ADDENDUM A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)

1. DESCRIPTION OF CASE

This case involves a determination by the National Labor Relations Board ("NLRB" or "the Board") that a sub-group of a winery's production-and-maintenance employees constitutes a "unit appropriate for the purposes of collective bargaining" under the National Labor Relations Act ("NLRA"). 29 U.S.C. § 159(b).

On September 2, 2014, Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601 (the "Union") filed a petition seeking to represent a group of cellar employees employed by Constellation Brands, U.S. Operations, Inc. ("Constellation") at its Woodbridge Winery. The group consists of some, but not all, of a single winery's production-and-maintenance employees, and some, but not all, of that winery's cellar department. After a hearing, the Regional Director approved that unit on January 8, 2015. The Board declined to review the Decision and Direction of Election. Constellation declined to bargain with the Union. The Union then filed an unfair labor practice charge in response

on March 18, 2015, and the NLRB awarded summary judgment in favor of the Union on July 29, 2015.

Constellation challenges the propriety of the bargaining unit at issue and the "overwhelming community of interest" test that the Board used to approve that unit. As set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. No. 83, 2011 NLRB LEXIS 489 (Aug. 26, 2011), that test impermissibly affords controlling weight to the union-proposed unit in violation of the NLRA, departs from past Board precedent without a reasoned explanation, and violates the Administrative Procedure Act because it was improperly promulgated through adjudication rather than rulemaking.

2. RESULT BELOW

On July 29, 2015, the NLRB awarded summary judgment to the Union, basing its decision on Constellation's admitted refusal to bargain with the Union. *See United Aircraft Corp. v. N. L. R. B.*, 333 F.2d 819, 822 (2d Cir. 1964) ("The regular procedure for challenging the appropriateness of a bargaining unit is to refuse to bargain and then defend against an unfair labor practice charge on the ground that the unit is inappropriate.").

3. RELEVANT ORDERS

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery *and* Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters. Case 32–CA–148431

July 29, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters (the Union) on March 18, 2015, the General Counsel issued the complaint on May 13, 2015, alleging that Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 32–RC–135779. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 4, 2015, the General Counsel filed a Motion for Summary Judgment. On June 8, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its position that the petitioned-for unit is inappropriate. In addition, the Respondent contends that necessary credibility resolutions were not made in the prior representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and place of business in Acampo, California (the facility), has been engaged in the business of producing wine.

During the 12-month period ending March 18, 2015, the Respondent, in conducting its operations described above, purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on March 4, 2015, the Union was certified on March 12, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated March 5 and 13, 2015, the Union requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the unit employees and, since March 25, 2015, the Respondent has refused to do so.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since March 25, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery, Acampo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Acampo, California, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 25, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 29, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by us at our Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

CONSTELLATION BRANDS, U.S. OPERATIONS, INC. D/B/A WOODBRIDGE WINERY

The Board's decision can be found at www.nlrb.gov/case/32–CA–148431 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONSTELLATION BRANDS,
U.S. OPERATIONS, INC., d/b/a
WOODBRIDGE WINERY
Employer

and Case 32-RC-135779

CANNERY, WAREHOUSEMEN, FOOD
PROCESSORS, DRIVERS AND HELPERS,
LOCAL UNION NO. 601, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.[1]

MARK GASTON PEARCE, CHAIRMAN

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., February 26, 2015.

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[1] We find no merit in the Employer's contention that the Regional Director improperly "ignored the Board's long established precedent that a plant-wide unit 'is presumptively appropriate.'" That a certain kind of unit is presumptively appropriate means only that a party seeking such a unit need not introduce evidence establishing a community of interest or other factors bearing on unit appropriateness, unless the presumption has been rebutted. It does not alter the longstanding principle that employees may seek to organize in any appropriate unit, which need not be "*the* single most appropriate unit." *Specialty Healthcare & Rehabilitation Center*, 357 NLRB No. 83, slip op. at 9 (2011) (quoting *American Hospital Ass'n v. NLRB,* 499 U.S. 606, 610 (1991)) (emphasis in original) (internal quotation marks omitted), enf'd sub. nom. *Kindred Nursing Centers East v. NLRB*, 727 F.3d 552 (6th Cir. 2013). Because the Petitioner does not seek such a unit, its presumptive appropriateness is irrelevant to the determination whether the petitioned-for unit is appropriate. See id. at 7 ("A party petitioning for a unit other than a presumptively appropriate unit … bears no heightened burden to show that the petitioned-for unit is also an appropriate unit.").

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

CONSTELLATION BRANDS,
U.S. OPERATIONS, INC.,
d/b/a WOODBRIDGE WINERY[1]

(Acampo, California)

Employer

and

Case 32-RC-135779

CANNERY, WAREHOUSEMEN,
FOOD PROCESSORS, DRIVERS AND
HELPERS, LOCAL UNION NO. 601,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Constellation Brands, U.S. Operations, Inc., d/b/a Woodbridge Winery, herein called the Employer, is a New York corporation engaged in the business of producing wine. The Employer operates a Facility located in Acampo, California, herein called the Facility, that is the subject of this petition. Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters, herein called Petitioner or the Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time general operators,

[1] The Employer's name appears as amended at hearing.

master operators, senior operators, and working foremen employed in the Employer's cellar operation at the Facility.[2]

A hearing officer of the Board held a hearing on September 10, 11, 15, 16, and 17, 2014, and the parties filed post-hearing briefs with me, which I have duly considered.

As evidenced at the hearing and in the briefs, the parties disagree about the scope of the unit appropriate within the meaning of the Act. On one hand, Petitioner contends that the petitioned-for unit of cellar employees is an appropriate unit (consisting of about 46 employees). On the other hand, the Employer asserts that the petitioned-for unit is inappropriate and fractures its operations, and that any unit must be a wall-to-wall unit of production and maintenance employees at the Facility (consisting of about 200 employees).

I have carefully considered the evidence and the arguments made by both parties on these issues. As discussed below, I have concluded that the petitioned-for unit is an appropriate unit, and that the Employer has failed to meet its burden of showing that the petitioned-for unit shares such an overwhelming community of interest with any of the remaining classifications such as to render a wall-to-wall unit of production and maintenance employees, the only appropriate unit. Accordingly, I have directed an election in the petitioned-for unit, consisting of approximately 46 employees.

I. RECORD EVIDENCE

Winemaker Robert Mondavi has owned the Facility since about 1979. Annually, the Facility produces about 22 million cases of wine comprising at least a dozen of its brands of wine for domestic and international distribution. The Facility also bottles wine for other

[2] The parties stipulated that the following categories of employees are excluded from any unit that I might find appropriate herein: wine trackers and coordinators, lab technicians, winemakers, office clerical employees, temporary workers, managers, guards, and supervisors, as defined by the Act. Moreover, the parties do not argue, nor does the evidence suggest, that foremen are supervisors within the meaning of Section 2(11) of the Act.

wineries. This translates into three production lines that can each produce about 30,000 cases of wine per shift. Although the picking of grapes is seasonal from August to October (the "crush"), the Facility operates year round as part of its "grape to warehouse" operations.

The Facility employs about 300 people, 100 of whom are management or administration and 200 of whom are, per the Employer, production and maintenance employees at issue in the instant hearing.

A. DEPARTMENTAL ORGANIZATION

The Vice President and General Manager ("GM"), who has worked at the Facility for 16 years, is in charge of the Facility's operations. Under the GM are five directors, who oversee various departments.

First, the Director of Cellar Operations is responsible for the cellar, barrel, and wine information departments, which collectively constitute about 68 or 69 employees. Reporting to the Director of Cellar Operations is a cellar master, who is responsible for the outside cellar ("cellar") and who oversees front-line cellar supervisors for the graveyard and swing shifts. There are about 46 cellar employees, with the job classifications of operator I, operator II, senior operator, and cellar foreman. Also reporting to the Director of Cellar Operations is another cellar master, who is in charge of barrel operations ("barrel") and cellar services ("cellar services"). There are about 18 employees in barrel, with the job classifications of operator I, operator II, senior operator, and foreman, as well as one recycler. There are about 4 to 6 employees in cellar services. Finally, the wine tracking supervisor also reports to the Director of Cellar Operations and oversees "wine info," which includes three wine tracking assistants and a bulk shipping coordinator, to ensure that every gallon of wine is tracked and legally compliant;

the parties stipulated that wine info employees are excluded from any unit that I might find appropriate herein.

Second, the Director of Maintenance is responsible for facilities maintenance and engineering, which consists of about 23 or 24 employees.[3] Two engineers report to the Director of Maintenance. Similarly, the facilities maintenance manager reports to the Director of Maintenance, and also oversees the storeroom supervisor. Facilities maintenance consists of about 16 to 20 employees in the job classifications of facility worker I, mechanic II, master mechanic, and maintenance foreman.

Third, the Director of Bottling oversees bottling, bottling sanitation, bottling maintenance, and bottling quality control. The bottling manager reports to the Director of Bottling and supervises four bottling supervisors for day shift, swing shift, graveyard, and bottling sanitation respectively. There are about 79 to 84 employees in bottling, with the job classifications of bottling operator I, bottling operator II, bottling senior operator, and bottling foreman. There are about 6 employees in bottling sanitation. Also reporting to the Director of Bottling is the bottling maintenance supervisor, who is responsible for about 19 to 22 bottling maintenance employees, the storekeeper, and an administrative assistant. Two production assistants work in bottling quality control to ensure that glass and materials arrive on time. They report to the Director of Bottling. There are also about 18 quality control employees, who the parties stipulated are excluded from any unit.

[3] At the hearing, the parties stipulated that the Director of Maintenance, the engineers, the facilities maintenance manager, and the storeroom supervisor are all supervisors within the meaning of Section 2(11) of the Act, in that they each possess and exercise one or more of the following authorities: hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or adjust grievances or effectively recommend such action, utilizing independent judgment in exercising such authority.

Fourth, the Director of Technical Services is responsible for the quality teams, including the cellar quality lab and the bottling quality lab.[4] The quality assurance manager and laboratory supervisor both report to the Director of Technical Services. The quality assurance manager oversees two senior laboratory technicians: a senior laboratory technician (responsible for the packaging lab), and a bottling laboratory supervisor (responsible for micro labs in bottling, including supervising 11 lab technician IIs, senior lab technicians, and lead lab technicians). The cellar laboratory supervisor, who oversees the cellar laboratory, supervises a lab technician II, a senior lab technician, and a lead sampler, who perform all cellar lab activity. There are about 23 employees in technical services, all of whom are excluded from any Unit per stipulation of the parties.

Fifth, the Director of Winemaking is responsible for all winemaking activity. Reporting to the Director of Winemaking are about two assistant winemakers, four winemakers, and three senior winemakers. There are about nine full-time winemakers on staff, all of whom are excluded from any Unit per stipulation of the parties.

Finally, the record suggests that there is a separate warehouse department, but does not detail the department's supervisory hierarchy. The warehouse department includes about 8 to 15 lift truck operators, 15 stager/loaders, and 6 general winery workers.

C. SKILLS AND TRAINING

The record contains job descriptions for certain positions in cellar, barrel, facilities maintenance, bottling, bottling sanitation, and warehouse.

The cellar and barrel departments utilize identical job descriptions for operator I, operator II, senior operator, and foreman. The required skills include, *inter alia*: operate forklift, operate

[4] The record also suggests that some labs may fall under the bottling department. As the lab employees are excluded from any unit, pursuant to the parties' stipulation, this is not determinative of any findings.

machinery, use presses, use hand tools, use basic math, use meters, and operate a vehicle. The cellar department job descriptions contain no specifically listed extra requirements. Although there are no job descriptions in the record for cellar services, the GM testified that the cellar services employees have the same skills and training as barrel and cellar employees. Of note, all employees must complete a certain amount of time in a lower-level position and acquire the skill set associated with that position before moving up to the next higher-level position within the department.

The recycler, who falls under the barrel department, must possess the following skills and responsibilities: operate vehicle, operate forklift, operate machinery, and use hand tools. As an extra requirement, the recycler must be able to lift 50 pounds.

Bottling operator I and II employees must possess the following skills, depending on the level of their position: operate machinery, use hand tools, use meters, and use basic math. Additionally, bottling operators must meet the extra requirements of having the ability to: lift, push, pull, and carry up to 50 pounds; stand for extended periods of time; walk on wet surfaces; climb stairs/ladder; work inside a winery production Facility; be exposed to loud noise and work near moving mechanical parts and tow truck traffic; and be occasionally exposed to fumes and/or toxic chemicals.

Sanitation employees must, according to the job description, possess the following skills: operate machinery, use hand tools, use meters, and use basic math. Additionally, sanitation employees must meet the extra requirement of having the ability to lift, squat, bend, twist, push, pull, reach overhead, carry up to 50 pounds, stand for extended periods of time, walk on wet surfaces, climb stairs, use ladder/scaffolding, perform duties in confined spaces, and work outside in all types of weather.

In facilities maintenance, the facilities worker I, mechanic II, and master mechanic employees must, depending on their position, possess the following skills: plumbing, welding, electrical, operate a vehicle, forklift, operate machinery, use hand tools, presses, writing, basic math, cooling systems, read blue prints, read diagrams, and use meters. Facilities maintenance employees must meet the extra requirement of being able to climb ladders, work from heights and in small spaces, be physically agile to perform required work, be skilled in the use of hand and power tools, welding, electrical and mechanical repairs, plumbing, and/or fabrication.

In the warehouse department, lift truck operators and stager/loaders must possess the following skills: operate vehicle, forklift, operate machinery, writing, and use basic math. These employees must also be able to read and write in basic English. General winery workers must be able to operate a vehicle, use a fork lift, write, and do basic math. As other additional requirements, these employees must be able to lift, push, pull, and carry up to 50 pounds, stand for extended periods of time, walk on wet surfaces, climb stairs, climb a ladder/scaffolding, and perform duties in confined spaces.

Essentially all of the entry-level positions at issue require a high school diploma/GED and 0-2 years of work experience.

D. JOB DUTIES

Employees participate in different aspects of the "grape to warehouse" production, which follows a particular flow: grape procurement, crush, fermentation, gaining, master blending, bottling/packaging, warehousing, and distribution. Each department except for facilities maintenance obtains work order forms with instructions on processing wine. All employees are responsible for compliance with sustainability practices and following safe operating procedures.

The record has extensive evidence regarding the duties of each job classification throughout the winemaking process.

1. Cellar

Cellar department employees (operator I, operator II, senior operator, foremen) have specific tasks and expected competencies, depending on their level. According to the job descriptions, these duties include, *inter alia*: adding additives to tanks, performing simple additions, assisting higher-level cellar employees with work orders; cleaning, sanitizing, and sterilizing equipment; moving and transferring wine; emptying and filling tanks and barrels; topping barrels; loading and unloading tanker trucks; adding chemicals to wine; operating equipment, such as pumps, filters, de-stemmers, lees filter, centrifuge, presses, ion exchange, pressure leaf filter, and cross flow filter; filtration; housekeeping; measuring and calculating workplace data; pump mixes; assembling blends per winemaker instructions and fining agency for clarifying wine; and providing feedback to winemaking, cellar, and barrel staff on best practices. Of note, employees at each of the higher levels train employees at lower levels.

Cellar employees clean cellar tanks, fill tanks, operate the rotovac, presses, and the hopper. Cellar employees, like all other employees, utilize hoses, which must be tagged and cleaned before use, to move product throughout the Facility. At the instruction of winemakers, cellar employees also add ingredients to wine.

Cellar employees begin each shift at Taco Bell, a building in the middle of the Facility, with a group exercise and stretch routine designed by a physical therapist; employees take turns leading the stretches. The record suggests that no other departments participate in the exercise routines or do their own exercise routines. Then, inside Taco Bell, cellar employees receive work orders for tasks to be completed during the day. Cellar employees work in pairs, and are

never paired with an employee outside the cellar department. Cellar employees are essentially interchangeable, and if one calls in absent, another one gets switched around to replace that person.

2. Barrel

As noted above, barrel employees (operator I, operator II, senior operator, foremen) have the same job descriptions as cellar employees. However, the record reveals that barrel performs a distinct function within the winemaking process – to barrel age specific wine. Thus, contrary to the cellar employees who work largely outside, barrel works with the wooden barrels in the indoor barrel area. In essence, barrel employees oversee their designated product from the time it leaves the presses until it is ready for bottling. Barrel employees start their shift and receive their work orders in the barrel warehouse.

The recycler also falls under the umbrella of the barrel department, and is responsible for recycling throughout the entire Facility.

3. Cellar Services

Cellar services employees spend the majority of their day outside on man lifts, power washing tanks and getting tanks cleaned and prepped. Cellar services employees are also responsible for overflow activity throughout the winery, they support the Facility in any outside activity, and they ensure cleanliness throughout the Facility. Cellar services employees sanitize the hoppers (a task that one cellar employee also performed alongside cellar services employees at the end of crush 2013), augers, bladders, and presses prior to the crush, which is work that has also been performed by cellar employees. Cellar services employees clean and move wine daily, fill tanks, and clean tanks if they overflow. Cellar services employees start their day in the barrel

break room, where they receive work orders and instructions from the barrel/cellar services supervisor.

4. Bottling

The job description for bottling sanitation contains the following responsibilities: sanitizing, cleaning, and monitoring all cellar and bottling equipment needed to feed, filter, fill, and cork the final product; sanitizing, cleaning, and monitoring pumps, hoses, bottle blowers, corkers, filtration equipment, cappers, and member filter housings and surrounding areas; documenting temperatures; filtering through-puts, pressures, and wine volume pre- and post-production; performing tasks to support bottling line product changes as production needs arise to ensure proper sanitation. In essence, sanitation employees take over when the product goes from cellar or barrel into bottling tanks for final processing. Moreover, the record reveals that bottling sanitation employees clean tanks (which are filled by cellar), return wine to bottling return ("BR") tanks (which is transferred out of the BR tanks by cellar), sanitize filters, and hand off product to bottling.

After bottling sanitation employees complete their tasks, the product flows to bottling operators who work on the bottling lines. The job descriptions for bottling operator I and II include the following responsibilities: attending to the operation of bottling equipment (i.e. un-caser, case packer, capsule machine, corker), including loading correct packaging materials into the machinery; observing, identifying, and correcting current and potential problems with line equipment and communicating the problems to the appropriate person; maintaining a sanitary work area; production reporting and/or quality checks. In essence, bottling operators run the Facility's bottling lines.

Although there are no job descriptions or details regarding the bottling maintenance positions, the GM testified that bottling maintenance does the same job as facilities maintenance, but merely focuses on the winemaking process after the product leaves the sanitation tanks.

5. Facilities Maintenance

Facilities maintenance employees (facilities worker I, mechanic II, master mechanic, and foreman) have, collectively, the following job duties: Facility maintenance tasks, including repair, modification, troubleshooting; preventative maintenance tasks on buildings, facilities, and systems, including lubrication, parts cleaning, and disassembling and reassembling equipment; plumbing; carpentry; painting; moving furniture, materials, and equipment as required; landscape maintenance tasks; installing and maintaining landscape irrigation systems; installing and modifying landscaping; applying fertilizers and insecticide; maintaining winery wetlands, including plowing, trenching, and dredging; skilled welding, electrical repair fabrication, medical repair, refrigeration and HVAC repair, liquid and gas plumbing, and other mechanical tasks; and read and interpret schematics for electrical, mechanical, piping, fabrication, and construction projects. After the crush, facility maintenance employees disassemble and remove certain pieces of equipment. The GM testified that maintenance and cellar employees work together to plant flowers around the Facility twice per year.

6. Warehouse

The job descriptions for lift truck operators and stager/loaders include the following duties: operating a powered lift; receiving inbound empty glass and raw materials used in production; moving barrels; maintaining appropriate logs and records for management; servicing powered lifts; performing daily maintenance and safety checks of powered lifts; general housekeeping; accurately assembling product to meet customer's request; pre-staging future

orders; completing paperwork; and loading staged orders into trucks to ensure appropriate weight distribution, blocks, and braces. Additionally, the record indicates that lift truck operators receive or offload glass bottles and stage outside production lines, and also bring cased bottles to the distribution center.

The job description for general winery worker sets forth a variety of responsibilities, including: moving wine product between tanks; adding chemicals; performing clean up duties; dumping, inspecting, stacking, and packing products; assisting in basic maintenance; participating in packing and shipping wine orders for customers; taking inventory; shipping and receiving packages; and assisting in the vineyard by pruning, picking, weeding, suckering, planting, and repairing trellises. The record lacks extensive evidence about the other day-to-day roles performed by general winery workers.

E. FUNCTIONAL INTEGRATION

Processing begins either from grapes or from juice and wine trucked in from outside of the Facility. A single work order, signed off on by different departments, can track the processing of grapes or juice as it moves throughout the Facility. Many departments may work on the same type of wine at different points throughout the winemaking process.

If the process starts with grapes (which only occurs during the crush from August to September), cellar employees handle the dumping of grapes into the hopper by using and maneuvering a hoist. From there, cellar employees facilitate the use of augers (a giant corkscrew) to push grapes forward along a conveyor in order to get them dropped into the presses. Cellar employees also operate crushers, which are machines that separate the grapes from the stems, and presses. After grapes are crushed and/or pressed, cellar employees "build lines" to get juice distributed to other tanks according to the work orders from the winemakers.

Then, cellar employees clean all of the lines and presses with water so they are sanitized for the next day. Once juice is in tanks, cellar employees add specific additives pursuant to the instructions of the winemaker and blend wine. After blending, cellar employees manage filtration in tanks. If the process begins with wine trucked in from outside the Facility, cellar employees are responsible for offloading the product from the tanker by building hoses and lines for processing. All of these processes occur within the cellar department.

Once the cellar employees complete their portion of the processing, the wine either goes to the barrel department or the bottling department, depending on the instructions of the winemaker. If wine is going to the barrel department, barrel employees come to the cellar department and transfer wine through hoses marked "barrel"; cellar employees do not assist in any way in this process. In fact, cellar employees are prohibited from touching hoses labeled barrel. In non-crush periods, barrel employees transfer wine about two times per week; in crush periods slightly more. Once transferred, the wine goes to a barrel department area behind closed doors; again, at that point, cellar employees have no involvement in the process.

For transfers to the bottling department, cellar employees are responsible for delivering wine to bottling tanks. After the wine is delivered, sanitation employees remove the wine to go into the bottling department. Once sanitation employees remove the wine from the bottling tank, cellar employees clean the tank. There are several bottling return "BR" tanks, for which the work is also split – bottling sanitation employees are exclusively responsible for putting wine into the BR tanks, and cellar employees are exclusively responsible for removing wine from BR tanks. Bottling follows extensive, detailed international protocols throughout processing; cellar employees are not trained on these procedures. Bottling maintenance employees ensure that bottling machinery and lines are running smoothly. Bottling essentially puts the final product

into bottles for future sale. Once wine is bottled into final product, it is labeled, packed into a case, put into a pallet of multiple cases, then placed into the warehouse, where warehouse employees prepare it for staging and loading out to customers.

Facilities maintenance works in all areas of the Facility, on average about 20-30 minutes per day in each area. As facilities maintenance employees must maintain and repair equipment throughout the Facility, these employees touch each phase of processing, albeit tangentially.

Per the GM, if prepared wine arrives as the Facility for bottling, employees in cellar, barrel, and cellar services unload tanker trucks with wine. However, there is no description as to how often each classification performs this work or the nature and extent of any interaction between them during this process.

F. CONTACT

1. Contact at Work Locations

The Facility consists of 257 acres, of which about 52 are fenced and contain 18 buildings. There is about a quarter mile between most of the buildings.

The Facility has an old barrel cellar and maintenance shop utilized by facilities maintenance for repairs. If certain smaller items, including bikes and tools, need repair, employees bring them to the maintenance shop; though the record reveals that any interaction between departments during maintenance is limited at best. If employees from other departments need maintenance assistance on a large item that cannot be moved, they generally notify their foreman, who in turn contacts maintenance. The GM testified that maintenance, cellar, and barrel employees frequent the old barrel cellar, but did not testify with any specificity.

The old rotovac building now houses cellar supplies and a common employee restroom. Next to that are the warehouses where the bottling lines are located and where trucks drop off

dry goods. The filtration building is where wine is prepared for bottling, with the bottling tanks in the adjacent building. These bottling areas are essentially exclusive to bottling, though the record reveals that bottling operators work next to sanitation. However, one of the cellar employees testified that in his four years at the Facility he has never been assigned to work the in bottling area of the Facility, nor did he know of any cellar employee who had. In fact, he stated that supervisors told cellar employees to never go into the bottling areas.

The production offices include human resources, planning, wine info, winemakers, quality labs, and cellar labs; the production locker room and break room are also located in the production offices.

In the middle of the complex is Taco Bell, the headquarters for cellar employees. At Taco Bell, cellar employees punch in, take breaks, and receive work orders. About twice a week, employees from other departments, such as winemaking or wine info, stop in to drop off or pick up paperwork. One of the cellar employees who testified estimated that he is in Taco Bell about once per hour, but could only recall one or two occasions on which he had seen a barrel employee in Taco Bell. Weekly cellar safety meetings held at Taco Bell do not include employees from any other departments.

The barrel building contains about 58,000 barrels, and is where barrel employees work. While cellar employees do work on and with tanks that are immediately adjacent to the barrel building, they do not go into the barrel building to perform their duties. In fact, one of the cellar employees testified that he has never worked with and did not know any cellar employee who has worked with the barrel department. Although the GM testified that cellar and barrel employees work hand in hand to get wine that was in a barrel into a bigger tank to go through the

final process before bottling, he provided no indication as to how often this occurred or whether and how employees in these departments interacted while performing such duties.

There is a separate recycling area where employees from throughout the Facility bring their recycling; this technically falls under the barrel department.

Tanks are distributed in areas throughout the Facility, sometimes referred to as tank farms. The GM testified that bottling, sanitation, cellar, and maintenance all work in the tanks and utilize various equipment, such as catwalks, and that cellar and sanitation work together to fill and empty tanks; however, he did not provide any details as to the nature and extent of such interaction. Moreover, the record reveals that only cellar services employees perform pressure washing in the tank farms.

The record contains extensive discussion of the ingredients room, also referred to as the cellar ingredients room, where employees retrieve supplies, such as ingredients added to the product, hoses, and pumps. Both cellar employees who testified they have never seen anyone besides cellar employees in the ingredients room (albeit, one of those employees has only worked swing or night shift). The GM testified that barrel employees use the ingredients room too, but provided no evidence of employees actually interacting with one another in this location.

The GM also provided general testimony about employees from different departments working together throughout the Facility, as "that's exactly what happens every day," but failed to testify with any degree of specificity. For example, the GM testified he has observed sanitation and cellar employees working together many times as he walked around the property – they were "get[ting] wine ready for our filling" – but provided no detail as to how often, where, or what he saw. With slightly more detail, the GM noted that he recently saw a maintenance employee and a cellar operator work together on a brand new piece of equipment, the continuous

float device, but again failed to provide details about the nature and extent of interdepartmental contact. Similarly lacking in detail is the GM's assertion that cellar employees were recently (no date or timeframe given) working with cellar services employees on man lifts to fill new tanks. The Employer did submit photos into evidence showing employees from multiple departments working side by side. However, the Employer failed to produce any evidence that different departments working alongside each other is a regular occurrence nor any evidence demonstrating the scope of interaction while doing so.

In contrast to the GM's testimony that employees throughout the Facility work together regularly, one of the cellar employees noted that a supervisor has, on multiple occasions, told employees to stay away from other departments because he did not want them talking and that it is common knowledge that the Employer has a policy precluding employees from mingling with other departments. Moreover, even the GM admitted that, during crush, the Facility restricts contact of employees who work outside with employees who work inside under the bottling roof in order to avoid contamination.

2. Contact at Break and Non-Work Locations

The record contains extensive evidence regarding Taco Bell, the work distribution area and break room utilized by cellar employees. Inside Taco Bell are men's and women's locker rooms, bathrooms, refrigerators, microwaves, and an eating area. Per the Employer, cellar employees do not have their own break room, but rather utilize a general production break room. In contrast, both cellar employees who testified stated that, in essence, they had seen no other employees besides those in the cellar department utilize Taco Bell. The exceptions to this were security guards (who are excluded from any unit) and janitorial staff (who are not employed by the Employer).

There are also break rooms and/or lockers in bottling, warehouse, and barrel areas. However, one of the cellar employees indicated that he had never been told he could take breaks in those areas, and had, in fact, been specifically instructed not to go into the bottling area, which he interpreted as including any break areas. Warehouse has a set of lockers in their area where they have a portable trailer; there is no evidence that cellar employees use these lockers.

The Facility has four designated smoking areas, including the Burning Bush near the production area, the bottling smoking area, and the cellar/maintenance smoking area, which are purportedly open to all employees. However, the record evidence of actual interdepartmental interaction in these smoking areas is almost nonexistent. While one cellar employee testified that he has seen some maintenance people also smoke at the Burning Bush, another cellar employee testified that employees from different departments utilize different designated smoking areas.

Additionally, employees who work on the day shift may take breaks or eat lunch at the Taco Truck, which parks at different areas throughout the Facility, including by the Burning Bush and by the bottling building patio. However, the direct evidence regarding employees eating at the Taco Truck is limited. Thus, while the GM testified that the Taco Truck is frequented by both cellar and barrel employees, he only named a few employees from each job category, and did not specifically say how regularly he saw them at the Taco Truck at the same time nor did he specify the extent of any interaction between them. Conversely, one cellar employee testified that he only saw cellar employees buying lunch at the Taco Truck.

For parking of employees' personal vehicles, the Employer requires use of colored stickers on vehicles to show their designated parking areas, which are essentially by department. However, there are not enough spots in the designated parking areas, and employees have

specific overflow lots they may use if they cannot find a spot in their designated lot. The Employer issues parking violation citations for noncompliance, and employees are told that they can receive discipline for violating the parking policy. The record does not contain specific evidence of employees actually interacting in any of the parking lots.

3. Interdepartmental Committees, Activities, and Trainings

There are several inter-departmental committees at the Facility, including the safety committee, the employee forum committee (meets every few months), and the holiday party committee. The record also shows that different departments cooperate when there is an investigation into and a resolution of workplace accidents, such as through the fork lift incident committee. However, there was no evidence establishing the frequency of such cooperation. The Employer also distributes a weekly, company-wide newsletter entitled "Behind the Label."

The Employer points to a variety of other inter-departmental activities and efforts as proof of extensive contact at the Facility. This includes: the annual winery meeting; the annual blessing of the wine; all-employee meals (such as Halloween and Thanksgiving); the adopt-a-family celebration; annual employee health screenings; annual service awards; fork-lift rodeo; the salute program to educate new employees about wine; the "Engage You" employee feedback survey; and the baseball outing. However, many, if not most, of these programs are voluntary and occur annually or infrequently.

Similarly, the Employer highlights interdepartmental trainings in support of its interdepartmental contact argument. These trainings include: sexual harassment training; confined spaces training; CPR training; respirator fitting and training; forklift training; fall protection and manlift training; golf cart training; weighmaster training; and safety day. Some of

these trainings occur annually, some occur only once during an employee's tenure, and some have no information regarding frequency.

G. INTERCHANGE

The Employer presented evidence that there are opportunities for permanent or long-term movement of employees between departments and that there are no restrictions on employees from one department applying for positions in another department. However, despite this purported opportunity, the GM could not identify any cellar employee who has transferred into the barrel department, or any barrel employee who transferred into the cellar department, in the year and a half since he assumed his role as general manager of the Facility.[5] The GM did recall, however, that in 2005, when the Employer downsized the barrel department at the Facility, the four employees affected by the downsize transferred to cellar; however in 2009 when barrel work picked up again, they migrated back to barrel. The GM testified, generally, that in his 17 years at the Facility he believed that examples existed of transfer between departments, and he believed that two to five happen per year, but did not provide more detail. The only specific example of permanent transfer in the record is the painter, who started working for the Employer as an employee in the cellar department, but then, more than a decade ago, transferred into facilities maintenance to work as a painter.

The record similarly lacks evidence regarding short-term interdepartmental transfer. In fact, the primary examples of short-term interchange do not relate to the cellar department. First, the record reveals that sanitation employees substitute for bottling operators during their breaks.

[5] The Employer, in its brief, cites to numerous employees who began working in the cellar department and then transferred to other departments, such as barrel, cellar services, and bottling. However, of the 10 employees discussed in the Employer's brief, 8 of them began working as temporary employees (who the record establishes are employed by an outside entity) in the cellar department and then "transferred" to work in other departments. One of the remaining employees listed is the painter, discussed herein.

Second, the evidence suggests that bottling maintenance employees perform the duties of bottling employees daily, but does not provide extensive detail in this regard.

With regard to the cellar department, there are only two limited examples of short-term interchange. First, one of the cellar employees testified that he worked stirring barrels once, for half a day about 5 years ago, and he once performed inventory in the barrel warehouse for a period of 10 to 15 days.[6] Second, the record reveals that on about 10 days over the course of 2013, cellar employees assisted the painter (in the maintenance department) with painting. In contrast, the other cellar employee to testify noted that he has never substituted for anybody in another department, nor has he seen employees from other departments substitute in the cellar department.

Finally, the record reveals that several employees from a variety of departments initially started working at the Facility as temporary workers, employed by an outside entity, in the cellar department during crush.[7]

H. TERMS AND CONDITIONS OF EMPLOYMENT

1. Work Rules

The record is clear that the Employer's general policies and work rules apply to all employees at issue in the instant hearing. These policies include the employee handbook, the code of business conduct and ethics, general safety guidelines, recycling policy, clean in place policy, the lifting policy, attendance policy, and call-in procedures for absences.

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[6] A cellar employee testified that he also worked temporarily as a replacement for a regular employee in the wine info department and was trained to perform those duties. As wine info employees are excluded from any unit, this minimal interchange is not probative to the instant inquiry.

[7] The record establishes that some years ago, while one cellar employee worked as a temporary employee, another employee, who is now a senior operator in barrels, used to work in the cellar department. However, the employee who testified about this had a very vague recollection of details, and did not, amongst other things, indicate whether the current senior barrel operator was a full-time or temporary employee while working in the cellar department.

2. Wages and Benefits

All employees at issue in the instant hearing are paid hourly and fall within the Employer's "H band" pay classification system. The H-12 pay band consists of operator I (including cellar, barrel, and cellar services) ($15.00 to $19.43 per hour), bottling operator I ($13.13 to $19.43 per hour), and Facility worker I ($13.13 to $19.43 per hour). The H-13 pay band consists of lift truck operators ($14.70 to $21.00 per hour). The H-14 pay band consists of operator II (including cellar, barrel, and cellar services) ($17.00 to $23.10 per hour), bottling operator II ($16.20 to $23.10 per hour), stager/loader ($16.28 to $23.10 per hour), and recycler ($16.50 to $23.10 per hour).[8] The H-15 pay band includes senior operators[9] (cellar, barrel, and cellar services) ($19.25 to $27.30 per hour) and sanitation operators ($17.85 to $27.30).[10] The H-16 pay band encompasses all foremen, regardless of department ($21.00 to $36.75 per hour). According to the GM, this H band classification means that those positions share common attributes in terms of skill sets, roles, and responsibilities. All employees may also receive bonuses, pursuant to the policies set forth in the employee handbook.

All employees receive paid holidays that are official shut down days. All employees also receive paid time off in accordance with the employee handbook

Moreover, all employees are eligible to receive the same medical benefits, dental benefits, life insurance, accidental death and dismemberment plan, and 401(k) plan. Employees are also able to purchase wine with an employee discount.

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[8] The record indicates that bottling operator II employees are in the H-14 pay band, but the relevant exhibit does not list this classification of employees.

[9] The two cellar employees to testify in the proceeding are both senior operators in the cellar department. One earns $19.25 per hour and the other earns $20.

[10] The record indicates that senior bottling operators are also in the H-15 pay bands; however they are not listed on the relevant exhibit.

3. Hours

The Facility runs 24 hours per day, and the Employer schedules shifts for different departments based on need. Shifts are 8.5 hours long, with a half hour unpaid lunch break.

The cellar department has three shifts: day (7:00 a.m. to 3:30 p.m.), swing[11] (3:00 p.m. to 11:30 p.m.), and graveyard (11:00 p.m. to 7:30 a.m.). Day shift cellar employees take lunch around 11 a.m., swing shift cellar employees take lunch around 10:00 p.m., and graveyard cellar employees usually take lunch around 1:30 a.m. Day shift and swing shift each have core employees, who are senior operators, who train the employees around them and do not rotate between shifts. Additionally, day shift and swing shift also have ten non-core operators who rotate between the two shifts every four months based on a cycle. Graveyard employees do not rotate.

The cellar services department begins day shift at 6:00 a.m. and swing shift at 2:00 p.m. The barrel department has day shift and swing shift, but no night shift. The GM did not know whether barrel employees rotated shifts. The recycler works on the barrel schedule.

The bottling department, including bottling sanitation and bottling maintenance, also operates on multiple shifts. First shift, which is bottling sanitation, starts at 5:00 a.m. Second bottling shift begins at 6:00 a.m. for operating bottling lines. The bottling crew for line 1 starts at 7:00 a.m. In the afternoon, first bottling swing shift starts at 2:30 p.m., and the second bottling swing shift begins at 3:30 p.m. Bottling graveyard shift begins at 11:00 p.m., however there is only a third shift if volume so necessitates. For bottling maintenance, day shift begins at 4:00 a.m., and swing shift begins at 12 noon. General winery workers are also on the bottling schedule. Similarly, lift truck operators work on the bottling shifts that begin at 5:00 a.m., 6:00

[11] The two cellar employees to testify in the proceeding are currently both senior operators on the swing shift. One previously worked graveyard shift, and the other previously rotated between shifts and worked day shift.

a.m., and 7:00 a.m. The record does not indicate specific times at which bottling department employees take their lunch breaks.

The facilities maintenance department has day shifts beginning at 5:00 a.m. and 6:00 a.m., and a swing shift beginning at 2:00 p.m.; during crush, one maintenance employee is on graveyard shift beginning at 11 p.m.

Finally, warehouse employees work first shift at 5:30 a.m., second shift at 6:00 a.m., third shift at 7:30 a.m., and swing shift starts at 1:00 p.m.

All employees must punch into the Employer's time system at one of the Facility's time clocks. Though the record suggests that employees may punch in at any time clock, testimony indicates that employees generally clock in at their primary work location or break room. In fact, one cellar employee indicated that a supervisor instructed him not to punch in anywhere else.

4. Equipment and Systems

There is extensive overlap of equipment and systems utilized by employees throughout the Facility. Hoses, gauges, hose keys, clamps, tape measures, and certain tools, including utility knives and Allen wrenches, are used by employees throughout the winery, including cellar employees. However, even if employees use the same category of equipment, such as hoses, some departments uses different measures or types of equipment than others.

Computers are used by employees in the bottling department. While the GM admitted that cellar operator I employees would likely not use computers, he suggested that cellar operator IIs could use computers depending on their training, but did not specify how frequently this occurs.

Forklifts,[12] which are labeled by department, are used by employees in cellar, barrel, bottling, bottling maintenance, and facility maintenance, but the record does not specify the regularity with which employees in each of these departments do so. Some employees, including cellar employees, also operate utility carts, lift trucks, and pallets.

As many of the departments at issue participate in various aspects of wine processing, and employees from multiple departments, including cellar, use oxygen cylinders, argon gas, CO2 tanks, and nitrogen. Employees from bottling sanitation, bottling maintenance, barrel, and cellar services use pressure washers.

The size of the Facility also leads employees to use bicycles, which are assigned to individuals, and golf carts, which are labeled by department, to move between work locations. Though the record generally suggests that golf carts are "extensively" used by everyone on site, including cellar, barrel, bottling, bottling maintenance, facility maintenance, sanitation, and warehouse, the record lacks specific examples and evidence of how often employees in each of these departments do so. Similarly, all employees carry radios, with designated radio channels per department.

5. Attire

All employees, including cellar, bottling, bottling sanitation, facilities maintenance, and warehouse department employees, are required to wear high visibility gear and personal protective equipment (eye wear, ear protection, and gloves) throughout the Facility unless in a designated safe area. The record contains extensive evidence regarding the high visibility t-shirt designed by a cellar employee and selected by the cellar department, which the Employer then elected to make for employees in other departments. However, only high-visibility gear, not the

[12] There is extensive record evidence about which employees use electric forklifts and which employees use propane forklifts. I do not find this distinction to be dispositive.

t-shirt itself, is required pursuant to the Employer's policy and, other than the safety day photograph, the record does not contain evidence regarding how frequently employees in other departments choose to wear the high visibility t-shirt.

In addition to high visibility gear, employees must have proper footwear, long pants, and otherwise appropriate attire (i.e., no midriff shifts or holes in clothes) at all times. Moreover, employees in some departments, including cellar and barrel, are fitted for personalized respirators due to vapors.

Finally, all employees have ID cards (for time cards and security) that list their job classification (i.e. operator I) and department (i.e. cellar).

I. COMMON SUPERVISION

As discussed above, each department has separate front-line supervisors who oversee employees on a day-to-day basis. These front-line supervisors also give yearly evaluations, which can affect income. The record is void of any specific evidence demonstrating that supervisors, or even managers, from one department ever directly supervise employees from another department or otherwise substitute for other departments' supervisors or managers when absent. Corroborating this separation are the Employer's call-in procedures: employees must call in absences to their direct supervisor;[13] however, if the supervisor is absent or unavailable, employees call the foreman in their department on their shift, not a supervisor or manager from another department.

There is no evidence that higher-level managers, such as the Director of Cellar Operations,[14] actually supervise or regularly interact with any employees at issue in the instant proceeding. The human resources manager is involved in hiring and human resources issues for

[13] Employees also request vacation directly from their front-line, shift supervisor.
[14] One cellar employee testified that the Director of Cellar Operations was present when he received a discipline, however, his shift supervisor and a cellar master were also present.

all of the departments at issue, but again is not involved in day-to-day supervision. All departments use the same human resources forms for discipline and performance evaluations.

II. ANALYSIS

The Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile,* 357 NLRB No. 83 (2011), sets forth the principles that apply in cases such as this, where the Employer contends that the smallest appropriate bargaining unit must include additional employees or job classifications beyond those in the petitioned-for unit. As explained in *Specialty Healthcare,* the Board first assesses whether the petitioned-for unit is an appropriate unit by determining whether it is readily identifiable as a group and by applying traditional community of interest principles. *Id.,* slip op. at 8- 9 and n. 25. If the petitioned-for unit satisfies these standards, the burden then shifts to the employer to demonstrate that the additional employees it seeks to include share such an overwhelming community of interest with the petitioned-for employees, that there "is no legitimate basis upon which to exclude certain employees from" the unit because the traditional community-of-interest factors "overlap almost completely." *Id.,* slip op. at 11-13, and n. 28 (quoting *Blue Man Vegas, LLC v. NLRB,* 529 F.3d 417, 421-422 (D.C. Cir. 2008)).

In determining whether a group of employees possesses an overwhelming community of interest, the Board examines such factors as:

> [W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, 357 NLRB slip op. at 9 (quoting *United Operations, Inc.,* 338 NLRB 123, 123 (2002)).

Under § 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." As the Board has often stated, "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." *Overnite Transportation Co.,* 322 NLRB 723, 723 (1996) (emphasis in original), reaffirmed in *Specialty Healthcare,* 357 NLRB slip op. at 9. Therefore, a union is "not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with th[e] requested unit does not exist." *Specialty Healthcare,* 357 NLRB slip op. at 11 (quoting *Overnite,* 322 NLRB at 723).

A. APPRORIATENESS OF THE PETITIONED-FOR UNIT

As an initial matter, I find there is *prima facie* evidence that the petitioned-for unit of cellar employees (operator I, operator II, senior operator, and foreman) is an appropriate unit because the record establishes that the employees in that unit are a readily identifiable group, such that there is a rational basis for grouping them together in a bargaining unit. *Odwalla*, 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare*, 357 NLRB slip op. at 13. In particular, the petitioned-for cellar employees, unlike the unit of employees sought by the Employer: work closely together throughout each shift; regularly interchange with one another, including as backup; have similar skills and training requirements; must demonstrate skills of

lower-level job classifications before moving up to higher-level job classifications within the department; earn hourly pay in the same wage ranges; and report to the same supervisors.

The Employer largely argues that Petitioner has not met its burden of showing that the cellar employees are an appropriate unit because a unit consisting solely of cellar employees impermissibly fractures the Employer's operations.[15] In support of this argument, the Employer contends that the Board will not approve of units fractured without a rational basis and cites to *ASV Inc. a/k/a Terex*, 360 NLRB No. 138 (2014) for that proposition.[16] However, the Employer's contention is not supported by Board law.

Contrary to the Employer's contention, "a unit is not fractured simply because a larger unit might also be appropriate, or even more appropriate." *Macy's Inc.*, 361 NLRB No. 4, slip op. at 11 (citing *Specialty Healthcare*, 357 NLRB slip op. at 13). The Board has found that while "a unit might be fractured if it is limited to the members of a classification working on a particular floor or shift," an entire department or classification can be an appropriate unit. *Macy's Inc.*, 361 NLRB No. 4, slip op. at 12-13. Here, like in *Macy's*, the petitioned-for unit is appropriate because it consists of an entire department for all shifts, "is coextensive with a departmental line the Employer has drawn," is "readily identifiable based on classifications and function," and has common supervision. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 8.

Moreover, the case law cited by the Employer is distinguishable. In *Terex*, the Regional Director, upheld by the Board, found that there was no rational basis for the petitioned-for unit because, *inter alia*: the unit did not track any lines drawn by the employer, such as job

[15] As part of its argument that Petitioner has not met its burden of proof that the petitioned-for employees constitute a readily identifiable group, the Employer also argues that cellar employees share a community of interest with other employees at the Facility. I will address community of interest with other employees at the Facility below.

[16] The Employer also cites to *Becker College*, Case 01-RC-081265, which was not reviewed by the Board and consequently has no precedential value. *See Boeing Co.*, 337 NLRB 152, 152, n.4 (2001). Thus, this case is not controlling to the instant proceeding.

classification or department; the record revealed no reason for including some employees but excluding others; and the supervisory hierarchy was shared. 360 NLRB No. 138 (2014). As discussed in detail below, here, unlike in *Terex*, Petitioner seeks to represent entire classifications of employees that constitute an entire department tracked along the Employer's division for function and supervision. Accordingly, *Terex* is not controlling in the instant case.

Finally, to the extent the Employer argues that Petitioner must establish that a production and maintenance unit is not appropriate, the Employer misstates the presumptions and burdens in this case, as a production and maintenance unit is only presumptively appropriate if it is the petitioned-for unit. *See CNH America LLC Employer*, 2014 WL 203086 (NLRB) ("We find no merit to the Employer's contention that the Regional Director's decision runs counter to the Board's presumption that wall-to-wall production and maintenance units are appropriate. Such presumption is not applicable in this case because the Petitioner does not seek to represent a wall-to-wall unit"). This is not the case here. Rather, as discussed above, under *Specialty Healthcare* Petitioner must only show that the petitioned-for unit is *an* appropriate unit, not the best or only appropriate unit. Contrary to the Employer's arguments, Petitioner has met this burden.

In light of the above and the record as a whole, I initially find that the cellar employees in the petitioned-for unit share distinct characteristics that render them readily identifiable as a group and that they share a sufficient community of interest, rendering them an appropriate unit.

B. OVERWHELMING COMMUNITY OF INTEREST ANALYSIS

Having determined above that the petitioned-for unit of cellar employees is an appropriate unit, then under *Specialty Healthcare,* the burden of proof shifts to the Employer to demonstrate that the production and maintenance employees it seeks to add to the unit share such

an overwhelming community of interest with the cellar employees that the community of interest factors overlap almost completely. I find that the Employer has failed to meet this burden. Thus, I find that the petitioned-for unit appropriately includes cellar employees, and excludes the remainder of the Employer's production and maintenance employees, specifically barrel, cellar services, recycling, facilities maintenance, bottling, bottling sanitation, bottling maintenance, and warehouse employees. The factors that support my decision are analyzed in turn below.

1. Departmental Organization

The Employer divides the Facility under the oversight of five directors, one of which is the Director of Cellar Operations. Within this framework, only cellar, barrel, and cellar services fall within the purview of the Director of Cellar Operations. Beyond that, the Employer continues to subdivide, and has two separate cellar masters – one who oversees the cellar department, and another who oversees the barrel and cellar services departments. Thus, the petitioned-for unit completely aligns with one of the Employer's own departmental demarcations – the entirety of the cellar department. Accordingly, although the Employer contends that the petitioned-for unit impermissibly fractures its operations, such is not the case. Instead, the record reveals that the petitioned-for unit consists of an entire department drawn along the same lines drawn by the Employer. Thus, in view of the above and the record as a whole, the "departmental organization" factor weighs against finding that an overwhelming community of interest exists between the petitioned-for cellar employees and all production and maintenance employees. *See, e.g., Macy's Inc.*, 361 NLRB No. 4, slip op. at 9.

2. Skills and Training

The record evidence establishes that the skills and training requirements of cellar employees have little in common with those of bottling, bottling sanitation, facilities

maintenance, and warehouse employees. Unlike cellar employees, these other groups of employees have requirements that include, *inter alia*, carrying 50 pounds, more physical exertion and agility, and even advanced knowledge of certain trades, such plumbing and electrical.

To the extent the Employer argues that there is no core competency, academic background, work experience, or technical or professional knowledge to perform the production and maintenance jobs at issue, this argument does not withstand scrutiny. First, while it is true that entry level positions in all departments require only a high school diploma or GED and 0 to 2 years of work experience, this similarity is non-specific, and is not controlling in the instant analysis given the overwhelming amount of differences in required skills. Moreover, as discussed above and contrary to the Employer's argument, the record reveals that job descriptions do, indeed, list specific requirements that vary from one job classification to the next.

In light of the above and the record as a whole, I find that an analysis of the "skills and training" factor weighs against the Employer's position with regard to all production and maintenance employees at issue.

3. Job Duties

The Employer, in its brief, contends that cellar, barrel, and sanitation employees share the same primary functions, which include, *inter alia*, moving product throughout the Facility with pumps and hoses. The record evidence, however, undercuts the significance of any overlap in duties.

As a preliminary matter, the Employer's argument with respect to job duties focuses only on two other job classifications, barrel and sanitation, that share tasks with the petitioned-for cellar employees. Thus, even assuming this aspect of the Employer's argument is true, the fact

that an overlap of job duties exists amongst some, but not all, other employees does not establish an overwhelming community of interest between the petitioned-for cellar employees and all of the other classifications sought by the Employer. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 12. The record is also clear that these "same" tasks constitute only a limited portion of the job duties of cellar, barrel, and sanitation employees. This is insufficient, as the Board has found that "the fact that other employees perform some of the same tasks is not sufficient in itself to render the requested unit inappropriate." *Guide Dogs for the Blind, Inc.* 359 NLRB No. 151, slip. op. at 6 (quoting *Charles H. Tompkins Co.*, 185 NLRB 195, 196 (1970)).

Moreover, the record evidence establishes that, with the exception of the job classifications mentioned above, there is very little overlap in job duties between cellar employees and the remaining production and maintenance employees. For example, maintenance employees perform highly technical repairs and maintenance, including electrical and HVAC, and bottling operators work with bottling equipment and materials, which are all tasks that cellar employees never perform.

In light of the above, I find that the "job duties" factor weighs against the Employer's position regarding an overall unit of production and maintenance employees.

4. Functional Integration

The Employer further contends that since its production and maintenance employees all work as part of an integrated process to transform grapes into wine, only an overall production and maintenance unit is appropriate. However, the Board has already considered and rejected similar arguments. For example, in *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 (2013), the Board discarded the employer's argument that all "dog-handling" employees had to be included in any unit because all of those classifications "work[ed] together to accomplish the

growth, development, training, and care of guide dogs throughout the dogs' lives." *Id.*, slip op. at 6. In declining to find an overwhelming community of interest, the Board highlighted that "each classification has a separate role in the process" and "only limited interaction and interchange with other classifications." *Id.*

Here, like in *Guide Dogs for the Blind* and in many workplaces, all of the employees at issue serve an integral purpose in crafting the Employer's final product – wine. However, as discussed above, each department plays an essentially distinct role in the winemaking process. Plus, as noted below, the cellar employees have only limited interaction and interchange with other classifications. Thus, despite sharing an end goal of producing wine, this alone does not establish that the employees at issue "are so functionally integrated as to blur the differences between" the groups. *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151, slip op. at 8. *See also Macy's, Inc.* 361 NLRB No. 4, slip op. at 10 ("even if the petitioned-for employees are functionally integrated with the other selling employees, the petitioned-for employees have a separate role in the process, as they sell products no other employees sell, and they have limited interaction and interchange with other selling employees"); *DTG Operations, Inc.*, 357 NLRB No. 175, slip op. at 7.

In light of the above and the record as a whole, I find that the "functional integration" factor weighs against finding that an overwhelming community of interest exists between the petitioned-for cellar employees and the remainder of the Employer's production and maintenance employees.

5. Contact

The record evidence regarding contact amongst the cellar employees and the other production and maintenance employees at various work locations is limited at best. Though

employees from different departments may work alongside each other at times or even in the same room in limited circumstances, the record does not detail the nature and extent of interactions between departments. *See, e.g., Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (no overwhelming community of interest where the record contains no evidence as to the frequency or extent of informal contact with other departments at issue). In fact, much of the instant record suggests that there is very little interaction amongst the departments, and, when interaction exists, it is only with certain departments, not with all departments contested by the Employer.

The record also fails to establish sufficient contact between the respective groups of employees at meetings, trainings, and Employer-sponsored events. While it is true that all employees participate in certain events, contrary to the Employer's contentions, these events do not support a finding of significant contact. First, they are not a regular part of the employees' functions. Second, the record contains no evidence of interaction, beyond mere attendance, amongst employees. Third, when viewed as a percentage of the amount of hours worked by an employee during a given month or year, these types of activities constitute a very small amount when compared to regular, day-to-day duties. The Board has found even more regular meetings to be insufficient where "there is no indication of any employee interaction beyond simply being in attendance" and where the meetings "do not involve the employees performing the main [...] function." *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (15-minute rallies at the beginning of each day did not establish significant contact amongst employees).

In light of the above and the record as a whole, I find that the lack of significant contact weighs against the Employer's position regarding an overall production and maintenance unit.

6. Interchange

The record similarly fails to establish significant permanent or temporary interchange between the cellar employees and the other production and maintenance employees sufficient to establish that an overwhelming community of interest exists between the cellar employees and the other departments sought to be included by the Employer. Significantly, although the GM testified as to the existence of transfers, his testimony lacked sufficient detail to establish the nature and extent of such transfers. Thus, the one example he did remember regarding the temporary elimination of the barrel department happened almost a decade ago and was only a one-time occurrence during his lengthy 17-year-long tenure with the Employer. Similarly, his testimony regarding the transfer of a painter from cellar to facilities maintenance over a decade ago is isolated in nature and thus does not support a finding of interchange. Finally, to the extent that the record contains evidence that certain current employees from outside the cellar department began working at the Facility as temporary employees in the cellar department, such evidence is not dispositive as they were not employees of the Employer while working as temporary employees in the cellar department. *See, e.g.*, *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (nine permanent transfers out of 41 employees over two year period between petitioned-for and nonpetitioned-for employees does not establish significant interchange).

Moreover, under the Board's analysis, "evidence of permanent interchange is a less significant indicator of whether a community of interest exists than is evidence of temporary interchange." *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10. Here, as with permanent transfers, the evidence presented regarding short-term transfers fails to establish regular interchange. The most compelling evidence regarding interchange relates directly to other production and maintenance employees, but does not involve cellar employees. In fact, the only evidence

directly relating to cellar employees is extremely limited in nature. For example, both the stirring of barrels 5 years ago and 10 days of assisting the painter are extremely isolated. Thus, this is insufficient to meet the standard to show an overwhelming community of interest. *See, e.g., Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (assistance of other departments does not "involve a significant portion of the petitioned-for employees' time" and is "infrequent" and "limited," and thus does not establish an overwhelming community of interest).

In light of the above and the record as a whole, I find that interchange weighs against the Employer's position.

7. Terms and Conditions of Employment

All employees at issue share, in essence, similar terms and conditions of employment. Thus, they have the same work rules and policies, the same benefits, similar hourly pay ranges within the same pay band, similar equipment and systems, and the same attire requirements. Additionally, all employees at issue work on shifts, even though only some of those shifts overlap.

This factor weighs in favor of the Employer's position. However, Board law is clear that the existence of such common terms and conditions of employment is not a determinative factor, absent evidence of more dispositive factors. *See, e.g., Macy's, Inc.*, 361 NLRB No. 4, slip op. at 11 ("the fact that two groups share some community of interest factors does not, by itself, render a separate unit inappropriate").

8. Common Supervision

The record reveals that the employees in the production and maintenance departments at issue here are directly supervised by separate supervisors on a day-to-day basis,[17] and thus this factor does not support finding that these employees share an overwhelming community of

[17] An exception to this is that cellar services employees report to the barrel supervisor.

interest. Moreover, the record also indicates that there is essentially no interchange of supervisors between departments, and that if a supervisor is absent, a foreman from the same department, rather than a supervisor from another department, would assume certain of their responsibilities (such as receiving calls from employees regarding absences).

Indeed, the evidence fails to establish any overlap of supervision other than at the uppermost levels of the Employer's hierarchy, at which point the managers at issue do not, at least from the record evidence, interact regularly with employees.[18] Of note, the Board has found that "such common upper-level supervision can be [...] outweighed by other factors favoring a separate unit." *Macy's, Inc.* 361 NLRB No. 4, slip op. at 9 (citing *Grace Industries*, 358 NLRB No. 62, slip op. at 6 (2012)). *See also Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 slip op. at 6 (no overwhelming community of interest where employees report to separate managerial chains). Such is the case here, where the immediate supervisors of the cellar employees are not shared with the remainder of the production and maintenance employees, and other community of interest factors, discussed above, weigh against finding that all production and maintenance employees share an overwhelming community of interest.

In light of the above and the record as a whole, I find that the lack of common supervision weighs against the Employer's position.

9. Conclusions Regarding Community of Interest

I have fully considered and analyzed the community of interest factors assessed by the Board in cases of this nature.[19] Of these factors, I have determined that only the similarity of

[18] While it is true that human resources and other personnel forms used by supervisors are uniform throughout the Facility, this likewise does not in and of itself create an overlap of supervision, but rather reflects only a certain consistency in the Employer's corporate structure. Moreover, although other employees, such as winemakers, lab technicians, office clerical employees, and managers also share this same common human resources structure, even the Employer concedes that these classifications do not belong in any unit found appropriate herein.

[19] To the extent that the Employer argues that an industry pattern for wall-to-wall units should impact the outcome in the case, such contentions are misplaced. As a preliminary matter, Petitioner does not seek a wall-to-wall unit,

terms and conditions of employment weighs in favor of the Employer's position that all production and maintenance employees must be included in the unit. As for the remaining factors, they all weigh against the Employer's position. As the Board stated in *Specialty Healthcare*:

> Using a Venn diagram to illustrate its point, the [D.C. Circuit] Court explained that, considering traditional "community of interest factors, two groups have an overwhelming community of interest" when the "factors overlap almost completely."

357 NLRB slip op. at 11 (citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008)).

Significantly, the Board has emphasized that the "mere fact that all petitioned-for employees share certain community of interest factors with some (but not all)" of the remainder of the unit requested by the Employer "does not demonstrate the 'almost complete' overlap of factors required to establish an overwhelming community of interest between all the petitioned-for employees and all other" employees in the unit requested by the Employer. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 12 (quoting *Specialty Healthcare*, 357 NLRB slip op. at 11). Like the employer in *Macy's*, the Employer in the instant case argues that the smallest appropriate unit includes all production and maintenance employees. However, like in *Macy's*, the factors show, at most, that some of the petitioned-for cellar employees share similarities with some of the remaining production and maintenance employees at issue, such as barrel and cellar services. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 12.

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making the presumption inapplicable. Additionally, the Employer cites to no case law indicating that a specialty industry standard exists for wineries, but instead provided collective-bargaining agreements from other wineries, which are not controlling to the instant analysis. Moreover, while the Board has noted that there are specialty industries with specific norms, there does not appear to be a specific standard for wineries. *See, e.g.*, *Sonoma Vineyards, Inc.*, 264 NLRB 642 (1982) (ULP case relating to a production and maintenance unit at a winery, but in which the composition of the unit was not at issue); *Di Giorgio Wine Co.*, 120 NLRB 268 (1958) (parties stipulated to the appropriateness of a production and maintenance unit in the winery, but litigated other issues). Finally, and as noted by the Board in *Macy's*, even assuming a standard did exist, this standard is not necessary mutually exclusive with the analysis set forth herein pursuant to *Specialty Healthcare*. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 13-19.

At most this establishes, as the Employer contends, that another unit might also be appropriate. For example, a unit combining cellar, barrel, and cellar services employees, or even a Facility-wide production and maintenance unit, might have also been an appropriate unit had Petitioner sought to represent that group. However, as is well established under Board law, the mere fact that another unit may also be appropriate does not render the petitioned-for unit of cellar employees inappropriate within the meaning of the Act.

In conclusion, I find that the Employer failed to meet its burden of showing that the employees in the remaining job classifications encompassed by the Employer's proposed production and maintenance unit share an overwhelming community of interest with the petitioned-for cellar employees.[20]

IV. CONCLUSIONS AND FINDINGS

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

[20] On brief, the Employer has limited its argument to the position that only an overall unit of production and maintenance employees is appropriate here. For the reasons set forth above, I have rejected this argument as contrary to the Board's holding in *Specialty Healthcare.* Although not argued by the Employer on brief, a colorable alternative argument could have been made that a unit of all cellar and barrel employees is actually the most appropriate unit in this case. In this regard, the record reflects that the cellar and barrel employees have identical skills and training requirements, as positions from both departments utilize the same job descriptions. Their job duties and functions also share many similarities. There is also some limited evidence of interchange, as reflected in the 2005 transfer of four employees from the barrel room to the cellar department, and their 2009 transfer back again, along with some very limited evidence of sporadic temporary interchanges. Finally, there is some evidence that the cellar employees and the cellar services employees occasionally work together in filling and cleaning tanks. On the other hand, it is clear that the cellar and barrel employees have been organized by the Employer into separate departments, with separate front-line supervisors and separate intermediate supervisors (i.e. the cellar masters). It is also clear that the cellar and barrel employees work in physically separate locations; they have different job functions in that they work on different portions of the Employer's winemaking process; and they have limited daily contact with each other. Under these circumstances, while an argument can be made that a unit of cellar and barrel employees is an appropriate unit, as noted above "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." *Overnite Transportation Co.,* supra. Therefore, only argument that the that the smallest appropriate unit here must include both the cellar and barrel departments, runs counter to the Board's holding in *Specialty Healthcare* and, accordingly, I reject such an argument.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. Petitioner claims to represent certain employees of the Employer.

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

6. 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 operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California, Facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, and managers and supervisors as defined in the Act.[21]

There are approximately 46 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

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 the purposes of collective bargaining by the Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of

[21] The Unit found appropriate conforms substantially with the unit the Petitioner sought at hearing.

Teamsters. The date, time and place of the election will be specific 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 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.

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 that may be used to communicate with them. *Excelsior Underwear,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon* Co., 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 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.).[22] The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before January 15, 2015. No extension of time to file this list may 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 shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by electronic filing through the Agency's website, **www.nlrb.gov**,[23] by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of the list will continue to be placed upon 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, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE POSTING OBLIGATIONS

According to Section 103.20 of the Board 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 3 working days prior to 12:01 a.m. of the day of election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are

[22] The unit consists of about 46 employees.
[23] To file the eligibility list electronically, go to www.nlrb.gov and select **File Case Documents**, enter the NLRB Case Number, and Follow the detailed instructions.

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.

D. 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 p.m. (ET) on January 22, 2015. The request may be filed through E-Gov on the Agency's website, http://www.nlrb.gov, but may not be filed by facsimile.[24]

DATED at Oakland, California this 8th day of January 2015.

/s/ George Velastegui
George Velastegui, Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

[24] To file the request for review electronically, go to www.nlrb.gov and select the **File Case 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.nlrb.gov.