

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**CONSOLIDATED NUCLEAR  
SECURITY, LLC**

**Amarillo, Texas**

**Employer**

**and**

**Case 16-RC-130908**

**SHEET METAL AIR RAIL AND  
TRANSPORTATION, LOCAL UNION 49**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

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

**I. INTRODUCTION**

The Sheet Metal Air Rail and Transportation, Local Union 49 (“the Petitioner”) seeks to represent a unit of all full-time and regular part-time planner/schedulers employed in the maintenance division by Consolidated Nuclear Security, LLC (“the Employer”) at its Amarillo, Texas facility. The Employer contends that the petition is procedurally invalid since it was filed before the Employer assumed its operation of the plant. The Employer further contends that the petitioned-for unit is not an appropriate unit for collective bargaining because of imminent structural and operational changes at the plant.

The two issues presented for my decision are (1) whether the petition was timely filed prior to the Employer assuming operation at the plant; and, (2) whether the petition should be dismissed because of imminent changes that would render the bargaining unit inappropriate.

## **II. DECISION**

I have considered the evidence adduced during the hearing, the arguments advanced by both parties, and their briefs. For the reasons set forth below, I find that the petition was timely filed and that a unit of planner/schedulers employed in the maintenance division to be appropriate. Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 16 in the following appropriate bargaining unit:

**INCLUDED:** All full-time and regular part-time planner/schedulers employed in the maintenance division by the Employer at the Pantex nuclear facility in Amarillo, Texas.

**EXCLUDED:** All planner/schedulers employed in the manufacturing division and supply chain division, temporary employees, office clerical employees, professional employees, guards, and confidential employees and supervisors as defined by the Act.

## **III. FACTS AND ANALYSIS**

The National Nuclear Security Administration (NNSA) is a semi-autonomous agency within the U.S. Department of Energy responsible for the management and security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs. Accordingly, the NNSA manages nuclear facilities across the country, including the Pantex nuclear plant in Amarillo, Texas (Pantex facility). The Pantex facility has approximately 3,100 employees engaged in the refurbishment, maintenance, assembly and disassembly of nuclear weapons.

The NNSA employs contractors to manage its nuclear facilities. About December 2011, the NNSA issued a request for proposals for operation of the Pantex nuclear facility as well as the Y-12 facility in Oak Ridge, Tennessee.<sup>1</sup> At that time, Babcock & Wilcox was operating these facilities. The Employer submitted proposals seeking to obtain the service contracts. In early 2014, the NNSA awarded the contracts to the Employer. The Employer was notified that it would assume the operation of Pantex on July 1, 2014, following a three-month transitional period.

The transition period between the Employer and Babcock & Wilcox was March 3, 2014 through July 1, 2014. During this time period, the Employer worked closely with the prior contractor and reviewed organizational structures at the plant. The Employer also had meetings

---

<sup>1</sup> The Y-12 plant is engaged in uranium production.

with labor unions that represented its unionized employees and agreed to assume the existing collective-bargaining agreements.<sup>2</sup> The Employer also opened communication with employees through informational meetings, benefit forums, and smaller group meetings with leaders in the respective departments. Prior to assuming operation of the plant, the Employer offered employment to the existing complement of employees. The vast majority of employees accepted these offers and continued in their same jobs, including the 25 planners/schedulers in the maintenance department.<sup>3</sup> When the facility transitioned from Babcock & Wilcox to the Employer's management, the planners/schedulers remained in their respectively assigned departments: maintenance; production; and global supply chain.

On June 17, 2014, the Petitioner filed a petition with the Regional Office seeking to represent planner/schedulers in the Employer's maintenance division.<sup>4</sup> On July 1, the Employer assumed exclusive operation of the Pantex facility.

**A. The petition was timely-filed and raises a question concerning representation for the Employer's employees.**

Pursuant to Section 9(c) of the Act, the Petitioner filed a petition for certification as bargaining agent for planners/schedulers employed at Pantex. The Employer was named as the employer in the petition. At that time, a successorship situation was imminent and well-publicized. As of the hearing date, the Employer had assumed the operation of the plant, retained the predecessor's entire workforce, and was the statutory employer of the proposed bargaining unit. Given the "substantial continuity" between the enterprises of the Employer and its predecessor, a successorship has been established. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 48 fn. 15 (1987). "Once true successorship is established the successor in effect inherits the question concerning representation." *Unit Train Coal Sales*, 234 NLRB 1265, 1270 (1978), enf. denied on other grounds, 636 F.2d 1121 (6<sup>th</sup> Cir. 1980). I find that the petition

---

<sup>2</sup> Labor unions that represent unionized employees at the plant include the Pantex Guard Union and Metal Trades Council.

<sup>3</sup> Approximately 21 of the 3,100 employees, rejected offers of employment in favor of voluntary separation packages. Two Planners/Schedulers in the maintenance department declined the Employer's offer and retired.

<sup>4</sup> The original petition identified the bargaining unit as planner/schedulers in the Employer's maintenance division and supply chain division. On July 1, 2014 the petitioner amended its petition to exclude those planner/schedulers in the supply chain division.

was appropriately filed raising a question concerning the representational status of this unit of employees. Cf. *Norfolk Maint. Corp.*, 310 NLRB 527 (1993).

**B. The Employer has no plans to substantively change the complement of planners/schedulers in its maintenance division.**

The record reflects that the Employer assumed full operation of the plant on July 1, 2014 and began implementing a matrix organizational structure. Janet Hunt, head of the Employer's Human Resources at the Pantex facility,<sup>5</sup> testified that this organizational structure is less rigid than the divisional structure of its predecessor. In this model, employees would be functionally aligned into more fluid organizations based on their skill sets. Since the new matrix structure is less compartmentalized, Hunt testified that the Employer's operations would be more flexible and efficient, and better able to meet the expectations of the NNSA.

Hunt testified that the Employer initially eliminated the divisional structure and organized the employees into three functional groups.<sup>6</sup> The manufacturing group is responsible for assembling, disassembling and maintaining nuclear weapons; the supply chain group is responsible for shipping and receiving inventory and procurement; and the maintenance group supports maintenance activities. These respective groups are supported by 57 planners/schedulers organized into an enterprise planning and control organization and subdivided into divisions depending upon which functional group they support. The 25 planners/schedulers who were assigned to the predecessor's maintenance department were also assigned to the Employer's maintenance division.<sup>7</sup> The 20 planners/schedulers who had been assigned to the predecessor's manufacturing department were assigned to the Employer's manufacturing division. The 12 planners/schedulers who had been assigned to the predecessor's supply chain department were assigned to the Employer's supply chain division. Planners/schedulers report to supervisors within their respective divisions.

Hunt testified that the Employer is now focusing on production and supportive organizations in its matrix alignment. While Hunt testified that the Employer is in the process of

---

<sup>5</sup> Hunt was the only witness who testified on behalf of the Employer.

<sup>6</sup> These functional groups are consistent with the operational divisions used by the predecessor employer.

<sup>7</sup> The crafts within the maintenance division include sheet metal, plumbers, pipe-fitters, welders, electricians, elections and instrumentation, and painters and carpenters.

planning broader structural and organizational changes, she acknowledged that the Employer has not yet determined what structural changes might be implemented or when they will be implemented. She said that the Employer was in the process of doing its due diligence, which included reviewing current organizational structures and trying to determine what changes are needed. Managers also needed to meet regarding the structural changes. Hunt speculated that changes might occur in the following three to six months. Hunt could not identify with any specificity when the Employer would make its changes, what types of changes might be made, or how these changes might affect the proposed bargaining unit.<sup>8</sup> A maintenance planner/scheduler also testified that he had not been notified of any of these proposed changes.

The Employer argues in brief that once its purported structural changes are made and the planners/schedulers in the maintenance division are fully integrated into one functional group, they will not longer constitute an appropriate bargaining unit. However, even as the Employer has assumed operation of the facility, it has separated the three divisions of planners/schedulers into readily identifiable groups based upon experience and qualifications. Planners/schedulers are assigned to support organizations based on their specific skill sets and work directly with employees and supervisors in that organization. For example, the planners/schedulers supporting the maintenance division are specifically assigned to the maintenance organization based upon their maintenance expertise and qualifications, and they work directly with employees in the maintenance group.<sup>9</sup> Consequently, Hunt testified that even after implementation of its matrix model, she expects that the individuals supporting the maintenance organization would continue to support that organization.

In its brief, the Employer cites cases where the Board dismissed petitions based upon imminent changes to the proposed bargaining unit. However, those cases showed demonstrable evidence of imminent changes. In *Plum Creek Lumber Co., Inc.*, 214 NLRB 619, 619 (1974), the employer hired 17 temporary electricians to construct its new production plant. Just prior to the completion of the construction project, a union filed a petition to represent the electricians. The Board found no useful purpose in conducting an election since the unit was being eliminated in a

---

<sup>8</sup> Hunt offered testimony concerning the Employer's implementation of its matrix model at the Y-12 plant in Oak Ridge, Tennessee. I find this evidence irrelevant for resolving this petition which concerns a specific unit of employees at a different facility.

<sup>9</sup> Planners/schedulers in the maintenance division do not work with employees from the other functional groups.

very short time period. Similarly, in *Cooper Int'l, Inc.*, 205 NLRB 1057, 1057 (1973), the employer presented evidence in the form of an executed purchase agreement demonstrating its relocation within six weeks of the hearing. Given the imminent relocation and the absence of evidence that the employees would relocate, the Board found no useful purpose in conducting an election and dismissed the petition.

The Employer has not presented demonstrable evidence that the character of the proposed unit will imminently change as the record reflects that the Employer is continuing to do its due diligence.<sup>10</sup> The Board has consistently declined to make election determinations based on employer plans that are indefinite, speculative, or remote in time. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309, 309 (1976); *Harold J. Becker Co.*, 343 NLRB 51, 52-53 (2004); cf. *Witteman Steel Mills, Inc.*, 253 NLRB 320 (1980) (projected expansion). Additionally, while the Employer makes much of the operational uncertainty arising from recently taking over a large service contract, uncertainty of future operations is not sufficient warrant for dismissing a representation petition. *Canterbury of Puerto Rico*, supra, and *Gibson Electric*, 226 NLRB 1063 (1976).

The facts regarding the Employer's planned change must be balanced against the employees' representational rights. "In determining whether a prompt election should be held when a change in the employer's location and possible changes in the work force are imminent, the Board must balance the objective of insuring maximum employee participation in selecting a bargaining agent against the goal of permitting employees to be represented as quickly as possible." *NLRB v. AAA Alternator Rebuilders*, 980 F.2d 1395, 1397 (11th Cir. 1993) (citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 48 (1987)). "In striking this balance, [the Board] must determine on a case-by-case basis whether the present employment complement is substantial and representative of a complement to be employed within the foreseeable future." *Id.* (internal quotations omitted). When considering "imminence," the substantive question is not whether specific changes will occur, rather whether those changes are so near in time that holding an election serves no useful purpose. *Larson Plywood Co.*, 223 NLRB 1161 (1976) (permanent layoff within 90 days constituted imminent and certain). In this case, the record

evidence fails to establish imminent changes that would have a substantive impact on the petitioned-for unit and that outweigh the representational rights of the employees.

As the record fails to demonstrate that the purported change of the unit character is imminent, I find that the requested unit of planners/schedulers in the maintenance unit is an appropriate unit. The petitioner must only seek an appropriate unit, not the most appropriate unit. The inquiry involves first, a determination that the employees in the petitioned for unit must be readily identifiable as a group and second, that the employees share a community of interest using the traditional criteria. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 11 fn. 25 and slip op. at 8-9 (2011).

The planners/schedulers in the maintenance department are a distinct group. They have separate supervision. Their job duties relate only to the maintenance department and no other department.

The maintenance planners/schedulers also share a community of interest. The parties stipulated, at the time of the hearing, planners/schedulers in the Employer's maintenance department share common work duties (such as planning tasks), skills, responsibilities, supervision, work schedules, compensation, and other similar working conditions. The planners/schedulers in the maintenance unit share a community of interest. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552, 560-561 (6<sup>th</sup> Cir. 2013); *Specialty Healthcare*, 357 NLRB No. 83, slip op. at fn. 28 (if unit sought by petitioner is an appropriate unit, inquiry ends there).<sup>10</sup>

The asserted imminent change is not supported by sufficient evidence to deny the employees an opportunity to participate in a representation election. The petitioned-for unit is an appropriate unit. I, therefore, find an immediate representation election is required in this case and so order it.

#### **IV. CONCLUSION AND FINDINGS**

---

<sup>10</sup> The Employer, citing *Odwalla, Inc.*, 357 NLRB No. 132, slip op. (2011), contends that failure to dismiss the petition could present a fractured unit in the future. However, as the timing of the purported merger of the planners/schedulers is speculative at this point, the fracturing is also speculative.

In view of the pertinent Board law and the evidence reflected in the record, I have found that a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act in which to conduct an election would include all full-time and regular part-time planner/schedulers employed in the maintenance division by the Employer at the Pantex nuclear facility in Amarillo, Texas. I further conclude and find as follows:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find 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 herein.<sup>11</sup>
3. The Petitioner is a labor organization within the meaning of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequent to this Decision, subject to the Board's Rules and Regulations. Eligible to vote are all full-time and regular part-time planner/schedulers employed in the maintenance division by the Employer at the Pantex nuclear facility in Amarillo, Texas; excluding all Planner/Schedulers employed in the Manufacturing Division and Supply Chain Division, temporary employees, office clerical employees, professional employees, guards, and confidential employees and supervisors as defined by the Act. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Sheet Metal Air Rail and Transportation, Local Union 49.

---

<sup>11</sup> The Employer is a Delaware corporation, with an office and place of business in Amarillo, Texas, where it is engaged in the business of refurbishing, maintaining, assembling and disassembling nuclear weapons. Based on a projection of its operations since about July 1, 2014, at which time the Employer commenced its operations, the Employer will annually perform services valued in excess of \$50,000 for the Department of Energy, National Nuclear Security Administration, an agency of the Federal Government and an entity directly engaged in interstate commerce.

### **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 that 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. Those employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

### **B. List of 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 Fort Worth Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). 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 Fort Worth Regional Office, on or before **July 18, 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 713-209-4890. 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 Fort Worth Regional Office.

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

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 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 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT, on July 25, 2014. You may also file the request for review electronically.

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 now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision and Order for guidance in doing so. Further guidance for E-filing may be found under E-Gov on the National Labor Relations Board website at <http://www.nlr.gov>. On the home page of the website, select the E-Gov tab and click on E-filing. Then select 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 Fort Worth, Texas, this 11<sup>th</sup> day of July 2014.

A handwritten signature in black ink that reads "Martha Kinard". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

Martha Kinard, Regional Director  
National Labor Relations Board, Region 16  
819 Taylor Street, Room 8A24  
Fort Worth, Texas 76201-6178