

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Wadsworth, Texas

**SOUTH TEXAS PROJECT NUCLEAR
OPERATING COMPANY**

Employer

and

Case 16-RC-128913

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 66**

Petitioner

DECISION AND DIRECTION OF ELECTION

STP Nuclear Operating Company (Employer), formerly known as Houston Lighting and Power Company, is a not-for-profit operating company that manages a two-unit nuclear reactor operating station in Wadsworth, Texas on behalf of its owners, the cities of Austin and San Antonio, and NRG. International Brotherhood of Electrical Workers, Local 66 (Petitioner) is the exclusive bargaining representative of a unit of employees at the Employer's Wadsworth, Texas facility. This unit includes electricians, mechanics, I&C technicians, material handlers and material handler trainees, operators and operator trainees, radiation protection technicians (including apprentices and helpers), and performance technicians.

On May 16, 2014, Petitioner filed, under Section 9(a) of the National Labor Relations Act (Act), a petition seeking a self-determination election pursuant to the Board's decisions in *Armour and Company*, 40 NLRB 1333 (1942), and *Globe Machine and Stamping Co.*, 3 NLRB 294 (1937). The proposed unit consists of approximately 37 reactor operators

currently employed by the Employer. Petitioner seeks to exclude all other employees, guards, and supervisors as defined in the Act. The Employer does not dispute that the reactor operators share a community of interest with the current bargaining unit.

The Employer contends that the appropriate unit must also include the approximately nine employees in the classification of operations technician, also known as reactor operator trainee. The Employer asserts that the operations technicians share a community of interest with the reactor operators and that there is a bargaining history in the industry that overwhelmingly favors their inclusion.

On May 27, 2014, a hearing officer of the National Labor Relations Board conducted a hearing, and both parties filed briefs with me, which I duly considered.

1. ISSUES

The primary issue in this matter is whether the petitioned-for unit constitutes an appropriate unit and whether a self-determination election should be held in accordance with the Board's decisions in *Armour* and *Globe*. Other related issues are whether the petition should be dismissed because the unit Petitioner seeks is inappropriate and whether an election should be held for the unit the Employer deems appropriate.

2. DETERMINATION

I have considered the evidence and arguments presented by both parties. As discussed below, I find that the petitioned-for unit is an appropriate unit because the reactor operators share a community of interest with the existing bargaining unit and because they constitute an identifiable, distinct segment of the Employer's unrepresented employees. I further find that the operations technicians should not be included in the unit. Accordingly, I shall direct a self-determination election in the petitioned-for unit of reactor operators.

3. FACTS

A. COMPOSITION AND ORGANIZATION OF THE CURRENT BARGAINING UNIT

Petitioner currently represents approximately 375 of the Employer's employees working in various job classifications within the Employer's Operations Department, including plant operators. All of the job classifications in the existing bargaining unit are functionally integrated into the operation of the Employer's facility and share the same supervisory/managerial hierarchy. These employees are supervised by unit supervisors, who report to a shift manager. Shift managers report to division managers, who report to the Operations Manager, who reports to the General Plant Manager.

Included in the existing unit is the classification of plant operators, which are operations positions that do not require licensing by the Nuclear Regulatory Commission (NRC). Plant operators generally go through an operator apprenticeship program, which is also included in the existing bargaining unit. Plant operators are responsible for monitoring plant equipment, including taking logs and performing readings on equipment that is not remotely monitored from the plant's control room. Plant operators perform manual manipulations of valves, pumps, and other components to ensure that the system is in the proper configuration before plant startup, and they are also responsible for operating the secondary systems that are not controlled from within the control room. Plant operators perform all of their job duties in the "field," or outside the confines of the control room.

Plant operators begin as apprentices or trainees, through selection into the unlicensed operator training program. The program consists of three phases, with each phase comprised of classroom and field training. For example, the first phase, which consists of yard systems (or common systems between the two units), is comprised of three to four months of

classroom training followed by a comprehensive examination and then field training, where the apprentice learns specific job functions working side-by-side with plant operators in the field. Apprentices then return to the classroom for several months to train for the next phase. Following completion of the training program, the employee becomes a journeyman plant operator. Apprentices and journeymen plant operators are part of the existing bargaining unit.

B. OVERVIEW OF THE WORK PROCESS OF REACTOR OPERATORS

Reactor operators are responsible for the operations and monitoring of the reactor, the support systems, and the secondary generation side of the plant. Reactor operators, who are required to be licensed by the NRC, perform their job duties almost exclusively from the control room, where they monitor and control all of the reactor and secondary side systems. Reactor operators direct plant operators working in the field in their daily operations, as well as periodically shutting down and restarting the reactors during periods of refueling.

Reactor operators are generally selected from internal applicants already working for the Employer as journeymen plant operators. Upon selection, these individuals become reclassified as operations technicians, or reactor operator trainees, a job classification outside the existing bargaining unit. Operations technicians begin at a base pay of \$42.00 per hour, the same rate of pay as a head journeyman plant operator.

The reactor operator training program lasts 18 months and is broken down into four examination phases. Upon completion of the general fundamentals exam, operations technicians receive 25% of the licensing bonus (\$650.00 per month) that is paid to reactor operators. They receive an additional 25% after completion of the systems exam, another 25% after completion of the off normal procedures exam, and the final 25% when they pass the NRC license exam. Upon licensing, operations technicians are required to complete an

additional approximately 12 weeks of training in the field on a 35-day rotation. If the candidate successfully completes the field training and passes all required tests, the operations technician becomes a reactor operator. The average pay rate for reactor operators, which includes the full licensing bonus, is \$45.50 per hour.

Reactor operators work on crews that comprise three reactor operators, a unit supervisor (who is a senior reactor operator), a shift manager, and six to seven plant operators. The crews work on 35-day rotating 12-hour shifts, seven days a week, and often have lunch and breaks together in a break room located adjacent to the control room. The reactor operators and existing bargaining-unit employees have frequent contacts, particularly as needed for operation of the reactor.

**C. COMPARISON OF JOB DUTIES AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT OF REACTOR
OPERATORS AND OPERATIONS TECHNICIANS**

During the reactor operator training program, operations technicians report to work in a classroom at the nuclear training facility, which is located approximately one-quarter mile from the Electrical Aux Building where the reactor operators' control room is located. The nuclear training facility is outside the secured area of the South Texas Project property and does not have any badging requirements for access, unlike the control room area, which is secured and requires multiple levels of security for access. Operations technicians' job duties during the 18-month training program consist of classroom training, studying, taking and passing examinations, and other similar tasks focused on the goal of obtaining licensure from the NRC. Although most, if not all, operations technicians are selected from among existing plant operators employed by the Employer, operations technicians are no longer qualified to perform work as plant operators after they become operations technicians, as their plant

operator qualifications are dropped. Operations technicians also cannot independently perform any job duties of reactor operators.

Reactor operators receive a comprehensive benefits package similar to the bargaining unit.¹ The operations technicians, presently excluded from the existing bargaining unit, receive the benefits that differ from those of employees in the existing bargaining unit. Reactor operators and operations technicians, as well as other non-bargaining unit personnel, have a different healthcare plan, time-off policy, scheduling provisions, performance evaluation system, and pay structure than employees in the existing bargaining unit.²

Reactor operators and operations technicians wear the same attire to work – dark pants and a white shirt, referred to as “organizational clothing.” However, operations technicians generally report to work for 10-hour day shifts, from 7:00 a.m. to 5:00 p.m Monday through Thursday. After progressing through part of the training, the operations technicians’ schedule is changed to Tuesday through Friday, with the same hours worked. Operations technicians take breaks and lunch in the cafeteria located in the nuclear training facility where their classroom is located. Operations technicians are supervised by a training instructor lead, who reports to the operations support manager.

4. ANALYSIS

Petitioner seeks a self-determination election in a unit of the Employer’s reactor operators. The Employer contends that an appropriate unit for any election must also include the Employer’s reactor operator trainees, or operations technicians. I find that the petitioned-for unit of reactor operators shares a community of interest with the existing represented unit

¹ After the hearing closed, the parties stipulated that the reactor operators and the existing bargaining unit employees shared a common employee benefits package.

² The other Operations Department job classifications not presently included in the existing bargaining unit consist of procedure writers, corrective action program investigators, and administrative staff.

of employees such that it is appropriate unit for them to vote in a self-determination election whether to join that unit. I also find that the operations technicians are not required to be included.

A. APPLICABLE BOARD LAW

The *Armour-Globe* doctrine permits employees who share a community of interest with an already-represented unit of employees to vote whether to join that unit. *Armour*, 40 NLRB at 1333; *Globe*, 3 NLRB at 294. See also *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). In such a self-determination election, there need not be a separate finding that the group of petitioned-for employees is, by itself, an appropriate unit. *Maryland Drydock Co.*, 50 NLRB 363 (1943). When the voting unit is not appropriate by itself, the employees are nevertheless entitled to a self-determination election in which a vote for the union is treated as a vote to be included in the existing bargaining unit. *Westinghouse Electric & Mfg. Co.*, 54 NLRB 272 (1944).

It is well-established that a self-determination election is the proper method by which a union may add unrepresented employees to an existing unit, if those employees share a community of interest with the existing unit employees and constitute an identifiable, distinct segment so as to comprise an appropriate voting group. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). In these circumstances, the Board's general policy that a residual unit is appropriate only if it includes all unrepresented employees of the type covered by the petition does not apply. *Id.* The analysis, therefore, is whether: (1) the employees in the proposed voting group – here, the reactor operators – share a community of interest with the currently-represented employees; and (2) the reactor operators constitute an identifiable, distinct segment. *Warner-Lambert*, 298 NLRB at 995. If those criteria are met, a self-determination

election is appropriate.

B. REACTOR OPERATORS SHARE A COMMUNITY OF INTEREST WITH THE EXISTING BARGAINING UNIT

I find that the reactor operators share a community of interest with the established bargaining unit. Factors to be considered in determining whether the petitioned-for unit shares a community of interest with the existing bargaining unit include: (1) degree of functional integration; (2) common supervision; (3) nature of employee skill and function; (4) interchangeability and contact among employees; (5) work situs; (6) general working conditions; and (7) fringe benefits. *Swift & Co.*, 129 NLRB 1391 (1961); *United States Steel Corp.*, 192 NLRB 58 (1971).

Applying the community of interest factors to the record facts in this case, I find, and the parties do not dispute, that the reactor operators share a community of interest with the existing bargaining unit. The job duties of reactor operators are functionally integrated with the job duties of the existing bargaining unit, which consists entirely of operations employees whose jobs collectively include responsibility for the operations of the nuclear reactors. The reactor operators share a common supervisory hierarchy with the existing bargaining unit, and several job classifications work together on a daily basis in the performance of their job duties on a single work crew. The reactor operators are generally selected from among the Employer's plant operators, such that reactor operators share the skills and knowledge of other existing bargaining unit classifications. The existing bargaining unit employees, as well as reactor operators, perform their job duties in the same work area; the control room, where the reactor operators primarily work, is within the facility in where other operations department employees perform their work. Finally, reactor operators share similar working conditions and benefits as the existing bargaining unit employees, including work schedules,

breaks, lunches, and attire. Thus, I find that the petitioned-for group of reactor operators shares a sufficient community of interest with the existing bargaining unit.

C. REACTOR OPERATORS CONSTITUTE A DISTINCT, IDENTIFIABLE SEGMENT

I further find that the petitioned-for unit of reactor operators constitutes an identifiable, distinct segment of the Employer's unrepresented employees. In examining whether the voting group constitutes an identifiable, distinct segment, the Board considers factors similar to the community of interest inquiry, including whether employees have separate supervision, geographic separation of work areas, and lack of integration with employees in other segments in the performance of ordinary job duties. *See Birdsall, Inc.*, 268 NLRB 186, 190 n. 12 (1983), *citing A. Harris & Co.*, 116 NLRB 1628, 1632 (1956).

Reactor operators, unlike operations technicians and other operations employees, work almost exclusively in the control room, while other operations employees work in the "field" adjacent to the control room and/or in another building altogether, the nuclear training facility. Reactor operators, who are responsible for remote monitoring of the reactor and support systems from the control room, perform different job duties than other operations employees and are the only group of employees required to maintain NRC licensure. Although reactor operators and other existing bargaining unit employees generally comprise a single work crew, which shares common supervision, the unit supervisor of each crew is a reactor operator, and reactor operators do not share supervision with other operations department employees such as operations technicians. As such, I find that the reactor operators constitute an identifiable, distinct segment of the Employer's unrepresented employees appropriate for a self-determination election.

D. EMPLOYER'S POSITION REGARDING OPERATIONS TECHNICIANS

In its brief, the Employer argues that an appropriate unit must include the Employer's operations technicians, or reactor operator trainees. The Employer relies primarily on bargaining unit history in the industry and its assertion that the operations technicians share an "overwhelming community of interest" with the reactor operators. That consideration is not determinative, and upon the facts and record as a whole, I find that the reactor operators have both the requisite community of interest with the existing unit and a distinctive function and diverse community of interest from the remaining employees – particularly the operations technicians – necessary to establish a separate voting group under *Warner-Lambert*.

The Employer misplaces reliance upon bargaining history in the industry. It cites with favor *Banknote Corp. of America, Inc. v. NLRB*, 84 F.3d 637 (2nd Cir. 1996), enfg. 315 NLRB 1041 (1994). *Banknote* dealt with a continuing bargaining unit in a successor organization. Three unions represented various employees in the predecessor's operations. The employer contended that the presumption in favor of maintaining the historical bargaining units was invalid because the technology in the industry had changed significantly. *Id.* at 648. In contrast, the issue the Employer presents here is what the industry practice has been, which is not supported by *Banknote*.

The Employer also contends that the bargaining history from the 1980s with Houston Lighting and Power also should dictate inclusion of the operations technicians. However, that history is about 25 years old and remote.

Contrary to the Employer's position, applying the standard set forth in *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990), I find that the employees in the petitioned-for unit

share a sufficient community of interest with the existing unit and that their employment interests are sufficiently identifiable and distinct from the Employer's other unrepresented employees to permit a self-determination election. In this regard, I note that although operations technicians are essentially “trainees” for the position of reactor operators, and share the same benefits with other currently unrepresented employees, they perform different functions, work in different buildings, and have separate supervision. The Employer did not present sufficient evidence to establish functional integration between the operations technicians and reactor operators or the existing bargaining unit. To the contrary, the facts establish – and the parties do not dispute – a strong community of interest between the reactor operators and the existing unit by virtue of functional integration and daily substantive contact.

It is well settled that in cases concerning a question of representation, the unit sought by the petitioner must be an appropriate unit, regardless of whether a broader unit may also be appropriate. *Century Moving and Storage*, 251 NLRB 671, 679 (1980), citing *Pilot Freight Carriers, Inc.*, 223 NLRB 286 (1976). The law does not require the petitioner to seek the most comprehensive unit, only an appropriate one. *See Overnite Transportation Co.*, 322 NLRB 723 (1996) (“There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’”) (*emphasis in original*); *see also Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. (2011). Further, the fact that a small, residual unit – in this case, of operations technicians – may be left unrepresented does not render the petitioned-for voting group inappropriate. *See Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 6, n. 38 (2011).

In sum, I find – and the parties do not dispute – that the employees in the petitioned-for voting group share a community of interest with the existing bargaining unit in that they possess, among other factors discussed above, functional integration, contacts, and similar job duties. Accordingly, the petitioned-for voting group of the Employer’s reactor operators shares a sufficient community of interest with the existing bargaining unit and constitutes a distinct and identifiable segment of the Employer’s unrepresented employees such that it is appropriate to hold a self-determination election to discern whether they wish to be represented by Petitioner in the existing bargaining unit. As such, I direct an election be conducted pursuant to *Armour* and *Globe, supra*, to determine whether the petitioned-for unit of reactor operators wishes to be included in the existing bargaining unit or whether it wishes to remain unrepresented.

5. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above-referenced discussion, I conclude and find as follows:

A. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employer is a not-for-profit corporation, owned by the cities of Austin and San Antonio, Texas, and NRG, a private company, engaged in the business of energy production. During the 12-month period preceding the filing of this petition, the Employer has purchased and received products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

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

D. The parties stipulated to the Petitioner's labor organization status.

E. 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.

F. A self determination election is appropriate for the following voting group:

INCLUDED: All full-time reactor operators employed by the Employer at its South Texas Project Nuclear Operating Company.

EXCLUDED: All other employees, supervisors, and guards as defined in the Act.

If a majority of valid votes is cast for Petitioner, they will be taken to have indicated the employees' desire to be included in the existing unit of electricians, mechanics, I&C technicians, material handlers and material handler trainees, operators and operator trainees, radiation protection technicians (including apprentices and helpers), and performance technicians currently represented by the Petitioner. If a majority of valid ballots is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

6. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the petitioned-for unit found appropriate above. The employees will vote whether they wish to be included in the existing bargaining unit currently represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local

Union 66, or whether they wish to remain unrepresented.

The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759

(1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas 77002, on or before June 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 by facsimile transmission at 817-978-2928 or by electronic filing through the Agency's website at www.nlr.gov. Guidance for electronic filing can be found under the E-Gov heading on the Agency's website. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

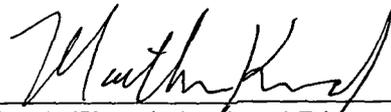
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are

filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 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 the failing to post the election notice.

7. 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 and Direction of Election 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 5:00 p.m., EDT, on June 19, 2014, unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. The request may be filed electronically through the Agency's website, www.nlr.gov³, but may not be filed by facsimile.

Dated at Fort Worth, Texas, this 5th day of June, 2014.



Martha E. Kinard, Regional Director
National Labor Relations Board
Region 16
819 Taylor Street – Room 8A24
Fort Worth, Texas 76102

³ To file the request for review electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, www.nlr.gov.

