: four senior nuclear construction specialists, one nuclear construction specialist, and two senior nuclear planners.

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<sup>34</sup> This department also does some work on projects inside the Power Block, such as constructing scaffolding and providing temporary power.

<sup>35</sup> In its post-hearing brief, IBEW asserts that the petitioned-for unit consists of physical production and maintenance employees in certain classifications “in the Nuclear Operations and Maintenance Departments.” There is no mention in IBEW’s brief of nuclear mechanics or nuclear electricians who work in Site Services. Thus, it appears that IBEW does not seek to include the Site Services mechanics or electricians in the unit.

Nuclear Engineering, supervised by Supervisor of Nuclear Engineering Forrest Kocon, provides engineering services such as designs and drawings for non-Power Block projects, and also oversees Millstone's motor vehicle fleet. This group employs six disputed employees: three nuclear engineer IIIs, two senior nuclear designers, and one vehicle management specialist.

The Unit 1 group, supervised by Supervisor of Nuclear Construction Edward Palmieri, maintains the decommissioned Unit 1 as a safe storage facility for spent fuel. This group employs one disputed nuclear electrician III and one disputed nuclear planner.

The Nuclear Facilities and Support Group, supervised by Supervisor of Nuclear Construction/Facilities Manager Dannie Russell, oversees the maintenance and upkeep of facilities that are mainly outside the Power Block. Six disputed nuclear mechanic IIIs in this group report to nuclear maintenance supervisor Douglas Hughes, who reports, in turn, to Russell. Four other disputed employees report directly to Russell: two coordinator-contract services IIs, one senior construction specialist, and one nuclear planner.<sup>36</sup>

In addition to the employees in those five groups, one disputed nuclear technical specialist III reports directly to Heard.

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<sup>36</sup> In addition to the maintenance coordinator in the Maintenance Department, DNC seeks to include the position of maintenance coordinator in the Facilities and Support subgroup of Site Services. This position, held until recently by Dave Plouffe, involves coordinating requests for scaffolding and inspecting scaffolding constructed by contractors. At the time of the hearing, Plouffe had recently retired, and a temporary contract worker was performing his former duties until an employee could be hired to replace Plouffe. As noted above, it is the Board's policy not to pass on vacant positions. Accordingly, I shall not make a determination with respect to the inclusion of the maintenance coordinator in Site Services.

All employees in Site Services work four ten-hour days, Monday through Thursday, except for capital projects that require overtime. All Site Services employees have access to vital areas.

2. Disputed nuclear mechanic IIIs in Site Services

Six nuclear mechanic IIIs work in the Site Services Facilities and Support group. Two of them perform maintenance for non-Power Block buildings, including air conditioning, ventilation, and heating work, plumbing, concrete repairs, structural repairs, and the like. They work out of Building 458. Four of the nuclear mechanic IIIs work on “snubbers,” which are large shock absorbers placed on pipes to counteract pipe movement. They work out of the snubber shop in Building 416.

As noted above, it appears that IBEW does not seek to include the nuclear mechanic IIIs employed by Site Services. As they share the same job title, perform the same type of physical maintenance work, and work within the same administrative segment as the included nuclear mechanics in the Maintenance Department, I shall include them in the unit. *PECO Energy Co.*, 322 NLRB 1074, 1088 (1997)(including building mechanics who perform general maintenance on company-owned buildings in a production and maintenance unit at a nuclear power plant, where the building mechanics perform the same duties as mechanics who work at the plant).

### 3. Disputed nuclear electrician IIIs in Site Services

Three nuclear electrician IIIs work in Site Services. Two of them work in the Electrical and I&C Construction group, providing temporary power throughout Millstone when it is needed for maintenance projects. They spend less than two percent of their time performing work covered by the fatigue rules.

The third nuclear electrician III works in the Unit 1 group, where he maintains equipment used to keep the spent fuel cool. During outages, he works with the other electricians in Site Services who provide temporary power for maintenance projects.

As noted above, it appears that IBEW does not seek to include the nuclear electricians IIIs employed by Site Services. As they share the same job title, perform the same type of electrical maintenance work, and work within the same administrative segment as the included nuclear electricians in the Maintenance Department, I shall include them in the unit.

### 4. Disputed nuclear construction specialist and senior nuclear construction specialists in Site Services

Site Services employs one nuclear construction specialist and seven senior nuclear construction specialists (collectively construction specialists), divided among the Mechanical and Civil group, the Electrical and I&C group, and the Facilities and Support group. The two classifications perform the same job duties, with the senior nuclear construction specialists being more experienced than the nuclear construction specialist. Construction specialists generally review engineering drawings, specifications, and design change packages prior to implementation and recommend changes or additions. All of them work four

ten-hour days and have work stations in Building 437. They generally wear jeans when they are working in the plant.

Two construction specialists work in the Electrical and I&C group, where they share common first-level supervision with the two Site Services nuclear electrician IIIs whom I have included in the unit. They work on capital projects, such as building a transmission tower for a transformer upgrade. They receive designs from design engineers and use them to prepare detailed work instructions for every aspect of the construction process, including the sequence of the work, a narrative description of how the work should be performed, and handwritten drawings. They work primarily with a senior nuclear planner in their group and with maintenance planners in the Outage and Planning group. Once a project is underway, they go into the field daily to monitor it. They are also responsible for developing work orders for lighting upgrades and repairs inside the Power Block. The lighting work is performed by electricians who are employees of a contractor.

Five construction specialists are employed in the Site Services Mechanical and Civil group. They spend 70 to 80 percent of their time in the field overseeing the implementation of mechanical and civil capital projects at Millstone, virtually all of which are performed by contractors. Although contractors perform the work, teams of DNC employees who may be affected by a project, called High Impact Teams (HITs), may also oversee such projects. The HITs teams include a construction specialist and relevant Maintenance and Operations personnel,

which may include mechanics, electricians, I&C technicians, PEOs, and control operators.

Construction specialist Thomas McDonald in the Site Service Facilities and Support group reports directly to Dannie Russell, who is the second-level supervisor of six Site Services nuclear mechanics whom I have included in the unit. McDonald is responsible for overseeing contractors who apply a coating to heat exchangers and pipes that prevents corrosion. This work takes place in the turbine and auxiliary buildings for Units 2 and 3 and also in the containment structure during outages. McDonald has some interaction with Maintenance Department employees who open the heat exchangers and take out piping for inspection, and who may point out needed repairs. About 75 percent of such contacts are with Maintenance supervisors and about 25 percent with maintenance mechanics.

The job description for construction specialists requires a four-year apprenticeship. A high school diploma or GED is preferred for the position. One construction specialist has a four-year degree in construction engineering, and it appears that the rest do not have a degree. Construction Specialist Paul Keeler was once a welder and mechanic in the Maintenance Department.

IBEW seeks to exclude the construction specialists for lack of community of interest with the petitioned-for employees. I find that they share a sufficient community of interest with the petitioned-for employees to warrant their inclusion in the unit. Their jobs concern a maintenance function. Although they do not perform physical maintenance work themselves and primarily oversee

contractors, they oversee construction projects that require substantial interaction with included employees such as planners, mechanics, electricians, I&C technicians, control operators, and PEOs. They share common first or second level supervision with nuclear electricians and nuclear mechanics in Site Services, whom I have included in the unit. I also note that one construction specialist was previously a mechanic in the Maintenance Department.

5. Disputed nuclear planners and senior nuclear planners in Site Services

Site Services employs three senior nuclear planners and two nuclear planners (collectively nuclear planners), distributed across the Mechanical and Civil, Electrical and I&C, Facilities and Support, and Unit 1 groups. Nuclear planners in the Unit 1 and in the Electrical and I&C groups share common first-level supervision with the Site Services nuclear electricians whom I have included in the unit. A nuclear planner in the Facilities and Support group reports directly to a supervisor who is the second-level supervisor of the Site Services nuclear mechanics whom I have included in the unit. The nuclear planners work in Building 437, with the exception of the Unit 1 nuclear planner, who has an office in Unit 1.

Employees in the two classifications perform similar duties, with senior nuclear planners being more experienced. They develop the work packages that support Site Service projects, identify and order the parts needed, and schedule and coordinate the work. Most of the projects they work on are performed by contractors, but occasionally the work is performed by DNC maintenance workers. The nuclear planners work with teams of construction specialists,

project managers, engineers, Operations Department personnel, and Maintenance Department personnel assigned to the project. They are in the field daily and frequently “walk down” jobs with foremen of the contractor that performs the work and with engineers, as well as with I&C technicians, mechanics, and electricians from the Maintenance Department, and PEOs. The Unit 1 nuclear planner works with the Unit 1 nuclear electrician III on small jobs, such as removing unused equipment. The nuclear planner in Facilities and Support processes about 15 to 20 orders per week for scaffolding, each of which requires a “walk down” of the job with the person who requested it, often a mechanic, electrician, or control operator, to determine exactly where the scaffold should be built.

The job description for both positions states that an associate’s degree or completion of a technical program in a craft discipline (mechanical, electrical, or instrument and controls, etc.) or nuclear operations is desired. Nuclear planner Larry Neff was previously a mechanic in the Maintenance group.

The salary level for nuclear planners is comparable to that of the petitioned-for employees and, like such employees, they are non-exempt from FLSA and eligible for an 8.5 percent incentive bonus.

IBEW asserts that the nuclear planners in Site Services should be excluded for lack of community of interest with the petitioned-for employees. I find that they share a sufficient community of interest with the petitioned-for employees to warrant their inclusion in the unit. Like the nuclear planners in the Outage and Planning group whom I have included, the work of the nuclear

planners in Site Services is functionally integrated with the maintenance process, as they develop the work packages that are necessary for any maintenance project to begin. While many of the projects they work on are implemented by contractors, their work also involves frequent contact with petitioned-for employees when they “walk down” jobs. Further, the nuclear planners in Site Services are in the same administrative segment as petitioned-for employees and also share common first-level or second-level supervision with nuclear electricians and nuclear mechanics, whom I have included in the unit. Finally, I note that one nuclear planner was previously a mechanic in the Maintenance Department.

6. Disputed coordinator-contract services IIs in Site Services

Two coordinator-contract service IIs work in the Facilities and Support group. They report directly to Supervisor Dannie Russell, who is the second-level supervisor of the six Site Services nuclear mechanics III, whom I have included in the unit.

Coordinator-contract services II Michael Manolakis is responsible for maintenance, snow removal, and cleaning services for the training and simulator buildings. He oversees contractors who do most of the cleaning work, although he does some cleaning work himself. He personally sets up and tears down the classrooms for the training instructors, arranging the desks, chairs, tables, and equipment needed for training. He also performs minor repair work on piping and air conditioning systems.

Coordinator-contract services II Frederick Phillips works out of Building 437. He oversees contractors who maintain the grounds at Millstone, perform snow and sand removal, clean buildings, and perform the physical work involved in office relocations. Phillips does not perform physical work himself. Most of the buildings Phillips is responsible for are outside the Power Block, although he is responsible for the upkeep of lighting in buildings both inside and outside the Power Block, with the exception of buildings within the RCA. He also procures equipment for the Facilities group, typically at the request of Supervisors Russell or Hughes, by working with a stockhandler in the warehouse or by searching for an outside contractor who might be able to supply the item.

A bachelor's degree is preferred for this position. The coordinator-contract services IIs work four ten-hour days, are eligible for a 10 percent incentive bonus, and are exempt for purposes of FLSA.

IBEW seeks to exclude the coordinator-contract services IIs for lack of a community of interest with petitioned-for employees. I find that they share a sufficient community of interest with the petitioned-for employees to warrant their inclusion in the unit. Although there is no evidence that coordinator-contract services II have significant contact with unit employees, they work within the same administrative segment and share common second-level supervision with the nuclear mechanics in Facilities and Support whom I have included. They perform a maintenance function and, like the mechanics in the Facilities and Support group, Manolakis performs some repair work, albeit minor, on piping and air conditioning systems.

## 7. Nuclear engineering group in Site Services

As noted above, the Nuclear Engineering group in Site Services provides engineering services such as designs and drawings for non-Power Block projects, and also oversees Millstone's motor vehicle fleet. This group employs six disputed employees: three nuclear engineer IIIs, two senior nuclear designers, and one vehicle management specialist, all of whom report to Supervisor of Nuclear Engineering Forrest Kocon.

### a. Disputed nuclear engineer IIIs in Site Services Engineering

Three nuclear engineer IIIs in Site Services do engineering work, generally for buildings that do not house Power Block equipment, although they occasionally do overflow engineering work in Power Block buildings. The projects they work on include re-roofing projects, electrical, mechanical and HVAC upgrades to buildings, and engineering work in connection with Millstone's roadways, domestic water system, sewer system, and power lines that bring power into the site. They create site plans and engineering drawings. One engineer works on all non-Power Block electrical distribution systems. A second is a civil engineer who works on projects such as a new building to store equipment that might be needed in the event of a major catastrophe or a project to replace underground oil tanks for non-Power Block buildings. A third works on space planning for group moves and office renovations and is also the project engineer for a new emergency operations facility that must now be relocated off-site per NRC regulations.

The Site Services nuclear engineer IIIs work in Building 437. They are exempt pursuant to the FLSA. The salary for this position ranges from \$84,100 to \$136,600 per year, and nuclear engineer IIIs are eligible for a 12.5 percent incentive bonus.

As noted above, nuclear engineer IIIs are required to have a bachelor's degree in engineering, and all three of the nuclear engineers in Site Services have such a degree, one in electrical engineering and two in civil engineering. The job description for the position states that nuclear engineer IIIs are required to hold or have previously held a professional engineer's license. The engineers in this group do not hold such a license.

IBEW seeks to exclude the nuclear engineer IIIs in the Site Services Engineering group as professionals. As noted above, the Board has consistently found that employees with professional engineering degrees working in specialized fields of engineering qualify as professionals. *Avco Corp.*, supra at 1358. Nuclear engineer IIIs at DNC are required to have an engineering degree, supporting the presumption that their work requires knowledge of an advanced type, and all three nuclear engineer IIIs in Site Services Engineering have such a degree. Accordingly, I find that the nuclear engineer III's in the Site Services Engineering group are professional employees, and I shall exclude them from the unit on that basis.

b. Disputed senior nuclear designers in Site Services Engineering

Two senior nuclear designers in the Site Services Engineering group, William Zesk and Alan Kronberg, report to Supervisor of Nuclear Engineering

Forrest Kocon. They work in Building 437. Zesk works on electrical engineering projects and Kronberg on mechanical and civil engineering projects. They are qualified CAD operators who prepare detailed, complex design drawings and check the accuracy of drawings completed by other designer or engineers. They generate design changes from verbal or written instructions. They go into the field to verify that the drawings created by the engineers match the as-built condition of the structure being worked on. The drawings are then turned over to others in Site Services for use in construction projects. Sometimes mechanics approach one of the designers to ask for a drawing for a project they are working on, so they can get it quickly, but this happens less than ten percent of the designers' work time.

The job description for the position states that an associate's degree is preferred and that senior nuclear designers must have either an associate's degree in drafting or design technology, or have completed a technical program demonstrating expert knowledge of accepted mechanical, structural, and electrical engineering design drafting principles and practices. The job requires skill in CAD software and strong math skills necessary to perform advanced calculations.

The salary for senior designers is within the same range as that of the petitioned-for employees. Like the petitioned-for employees, they are non-exempt from FLSA and eligible for the same 8.5 percent incentive bonus.

IBEW asserts that the senior nuclear designers in Site Services should be excluded for lack of a community of interest with unit employees. I find that their

community of interest is sufficient to include them. Although the designers do not perform maintenance work themselves, their duties are functionally related to maintenance work. *PECO Energy Co.*, supra at 1086-1087 (designers included in a production and maintenance unit at a nuclear plant, where they draft schematics used by production and maintenance employees in modifying equipment at the stations, so that they carry out functionally related duties). Although they do not share common immediate supervision with the petitioned-for employees, they work within the same administrative segment that reports to the Plant Manager. Their wages are comparable to those of petitioned-for employees and they share the same non-exempt FLSA status and 8.5 percent incentive bonus tier.

c. Disputed vehicle management specialist in Site Services Engineering

Vehicle management specialist Richmond Kelly is responsible for coordination of the maintenance of about 70 vehicles of various types in DNC's fleet, including automobiles, pick-up trucks, dump trucks, pay loaders, back hoes, front end loaders, cranes, platform lifts, forklifts, and Lull lifts. He handles the rental of vehicles and special equipment from vendors. He prepares and implements annual preventive maintenance plans for fleet vehicles and ensures that routine maintenance and repairs are performed at off-site garages. He orders parts for repairs. He oversees the vehicle inspection process required by law. The forklifts and Lull lifts are used both by contractors and by DNC maintenance personnel. He coordinates the dispatch of vehicles to users on-site and off-site.

A high school diploma or GED is preferred for this position. The position requires knowledge of light and heavy construction equipment operations and maintenance and knowledge of the inspection process. Kelly's position is exempt from the FLSA and eligible for a 10 percent incentive bonus.

IBEW seeks to exclude the vehicle management specialist on community of interest grounds. As the vehicle management specialist works in the same administrative segment as the petitioned-foremployees and directly supports the maintenance function, in that he dispatches and maintains vehicles, lifts, and other equipment used by the maintenance employees in their work, I shall include him in the unit.

8. Disputed nuclear technical specialist III in Site Services

Nuclear technical specialist III Jacqueline Williams reports directly to Manager of Nuclear Site Services Heard. Williams spends 60 percent of her time as the Corrective Action Coordinator for Site Services. She prioritizes the corrective actions and ensures that they are completed in a timely fashion. Williams participates in teams that perform "root cause" and "apparent cause" evaluations of errors. Depending on the nature of the event the team investigates, Williams may work with operators or mechanics on these investigations, as well as with non-petitioned-for employees.

In addition, Williams does budget analysis for Site Services, tracking the group's spending on a daily basis. She is also vice chair of a safety committee that meets monthly and is composed of 30 to 40 non-supervisory employees.

The committee includes petitioned-for PEOs, mechanics, electricians, and I&C technicians.

A bachelor's degree is preferred for the nuclear technical specialist position; Williams has an associate's degree in applied science.

IBEW asserts that Williams should be excluded as a quasi-managerial employee and for lack of a community of interest, but it presented no evidence in support of Williams "quasi-managerial" status. Like the corrective action coordinators in the Maintenance Department, I find that Williams, as the corrective action coordinator for Site Services, has a sufficient community of interest with petitioned-for employees to warrant her inclusion. Although she has somewhat different terms and conditions of employment from many of the petitioned-for employees in that she performs administrative work in an office setting, her work is an integral part of the maintenance process, and she has contact with petitioned-for employees during her investigation of errors in maintenance procedures and in connection with her work on the safety committee.

**E. Clerical positions**

1. Disputed administrative assistant IIIs

Each of the four groups at issue employs an administrative assistant III. Jean Predmore is the administrative assistant III for Operations, Eileen Annino for Maintenance, Edie Andren for Outage and Planning, and Anna Chinigo for Site Services. Each Administrative Assistant III reports to the top manager in her

respective department. They work in an office setting in Building 475 or 437 and sit just outside the offices of their respective managers.

The administrative assistant IIIs perform tasks such as answering the phone, scheduling appointments and meetings for their respective managers, making travel arrangements for their managers, taking minutes at meetings, disseminating information to employees in their departments at the direction of the their managers, processing expense reports, timekeeping, monitoring employee schedules for compliance with the fatigue rules, ordering supplies, tracking purchases in their department, and copying and filing documents.

During outages, Annino performs her normal duties but also works as part of a Performance Improvement Team within the Organizational Effectiveness group, a group I have excluded from the unit. This entails going into the plant, while wearing a hard hat and safety glasses, to observe workers. Andren works at the Help Desk in the Outage Control Center during outages.

Administrative assistant IIIs are required to have extensive clerical/administrative experience. A high school diploma or GED is preferred.

DNC seeks to include administrative assistant IIIs on the ground that they perform duties essential to the production process, while IBEW seeks to exclude them as office clericals. The Board has historically taken the position that plant clericals are normally included in production and maintenance units, while office clericals are excluded from such units. *Caesar's Tahoe*, 337 NLRB 1096, 1100. Historically, workers who perform clerical duties in close association with the production process and production employees are included in a production and

maintenance unit as plant clericals, even though they may exercise secretarial skills and are classified as clerks. *Brown and Root*, 314 NLRB 19, 22 (1994). Clericals whose principal functions and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel. *Mitchellace, Inc.*, 314 NLRB 536 (1994), citing *Container Research Corp.*, 188 NLRB 586, 587 (1971).

I find that administrative assistant IIIs are office clericals and shall exclude them from the unit. In this regard, they do not work in the production and maintenance area, and their primary duties are general office duties unrelated to the production and maintenance process. Annino's work in the plant during outages does not warrant a different result, as she works for an excluded department when she does so, and her work there is too sporadic to include her as a plant clerical.

## 2. Disputed process assistant IVs

Three process assistant IVs work in the Maintenance Department. Process assistant IV Joanne Orlando, who reports to Supervisor of Nuclear Maintenance David Knopf, works in the Unit 3 mechanical maintenance shop in Building 323. Process assistant IV Susan Reed, who reports to Supervisor of Nuclear Maintenance Tyrone Hughes, works in the Unit 1 and Unit 2 "Ops" office in Building 110. Process assistant Gwen Horsley, who reports to Maintenance

Supervisor Chad Robertson, works in the Unit 2 maintenance shop in Building 211.

The three process assistant IVs in the Maintenance Department perform similar administrative duties. They answer the phone and schedule trips for their respective supervisors. They handle timekeeping and ensure that the work schedules of the maintenance employees in their group comply with the NRC fatigue rules. They coordinate vacation schedules for maintenance employees in their group; schedule training sessions for maintenance employees and remind them of required training; coordinate with IT to set up work stations and computers for new maintenance employees; and track credit card purchases and process expense receipts.

The Operations Department employs one process assistant IV, Joan Lafaille. She works in the Unit 2 Control Room as an off-shift employee. She maintains and tracks Shift Operations procedures and briefs the personnel on watch, including control operators, on any procedural changes.

According to the job description for process assistant IVs, they perform the highest level of general clerical and administrative duties and a wide variety of specialized and complex clerical functions, and they are required to have excellent computer skills. A high school diploma or GED is preferred.

DNC seeks to include process assistant IVs on the ground that they perform duties essential to the production process, while IBEW seeks to exclude them as office clericals. As with the administrative assistant IIIs, I find that the three process assistant IVs in the Maintenance Department are office clericals

and shall exclude them from the unit. In this regard, their primary duties are general office duties unrelated to the production and maintenance process.

I find that the process assistant IV in Operations, Joan Lafaille, is a plant clerical who should be included in the unit. In this regard, she works in the Control Room with petitioned-for employees with whom she has frequent contact, and her work in maintaining and briefing Shift Operations personnel about procedural changes relates to production matters rather than to general office matters.

## **F. Training Department**

### **1. Overview**

The Training Department is responsible for the training of all Millstone employees. Manager of Nuclear Training John Palmer, who oversees this department, reports directly to the Plant Manager at Millstone as well as to Michael Crist, DRS' Director of Nuclear Training in Innsbrook, Virginia.

The Training Department is divided into six groups, each headed by a Supervisor of Nuclear Training who reports to Palmer. Five of these groups employ various classifications of instructors. Supervisor Michael Cote oversees the training of PEOs. Supervisor Michael Siebert oversees initial training for employees who seek to become licensed by the NRC as control operators and senior reactor operators. Supervisor James Grogan oversees requalification and continuing training required of licensed control operators and licensed senior reactor operators in order to maintain their NRC license. Supervisor Robert Andren oversees the training of maintenance employees.

Supervisor of Technical Training Ellen MacLean oversees technical training for employees in the Chemistry, Health Physics, Radioactive Material Handling, and Engineering groups. She also oversees emergency planning training for Millstone's SERO team, composed of about 500 employees, as well as the fire watch, fire brigade, and medic first aid training, which is provided to various unit employees in the Operations and Maintenance Departments as well as to various employees whom I have excluded from the unit, such as chemistry employees, health physics employees, and process assistants.

Supervisor of Nuclear Training Trad Horner oversees the sixth group, which employs various classifications of employees who maintain a simulator that is used for training purposes.

DNC seeks to include three classifications of instructors employed by the Training Department. Within the Simulator group, it seeks to include four software systems engineer specialists, one senior system analyst, one systems analyst specialist, and one senior simulator computer specialist. Finally, DNC seeks to include four training administrators and a senior business systems analyst employed by the Training Department. IBEW seeks to exclude all of these employees on various grounds.

## 2. Disputed instructors in the Training Department

The Training Department employs about 54 instructors in three classifications (collectively instructors): Senior instructors (nuclear operations) conduct training for PEOs, control operators, and senior reactor operators and for those in training to become PEOs, control operators and senior reactor

operators. Senior instructors and senior instructors (nuclear) conduct training for employees other than those who operate the plant, with senior instructors (nuclear) being more experienced than senior instructors.

Instructors work primarily in two training buildings that are located about one mile from the plant, outside the Protected Area. The training buildings include 20 to 25 classrooms, as well as a simulator of the Control Room that is used for instructional purposes. The instructors have cubicles in the training buildings and laptops that they use to make Power Point presentations. The instructors' primary responsibility is to teach students. They are responsible for designing, implementing and evaluating training in the classroom, laboratory, simulator, and on-the-job. Instructors are required to be proficient in developing lesson plans, in developing and grading exams, and in reviewing exam results with students to facilitate learning.

According to their job descriptions, instructors are required to have technical expertise in the subjects they teach, as well as in-depth knowledge of instructional design theory. A bachelor's degree is preferred for all three classifications. The 31 senior instructors (nuclear operations), who teach the most complex topics, must hold or have held a senior reactor operator's license or certification or STA certification. Many of the instructors previously worked at Millstone in the fields that they teach as instructors. Thus, the instructors include former licensed operators, PEOs, maintenance employees, engineers, chemistry technicians, and health physics technicians.

To become a PEO, students must undergo four months of initial training, five days a week, mostly in the classroom, although instructors also take students into the plant to see the systems they have just learned about. After that initial training, they work in the station for about a year, gaining the qualifications they need to perform specific tasks. Thereafter, PEOs must complete about 200 hours of annual training by instructors.

To become a control room operator/reactor operator, students must take an 18-month course involving classroom and simulator training and pass two NRC-regulated examinations. Operator instructors work in nearly a one-to-one ratio with students during the simulator portion of the training. Once they become licensed reactor operators, control operators must complete about 200 hours of continuing training annually to maintain their license.

About eleven senior instructors (nuclear) provide training for maintenance employees, generally in the training building. Initial training for maintenance employees takes about two years. After initial training, maintenance employees spend about two weeks per year in continuing training.

Some of the instructors are dedicated to training individuals who have been excluded from the unit by stipulation, such as senior reactor operators and maintenance supervisors, or to employees whom I have excluded, such as senior reactor operators-in-training, and employees from the Chemistry, Health Physics, Radioactive Material Handling, and Engineering groups.

During outages, which occur every 18 months for each of the two units, for about 30 to 40 days, some of the instructors perform covered work. Some

Operations instructors work as PEOs or work in the Control Room. Other instructors work as helpers to petitioned-for employees during outages, such as maintenance employees, fuel handlers, or Outage and Planning employees. Other instructors, during outages, perform work unrelated to that performed by employees I have included, such as working as health physics technicians or health physics supervisors, working with chemistry employees or engineers, or setting up a database for supplemental workers coming into the plant.

I shall include the instructors in the unit. Although the Training Department, like the other matrixed groups discussed above, has a dual reporting relationship, it is the only matrixed group that reports directly to the Plant Manager at Millstone, and thus is encompassed by the administrative segment that I have determined to be appropriate, i.e., those departments that report to the Plant Manager. Although the primary duty of the instructors is to teach rather than to operate or maintain the plant, as the petitioned-for employees do, the instructors are required to have technical expertise in the same subject areas as the petitioned-for employees they train. Because of this requirement, many instructors formerly worked in petitioned-for classifications as control operators, PEOs, and maintenance employees. I recognize that some of the instructors have no contact with petitioned-for employees, because they are devoted to training other employees such as supervisors, engineers, health physics, or chemistry employees. It appears, however, that most of the instructors train petitioned-for employees in the Operations and Maintenance Department and, because of the lengthy and on-going training requirements,

most of these instructors have substantial contact and interaction with the petitioned-for employees. Finally, some of the instructors perform unit work or assist petitioned-for employees during periodic outages.

I recognize that the Board has excluded instructors from units in some cases based on their distinct function from that of unit employees. See, *Hawthorne School Of Aeronautics*, 98 NLRB 1098, 1102 (1952)(excluding pilot instructors and instructors in the academic training department from an all-employee unit, as they are concerned only with the instruction of students and not with the operation or maintenance of the employer's equipment and facilities); *Western Electric Co., Inc.*, 126 NLRB 1346, 1356 (1960)(excluding instructors/graduate engineers from a unit of professional engineers, where the relationship between instructor and engineer is one of instructor-student); *Automobile Club of Missouri*, 209 NLRB 614, 615-616 (1974)(excluding sales trainer from unit of insurance salesmen, where his duties and functions are distinct from those of the salesmen). I find those cases to be distinguishable, however, as they did not involve public utilities, and the Board was not confronted in those cases with carving out a unit that conforms to a well-defined administrative segment of an employer's operations.

### 3. Disputed Simulator group employees in the Training Department

The Simulator group, which reports to Supervisor of Nuclear Training Trad Horner, is responsible for reprogramming the simulator, a mock-up of a Control Room that is used to train control operators, employees who are training to become control operators, and, occasionally, I&C technicians. This group

reprograms the simulator, either so that it conforms to plant modifications or in response to trouble reports that indicate a discrepancy between the performance of the simulator and that of the actual Control Room. The Simulator group includes a systems analyst specialist, a senior systems analyst, four software systems engineer specialists, and a senior simulator computer specialist. All of them have cubicles in the Training facility.

a. Disputed systems analysts in the Training Department

The systems analyst specialist and senior systems analyst (collectively systems analysts) in the Simulator group perform the same function, with the latter being more experienced. Systems analysts review trouble reports. If they conclude that a problem actually requires modification of the simulator, they create a deficiency report that is routed to software systems engineer specialists in the Simulator group. They may gather data about proposed changes by visiting the plant or by phone or e-mail. The systems analysts also test changes to the simulator after they have been made to ensure that it responds appropriately.

The job descriptions for the systems analysts state that a bachelor's degree is preferred. One has a bachelor's degree and is working on a Ph.D. in history; the other has no advanced degree. Horner testified that the primary qualification for the job is a senior reactor operator's license or certification. Both have previously worked as operator instructors in the Training Department and as senior reactor operators.

I shall include the systems analysts in the Simulator group because they work in a department that is encompassed by the administrative segment I have found to be appropriate and because their work directly supports that of the instructors, whom I have included in the unit, and enables the petitioned-for Operations and Maintenance Department employees to receive the training that is a requirement of their jobs.

b. Disputed software systems engineer specialists in the Training Department

Four software systems engineer specialists in the Simulator group are responsible for making changes to simulator code in response to deficiency reports sent to them by the systems analysts. Prior to making any changes in simulator code, the software systems engineer specialists gather data about the proposed changes, by visiting the plant or by phone or e-mail. The software engineers often work with engineers in the Engineering Department with respect to plant modifications.

The job description for the software systems engineer specialists states that a bachelor's degree is preferred. Nonetheless, each of the four software systems engineer specialists possesses a Ph.D. in Engineering. The job summary for the position states that the software systems engineer specialists provide technical consulting on complex projects and perform as the top technical experts in one or more highly specialized phases of software systems programming.

In agreement with IBEW, I shall exclude the software systems engineer specialists, all four of whom have doctorates in engineering, on the ground that

they are professional employees. As noted above, if a group of employees consists primarily of individuals with professional degrees, the Board presumes that the work requires knowledge of an advanced type, as required by Section 2(12). The Board has consistently found that employees with professional engineering degrees working in specialized fields of engineering qualify as professionals. *Avco Corp.*, 313 NLRB 1357, 1358 (1994). In light of the fact that these software engineers are the top technical experts on highly specialized and complex programming projects, I find that their work is predominantly intellectual and varied character, involving the consistent exercise of discretion and judgment, and thus satisfies the test for professional employee status.

c. Disputed senior simulator computer specialist in the Training Department

The senior simulator computer specialist in the Simulator group maintains the simulator hardware, ensuring that it looks identical to the hardware in the actual Control Rooms. He has a work station in the training facility but also spends time in the Control Rooms to observe the equipment there. The job description for the senior simulator computer specialist states that an associate's degree is preferred; the senior simulator computer specialist has an electronics education from a community college.

I shall include the senior simulator computer specialist in the Simulator group for the same reasons that I have included the systems analysts. He works in a department that is encompassed by the administrative segment I have found to be appropriate and his work directly supports that of the instructors, whom I have included in the unit, and enables the petitioned-for Operations and

Maintenance Department employees to receive the training that is a requirement of their jobs.

4. Disputed training administrators and senior business systems analyst

The Training Department employs four training administrators, one of who reports to the Manager of Nuclear Training and three of who report to one of the Supervisors of Nuclear Training. They work in the Training facility near their supervisors. The training administrators are primarily responsible for maintaining Millstone's training records, including the updating of qualification records. Other duties include scheduling rooms and meetings, preparing the agenda and minutes for training review board meetings, and occasionally doing typing for instructors. One of the training administrators handles payroll and expense reports for the Training Department. Another proctors weekly exams given to new hires. The training administrators interact primarily with instructors and other training administrators, although they have some interaction with petitioned-for employees concerning verification of their qualifications. A high school diploma or GED is preferred for this position.

Senior business systems analyst Joanne Giffin reports to the Supervisor of Technical Training. Giffin is responsible for entering data into the Training Department's databases and for retrieving records from the databases. Giffin works in the Training building but occasionally goes into the Protected Area to attend meetings about the training databases. She works frequently with excluded IT Department employees to address software problems in the database. A bachelor's degree is preferred for this position.

During outages, the training administrators and senior business systems analyst work in the Training building, processing supplemental employees who are brought in to work on-site.

I shall exclude the training administrators and senior business systems analyst from the unit on the ground that they are office clerical employees. In this regard, they perform administrative support duties for the Training Department and are not involved in the production and maintenance process.

#### **V. UNIT DESCRIPTION**

Accordingly, I find that 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 production and maintenance employees employed by the Employer at its Waterford, Connecticut facility in its Nuclear Operations, Outage and Planning, Nuclear Maintenance, Nuclear Site Services, and Training Departments, as set forth more fully in Appendix A, but excluding employees employed in all other departments, certain employees set forth in Appendix B, all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**<sup>37</sup>

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 457, AFL-CIO**. 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.

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<sup>37</sup> Although the unit found appropriate is broader than that initially sought by the Petitioner, I shall direct an election because the Petitioner has a showing in the broader unit sufficient to warrant an election. *N. Sumergrade & Sons*, 121 NLRB 667, 670-671 (1958).

## 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.

### 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 Subregional 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. This list may initially be used by me to assist in determining whether there is 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 Subregional Office on or before May 12, 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 Subregional Office by electronic filing through the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), by mail, or by facsimile transmission at 860-

240-3564. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **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 Subregional Office.

### **Notice of Posting Obligations**

According to Section 103.20 of the Board's and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by May 19, 2014. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

**DATED:** May 5, 2014



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Jonathan B. Kreisberg, Regional Director  
Region One  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

## **APPENDIX A**

### **Included employees**

Employees in the following classifications, who are employed in the Nuclear Operations, Outage and Planning, Nuclear Maintenance, Nuclear Site Services , and Training Departments:

Control operators (MP)

Control operator trainees

Coordinator contract services II

Instrument technicians III

Lead nuclear fuel handlers (MP)

Maintenance coordinator in the Maintenance Department

Nuclear construction specialist

Nuclear electricians II (MP)

Nuclear electricians III (MP)

Nuclear engineer III in the Maintenance Department who serves as Department Corrective Action Coordinator.

Nuclear instrument technicians

Nuclear instrument technicians T2

Nuclear instrument technicians T3

Nuclear maintenance specialist

Nuclear mechanics I (MP)

Nuclear mechanics II (MP)

Nuclear mechanics III (MP)

Nuclear maintenance technicians

Nuclear outage specialists

Nuclear planners

Nuclear plant equipment operators (MP)

Nuclear plant equipment operator trainees

Nuclear schedulers

Nuclear specialist

Nuclear technical specialist IIIs

Nuclear toolkeepers

Nuclear workweek coordinators

Process assistant IV in Nuclear Operations

Senior instructors

Senior instructors (nuclear)

Senior instructors (nuclear operations)

Senior nuclear construction specialists

Senior nuclear designers

Senior nuclear generation test services technicians

Senior nuclear instrument technicians

Senior nuclear planners

Senior nuclear schedulers

Senior simulator computer specialist

Senior systems analyst

Systems analyst specialist

Unit outage coordinators

Vehicle management specialist

## **APPENDIX B**

### **Excluded employees**

#### **Stipulated exclusions**

Assistant Supervisor Instrumentation and Controls

Coordinator Nuclear Operations Support

Manager of Nuclear Maintenance

Manager of Nuclear Operations

Manager of Nuclear Outage and Planning

Manager of Nuclear Site Services

Nuclear Maintenance Supervisor

Nuclear Operations Maintenance Advisor

Nuclear Operations Manager (MP)

Plant Manager (Nuclear)

Shift Manager

Site Vice President

Supervisor Instrumentation and Controls

Supervisor Nuclear Construction

Supervisor Nuclear Engineering

Supervisor Nuclear Maintenance

Supervisor Nuclear Operations Support

Supervisor Nuclear Outage

Supervisor Nuclear Planning

Supervisor Nuclear Scheduling

Supervisor Nuclear Shift Operations

Unit Supervisor

Unit Supervisor (STA/SRO)

**Additional exclusions**

All employees employed at Millstone in departments other than Nuclear Operations, Outage and Planning, Nuclear Maintenance, Nuclear Site Services, and Training Departments.

Nuclear engineer IIIs

License School mentors in Nuclear Operations

Training liaison in Nuclear Operations

Senior reactor operators (SROs)-in-training in Nuclear Operations

Administrative assistant IIIs

Process assistant IVs in the Maintenance Department

Software systems engineer specialists in the Training Department

Training administrators in the Training Department

Senior business systems analyst in the Training Department

**Employees permitted to vote subject to challenge**

Senior controls specialists

Nuclear electrician III Samuel Laurion