UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

DCW CASING, LLC
Employer-Petitioner

and Case Nos. 02-RC-126182 and 02-UC-125587

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 342
Petitioner-Union

and

DISTRICT 6, INTERNATIONAL UNION OF INDUSTRIAL, SERVICE, TRANSPORT, AND HEALTH EMPLOYEES
Intervenor-Union

DECISION AND DIRECTION OF ELECTION

DCW Casing, LLC ("the Employer") is a wholesale producer of meat casings. The Employer has two locations. Its corporate headquarters in Mount Vernon, NY, is also the production and warehouse facility. In the Bronx, the Employer operates a warehouse facility. On March 31, 2014, the Employer filed a unit clarification petition, in Case No. 02-UC-125587, based on competing claims from two unions for representation of the Mount Vernon employees.

On April 9, 2014, United Food and Commercial Workers Union, Local 342 ("the Petitioner" or "Local 342") filed a representation petition in Case No. 02-RC-126182, seeking to represent all full-time and regular part-time production and maintenance employees, drivers and helpers at both the Bronx and Mount Vernon locations.[1]

District 6, International Union of Industrial, Service, Transport and Health Employees ("the Intervenor" or "District 6") intervened in Case No. 02-RC-126182, and asserted that the petition was barred by its collective-bargaining agreement covering the Mt. Vernon employees.

Both of these petitions were consolidated for hearing.

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act ("the Act"), a hearing was held before a Hearing Officer of the National Labor Relations Board ("the Board").

[1] At the hearing, the Petitioner's counsel clarified that the petitioned-for unit includes only the Bronx and Mount Vernon locations. Further, the record does not indicate that there are employees in the classifications of driver and helper at either location.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding[2] I find that:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that the Employer is a national corporation engaged in the wholesale production of meat casings, with an office and principal place of business located at 700 South Fulton Avenue, Mount Vernon, New York. The parties stipulated, and I find, that the Employer's annual direct involvement in interstate commerce is valued in excess of $50,000. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Local 342 and District 6 are labor organizations within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Local 342 seeks to represent all full-time and regular part-time production and maintenance employees, drivers and helpers at the Employer's Mount Vernon and Bronx facilities. Although District 6 has a current collective-bargaining agreement with the Employer, Local 342 argues that it is not a bar to this petition due to the unique historical circumstances regarding the representation of the proposed unit. Specifically, Local 342 argues that the Employer has recognized and bargained with it concerning the Bronx employees. Further, Local 342 notes that the Employer has continued to apply the terms of the expired Local 342 contract to both the current Bronx employees and to the former Bronx production and maintenance employees who have been permanently transferred to the Mt. Vernon facility. Accordingly, its representational claim to a larger bargaining unit should not be discounted through accretion, as it would not effectuate the purposes of the Act to deny the employees the right to vote.

District 6 argues that it has historically represented the employees at the Mt. Vernon facility. The record suggests that when District 6 discovered that the Employer had applied the Local 342 contract wages and terms to the permanently transferred group of production and maintenance employees, it promptly objected and demanded recognition for the entire Mt. Vernon facility. Notably, the recognition clause of the District 6 collective-bargaining agreement with the Employer extends coverage to all production and maintenance employees at Mt. Vernon. Accordingly, District 6 argues that the contract bars the processing of the instant RC petition. It does not seek to represent the employees currently working out of the Bronx warehouse facility.

[2] The parties waived their right to file briefs.

Like the Intervenor, the Employer claims that the current District 6 collective-bargaining agreement is a valid contract that bars the instant petition. Due to the competing claims of the Petitioner and the Intervenor, the Employer filed the instant UC petition. In that regard, the Employer submits that District 6 is the "correct and only" representative of all the bargaining unit employees at the Mt. Vernon facility because the contractual recognition clause covers that location.

Regarding the UC petition, District 6 argues that, although Local 342 is the historical representative of the Employer's employees in the Bronx, it should have ceased to represent those employees upon their transfer to Mount Vernon. Again, District 6 notes that the recognition clause of its collective-bargaining agreement is defined by geographic jurisdiction. Further, District 6 maintains that the former Bronx facility employees perform identical work to the employees represented by District 6 at Mt. Vernon, under the same supervision. Accordingly, District 6 argues that the seven employees transferred from the Bronx joined a significantly larger unit of twenty-two employees in Mount Vernon; and therefore, they should accrete into the District 6 bargaining unit.

I have considered the record and the arguments presented by the parties. I find that Local 342's petition seeking a unit of all production and maintenance employees at both of the Employer's locations is the smallest appropriate unit. As a result, the District 6 collective-bargaining agreement covering only one facility is not a bar to the instant petition because it covers an inappropriate unit. *See Moveable Partitions, Inc.*, 175 NLRB 915 (1969); *Mathieson Alkali Works, Inc.*, 51 NLRB 113 (1943). Further, because the representation petition raises a question concerning representation, I am dismissing the unit clarification petition and find that accretion is not appropriate on these facts. *See Mass. Elec. Co.*, 248 NLRB 155 (1980); *Martin Marietta Refractories, Co.*, 270 NLRB 821 (1984).

FACTS

On October 1, 2012, three separate and distinct corporate entities - Casing Associates, LLC ("Casing"), Wolfson Casing Corporation ("Wolfson"), and a holding company by the name of DAT USA Holdings - merged to form DCW Casing, LLC, the Employer. A former Casing executive, Philip Schwartz, became the Employer's chief executive officer. The Employer retained several former Wolfson employees in the same management capacity: vice president for sales, vice president for operations, and Human Resources Manager Lisa Patton.

Prior to the merger, Casing operated the Bronx facility which is located at 1120 Close Avenue, Bronx, New York. Wolfson operated the Mount Vernon facility which is located at 700 South Fulton Avenue, Mount Vernon, New York.

For at least the past decade, Local 342 represented the production, shipping, receiving, chauffeur, helper and maintenance employees employed by Casing at the

Bronx facility. For about twenty years, District 6 represented the production and maintenance employees employed by Wolfson at the Mount Vernon facility.

The Employer was formed in about October 2012. Initially, it continued the production and warehouse operations at both facilities unchanged. The Employer continued to recognize Local 342 as the exclusive collective-bargaining representative of employees in the Bronx, and District 6 as the exclusive collective-bargaining representative of employees in Mount Vernon. The most recent collective-bargaining agreement between Local 342 and Casing had expired on May 12, 2012. The recent collective-bargaining agreement between Wolfson and District 6 was effective by its terms from March 1, 2015, to February 27, 2013.

The record indicates that by letter dated January 14, 2013, Human Resources Manager Lisa Patton notified Local 342 that as of March 15, 2013, the Employer would sever its relationship with Local 342 and terminate its application of the expired collective-bargaining agreement between Casing and Local 342 to the employees in the Bronx.

Also in early 2013, the Employer commenced negotiations for a successor collective-bargaining agreement with District 6. The collective-bargaining agreement between Wolfson and District 6 expired by its own terms on February 27, 2013. The Employer executed a new CBA with District 6 effective from February 28, 2013, to February 27, 2016, covering all production and maintenance employees at the Mount Vernon facility.

In February 2013, Local 342 objected to the Employer's notification to sever their collective-bargaining relationship. Thereafter, the Employer agreed to maintain the status quo by continuing to recognize Local 342 as the exclusive collective-bargaining representative for the Bronx facility and for any Bronx employees who transferred to the Mount Vernon facility.

From about March through June 2013, the Employer phased in the consolidation of its production operations to its headquarters in Mount Vernon, and it began to transfer Bronx employees on an "as needed" basis. Patton testified that the Mount Vernon facility is larger, more modern, and cleaner than the Bronx facility. The Mount Vernon facility contains the Employer's production line and a warehouse for product shipments.

The group of employees that transferred from the Bronx to Mount Vernon includes the following classifications: three production employees, one maintenance employee and three packing employees. These seven employees joined twenty-two existing production and maintenance employees in Mount Vernon.

The record indicates that currently, the employees at the Mount Vernon facility who are encompassed by the petitioned-for unit include the following classifications: production employees, packers, forklift operators, shipping and receiving clerks, and maintenance employees.

The undisputed record evidence demonstrates that the former Bronx employees continued performing the same duties and responsibilities at the Mount Vernon facility. Apart from learning to use a hand scanner, no training was necessary. All of the employees in the combined unit report to the same respective supervisors. That is, the production employees report to the production supervisor, the packers report to the shipping supervisor, and the maintenance employees report to the maintenance supervisor.

The Bronx facility became solely warehouse space. Products and materials are stored in the Bronx and then transferred to Mount Vernon. The record discloses that only two employees remain in the Bronx facility, a packer and a leadman packer, both of whom are members of the Local 342-represented unit. The record indicates that the Bronx does not have an on-site supervisor; instead, it appears that the Bronx packers report to the Mount Vernon shipping supervisor. In that regard, Bronx Foreman Packer Jose Guzman is sometimes assigned to temporarily work in Mount Vernon.[3] On those occasions, Guzman performs the same duties as the other Mount Vernon packers, and he reports to the only shipping supervisor. The record does not disclose how often Guzman reports to Mount Vernon.

Notwithstanding the commonality of the combined group as described above, the Employer continued to apply the terms of the expired Local 342 contract to the transferred employees. For the twenty-two production and maintenance employees who had always worked in the Mount Vernon facility, the Employer applied the terms and conditions of its agreement with District 6.

By letter dated March 22, 2014, District 6 notified the Employer that all employees in the Mount Vernon production and warehouse unit should be covered by the District 6 contract. In response, the Employer filed the instant unit clarification petition. Shortly thereafter, Local 342 filed the instant representation petition seeking a multi-location unit of all of the Employer's production and warehouse employees.

ANALYSIS

Under Section 9(b) of the Act, "the Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The statute does not require that a bargaining unit be the only appropriate unit, or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate, that is, appropriate to insure to employees in each case the fullest freedom in exercising the rights guaranteed by the Act." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950); *National Cash Register Co.*, 166 NLRB 173 (1967); *Dezcon, Inc.*, 295 NLRB 109

[3] The record does not disclose how often Guzman reports to Mount Vernon. Patton testified that Guzman is assigned to Mount Vernon "to cover vacation." No further testimony was adduced and no documents were introduced to show the frequency of temporary transfers.

(1989). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

Here, the Petitioner has petitioned for a multi-location unit of all production and maintenance employees at the Employer's Bronx and Mount Vernon facilities.[4] In a multi-facility context, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (a) similarity in employee skills, duties, and working conditions; (b) functional integration; (c) employee contact and interchange; (d) centralized control of management and supervision; (e) geographic separation of facilities; and (f) bargaining history. *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent-A-Car,* 330 NLRB 897 (2000); *Macy's West Inc.*, 327 NLRB 1222, 1223 (1999).

As set forth more fully below, in applying those factors here, I find that the smallest appropriate unit includes the production and maintenance employees at the Bronx and Mount Vernon facilities.

a. Similarity in Employee Skills, Duties, and Working Conditions

The record clearly demonstrates that when the Bronx employees transferred, their skills and duties were identical to those of the production and warehouse employees already working at the Mount Vernon facility. While the record evidence regarding the packing classification was sparse, the record as a whole indicates that the remaining Bronx packers possess skills and duties that are indistinguishable from the packers stationed in Mount Vernon. In that regard, I note that one of the Bronx packers sometimes performs work at Mount Vernon and no record evidence was adduced to show that his temporary transfer required special training. Thus, the employees at both locations share a strong community of interest with respect to skills and duties.

b. Functional Integration

The record suggests that the Bronx facility exists to support the Mount Vernon facility. It appears that the Employer stores product and materials at the Bronx warehouse which are then used to produce the final product in Mount Vernon. Although the record was vague, there is no indication that the work performed at the Bronx facility could be performed in isolation of the Mount Vernon facility, and vice-versa. Further, it appears that the Bronx packers report to the shipping supervisor based in Mount Vernon. Accordingly, the departmental structure is organized by function, not by facility, which favors finding a multi-location unit.

[4] To the extent the Employer and/or District 6 argue that a single-facility unit is presumptively appropriate, I note that that presumption does not apply in cases such as this, where the petitioning labor organization seeks a multi-facility unit. *Capital Coors Co.*, 309 NLRB 322 fn. 1 (1992).

c. Employee Interchange and Interaction

As stated above, all of the production work is currently performed at the Mount Vernon facility. It is undisputed that those employees have daily interaction. In the Bronx, one of the packing employees – half of the workforce there – is assigned to work at the Mount Vernon facility when needed. Thus, the record demonstrates at least some employee interchange.

d. Centralization of Labor Relations

Labor relations are centralized in Mount Vernon. Lisa Patton testified that the Employer's Human Resources personnel are solely located in Mount Vernon. Perhaps more importantly, the record shows that the Employer representatives who were involved in collective bargaining for the Bronx unit were also responsible for collective bargaining for the Mount Vernon unit. Finally, the absence of any management or supervisory personnel in the Bronx weighs in favor of including the facility in the bargaining unit. *See Hazard Express, Inc.*, 324 NLRB 989 (1997).

e. Geographic Proximity

I have taken administrative notice of the fact that the Bronx and Mount Vernon facilities are approximately eight miles apart. A similar distance has been found by the Board to weigh in favor of a single-facility unit, rather than multi-facility. However, when so found, other community of interest factors have also been absent. *See Hilander Foods*, 348 NLRB 1200 (2006) (no employee interchange, limited functional integration, high local autonomy and geographic distance of eight to thirteen miles weighed against a multi-facility unit). Where other community of interest factors are strong, in contrast, distance between facilities will not tip the balance in favor of separate, single-facility units. *See Dayton Transp. Corp.*, 270 NLRB 1114 (1984) (highly integrated operations, centralized control of labor relations, and employee interchange outweighed distance of 175 miles between three facilities). Here, a mere eight miles between facilities weighs in favor of finding a multi-facility unit is appropriate, given the highly integrated operations, centralized control of labor relations, and similarity of skills and duties.

f. Collective Bargaining History

Prior to the merger, two different unions historically represented two distinct single facility bargaining units. However, this bargaining history alone does not decisively tip the balance. In *Coplay Cement Co.*, 288 NLRB 66 (1988), the Board found a single, multi-plant unit to be appropriate, despite years of bargaining in separate, single-plant units. There, as here, factors like centralized control of labor relations, integration of function between facilities, and employee interchange all militated in favor of finding a multi-plant unit to be the appropriate unit. In the instant case, for a brief period after the merger, the bargaining involved single plants. However, since about June 2013, the units at each facility have effectively been combined into one group. Moreover, to exclude two packing employees from a proposed unit of all production and maintenance

employees, as District 6 suggests, is inconsistent with the classifications that comprised the historical units. Accordingly, the Employer's current operations favor finding a multi-facility unit.

Based on all of the above, I find that the employees at the Bronx facility share a community of interest with the employees in Mount Vernon, and therefore, the petitioned-for multi-facility unit is appropriate.

To conclude otherwise fractures a unit that historically consisted of both classifications and that is at odds with the Employer's organizational structure. Severing the two packing employees in the Bronx from the packing and other production and maintenance employees in Mount Vernon would create a fractured unit. Where, as here, the duties, skills and working conditions of two segments of a workforce are indistinct, the Board has found a unit encompassing only one of the segments to be inappropriately narrow. *See Riker Laboratories*, 150 NLRB 1099 (1966) (dismissing petition for shipping and receiving employees as inappropriately narrow in scope, and finding that the unit should have included all production and maintenance employees).

Accordingly, the District 6 contract is not a bar to the instant petition because it covers an inappropriate unit. Contracts that cover a bargaining unit found inappropriate by the Board are not given bar quality.[5] *Mathieson Alkali Works, Inc.*, 51 NLRB 113, 115 (1943) (noting that the contract bar rule "assumes that the unit of employees covered by the contract is appropriate," and holding that "where the parties contract on the basis of a unit different from that found by the Board their agreement is subject to any subsequent determination the Board may make...with respect to the appropriateness of the unit"); *Moveable Partitions, Inc.*, 175 NLRB 915, 916 (1969) (finding no contract bar where the existing unit was limited geographically, and holding that "in order for a contract to be a bar to a petition, the contract must embrace an appropriate unit"). For this reason, I will not dismiss the representation petition on contract bar grounds, as the Employer and District 6 urge.

Finally, having found that the representation petition raises a question concerning representation, I am dismissing the unit clarification petition filed by the Employer. Accreting only the transferred employees would also inappropriately fracture the petitioned-for unit. District 6's reliance on the Board's decision in *Boston Gas Co. (Boston II)*, 235 NLRB 1354 (1978), is misplaced. There, all competing claims were limited to representing employees at a single facility. The issue before the Board was whether one of the competing labor organizations represented a predominant group of the proposed single facility unit. Here, the proposed unit is not limited to a single location of merged employees, but rather a single unit covering both locations. Accordingly, District 6's competing claim, limited to a single facility, is too narrow.

[5] During the hearing, Local 342 attempted to adduce testimony that would show that District 6 acquiesced to a "members only" contract which would remove its bar quality. *Ron Wiscombe Painting & Sandblasting Co.*, 194 NLRB 907 (1972). However, my findings that the contract is not a bar do not rely on the "members only" line of cases.

In conclusion, I am directing an election in the petitioned-for unit, at which time employees will decide whether they desire representation by Local 342, by District 6, or by no labor organization. [6]

5. I find that the following unit is appropriate within the meaning of Section 9(b) of the Act:

> INCLUDED: All full-time and regular part-time production and maintenance employees employed by DCW Casing, LLC at its facility located at 700 South Fulton Avenue, Mount Vernon, New York and at its facility located at 1120 Close Avenue, Bronx, New York.
>
> EXCLUDED: All other employees, including office clericals, and supervisors and guards as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the 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 twelve 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 twelve months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining purposes by **Name of Union** or by **no** labor organization.

NOTICE OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the

[6] District 6 has not indicated whether it is interested in representing the petitioned-for unit, which includes the employees at the Bronx facility. If it does not wish to represent employees in the appropriate unit described above, it shall notify the Regional Director to that effect within ten days of the date of this Decision and Direction of Election and its name will be removed from the ballot.

Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

LIST OF VOTERS

To insure that all eligible voters 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 Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within seven days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 2's office, 26 Federal Plaza, Room 3614, New York, New York, 10278, on or before **May 14, 2014**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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 NW, Washington, DC, 20570. This request must be received by the Board in Washington by **May 21, 2014**.

In the Regional Office's initial correspondence the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may not be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for e-filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the E-Gov[7] tab and click on E-Filing. Then select

[7] To file the request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating

the NLRB office for which you wish to e-file your documents. Detailed e-filing instructions explaining how to file the documents electronically will be displayed.

DATED at New York, New York this 7th day of May 2014.

Karen P. Fernbach
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, NY 10278

that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for e-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website.