

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

CHAMPION WINDOW MANUFACTURING
AND SUPPLY CO., LLC ^{1/}

Employer

and

Case 9-RC-18299

IRON WORKERS SHOPMEN'S
LOCAL UNION NO. 468

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

I. INTRODUCTION

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board on June 4 and 7, 2010. The Employer, a wholly-owned subsidiary of Champion Holdco, LLC ("Holdco"), is engaged in the manufacture of windows and sliding glass patio doors at its Cincinnati, Ohio facility. The Petitioner seeks to represent a unit comprised of all full-time and regular part-time hourly production, maintenance, shipping and receiving employees, line leaders, and plant clerical employees employed at the Employer's manufacturing facility located at 12121 Champion Way, Cincinnati, Ohio, but excluding logistics employees, administrative employees, office clerical employees, confidential employees, professional employees, guards and supervisors, as defined by the Act. The Petitioner asserts that the Employer's production and maintenance employees are employed at a single plant and the unit is presumptively appropriate under Board standards.

The Employer, in contrast to the Petitioner, asserts that it is one of three corporations constituting a single employer and any appropriate unit must include the same classifications of employees also employed by its two sister corporations, Champion Door Manufacturing Co., LLC, hereinafter referred to as Champion Doors, and Enclosure Suppliers, LLC, hereinafter referred to as ESI or Patios. ^{2/} The Employer argues that the community of interest shared by employees in the unit sought by the Petitioner is not sufficiently distinct to warrant the exclusion of similar job classifications employed respectively by Champion Doors and ESI. The Employer urges that, at a

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} Patios is often referred to in the record as ESI, which originated when its legal name was Enclosure Suppliers, Inc.

minimum, the appropriate unit must include Champion Door's employees and, most appropriately, should also include ESI's employees.

I have fully considered the record evidence as a whole, as well as the arguments made by the parties at the hearing and in their post-hearing briefs. As set forth in detail below, I find that the Employer, Champion Doors and ESI are a single employer. However, the record does not establish that the employees of Champion Doors and ESI possess such a substantial community of interest with the Employer's employees so as to compel their inclusion in the same unit. Accordingly, I find the unit sought by the Petitioner to be appropriate.

In explaining how I came to my determination on these issues, I will first give an overview of the Employer's operations, including its organizational and operational structure, and discuss the working conditions of its employees. I will then set forth the applicable legal precedent and analyze each issue in relation to that precedent. Before beginning my analysis, I note that there is no history of collective bargaining affecting any of the employees involved in this proceeding.

II. FACTUAL OVERVIEW OF EMPLOYER'S OPERATIONS

A. Corporate Structure

The Employer, Champion Doors, and ESI are subsidiaries of Champion HoldCo, LLC ("HoldCo"), which is the holding company for all of the various companies within the Champion enterprise, referred to herein as Champion. Champion manufactures, sells and installs custom built replacement windows, patio doors, entry doors and patio enclosures. The record reflects that it advertises all of these products under the Champion name. Champion also sells and installs vinyl siding, which it purchases from an outside manufacturer. The Employer produces replacement windows and patio doors; Champion Doors makes entry doors; and ESI manufactures patio enclosures, including the patio doors that are attached to the enclosures.

There are two intermediate subsidiaries between HoldCo and the three manufacturing entities at issue: Champion OpCo, LLC ("OpCo"), which finances the operations of all of the Champion companies, and Champion ManuCo, LLC ("ManuCo"), the manufacturing arm of Champion. HoldCo wholly owns OpCo, which in turn wholly owns ManuCo. ManuCo wholly owns Champion's only manufacturing facilities: the Employer, Champion Doors, ESI and a fourth manufacturing operation, Champion of Denver, which is located in Denver, Colorado and not at issue in this proceeding. Production at these facilities is driven by customer orders and the products are built according to customer specification. Champion sells and installs its products under the auspices of Champion RetailCo, LLC ("RetailCo"), which is comprised of approximately 68 retail affiliates around the United States in which RetailCo has majority ownership. Like ManuCo, RetailCo is wholly owned by OpCo. Champion delivers most of its products in trucks owned by Champion Window and Door Trucking ("Champion Trucking"). Champion Trucking, also wholly owned by OpCo, reports directly to Champion's Chief Operating Officer (COO) Donald Jones. The employees of Champion Trucking are not at issue in this proceeding.

Champion's Chief Executive Officer (CEO) Dennis Manes, and its COO Jones, report directly to Champion's board of directors. Jones oversees Logistics Manager Jeff Behrman, who

is in charge of Champion Trucking's operations, and serves as vice-president of manufacturing with overall responsibility for Champion's four manufacturing entities, i.e., the Employer, Champion Doors, ESI and Champion of Denver. Jones is responsible for determining the annual budget, setting production goals and hiring the plant managers of the manufacturing entities. Reporting to CEO Manes and COO Jones in the corporate hierarchy are Doug Tulmaris, vice-president of marketing, Marty Hindt, vice-president of administration, and Joe Faisant, chief financial officer (CFO). Hindt oversees the director of human resources, Sandy Stude, assistant director of human resources, Kathy Crawley, and the corporate safety manager, Bill Radlinger. In addition to their corporate duties, both Crawley and Radlinger also have responsibilities specific to the Employer. Crawley's assistant, Amy Carroll, serves as the Employer's primary human resources person and handles all such activities. Radlinger, who handles safety matters throughout the Champion enterprise, is responsible for conducting the safety orientation of the Employer's new hires.

The three corporations at issue in this proceeding are separately incorporated, have individual EIN numbers and each pay their own state tax. Pursuant to a system devised by CFO Faisant for record keeping and tracking, each corporation has its own checking account for operations; however the accounts are "zero balance" accounts in which all funds are deposited by OpCo and then transferred back to the OpCo account on a daily basis. The corporations do not perform any production for one another and each corporation receives its manufacturing orders directly from their respective retail affiliates. Some of the materials used in the production process of each corporation are jointly ordered, but each corporation is "billed" for its portion of the material. For example, COO Jones secured contracts with two suppliers to provide all of the glass and vinyl used by the Employer and ESI in the manufacturing process. Each corporation has its own equipment, but the Employer and ESI share Argon testing equipment that is located in Champion University, a training and testing facility. The testing equipment is needed to determine whether the right amount of Argon is being used in the insulated glass used in both the window and patio products. The record does not disclose whether production employees in the petitioned-for unit conduct such testing.

Each of the manufacturing corporations at issue has its own plant manager who reports directly to COO Jones. The plant managers only have production related and operational responsibilities for their respective plant. Production employees at each of the three corporations are supervised by their respective plant managers. Each plant manager is responsible for hiring, firing and disciplining his employee complement. The Employer's plant manager, Allen George, testified that he decides the starting wage for all new hires in consultation with "human resources." Ronald Baroni, Champion Doors' plant manager, testified that he sets initial wages and determines the wage increases for employees. He grants wage increase out of his labor budget, but if his labor costs exceed his allocated budget, Baroni must secure approval from senior management before granting any wage increases.

The record reflects that Champion's "corporate" personnel, i.e., the individuals working in the departments listed above the manufacturing facilities on Champion's organizational chart (Employer's Exhibit 2(a)), handle certain functions for the entire Champion enterprise, including

the three manufacturing corporations at issue herein. ^{3/} For example, the record reflects that advertising of Champion's products is overseen by the vice-president of marketing and marketing also e-mails a company-wide employee newsletter that is supposed to be posted at the manufacturing facilities. ^{4/} The CFO is responsible for setting up and managing the financial accounts used by the manufacturing entities. Champion has a national account through which all office supplies are ordered from the same supplier. All entities use the same e-mail system. There is record evidence that the Employer and Champion Doors use the same phone system, but the record does not disclose whether ESI also shares the system. Finally, a committee with representatives from each of the Champion entities in Cincinnati plans an annual employee picnic, the cost of which is proportionally shared by each entity.

Much of the adduced evidence at the hearing related to the functions provided by "corporate" human resources personnel ("corporate HR"). Thus, the record reflects that Assistant Human Resources Director Crawley coordinates employee benefits for the entire Champion enterprise, but a third party, Universe, actually administers the employee benefit program and handles claims. Crawley and her assistant, Amy Carroll, conduct the initial screening of all job applicants using the same application for all three manufacturing corporations. The initial applicant screening process includes reviewing applications for basic production experience, pulling applications that meet the minimum criteria, and conducting background checks, which is done by Safety Manager Radlinger. However, interviews and final hiring decisions are made by each corporation's plant manager. Each corporation conducts its own employee orientation, including its own safety orientation, but Crawley provides a checklist of items to be covered in orientation for all employees and each entity uses the same safety orientation script and the same forms verifying that the employee has been trained. Additionally, all the corporations use the same safety manual. Crawley, who is the primary human resources person for the Employer, conducts its orientation for new employees and Safety Manager Radlinger conducts the safety orientation.

Champion's human resources department (HR) formulates and disseminates certain personnel policies which are set forth in an employee handbook that applies to the Employer's employees and those of Champion Doors. However, Champion Doors has an additional employee handbook that is said to "supplement" the handbook from Champion and ESI has its own employee handbook. The record does not indicate whether the ESI and supplemental Doors handbooks were created by "corporate." ESI has its own human resources person who deals directly with Champion's HR staff in administering her duties. Crawley testified that she guides and trains the human resources personnel in ESI as well as Champion Doors. However, there is conflicting record evidence regarding whether Champion Doors has its own human resources personnel. COO Jones testified that Champion Doors did not, while Crawley testified that Champion Doors and ESI each employ a person to handle various personnel matters, including approving FMLA requests and processing claims for worker's compensation and unemployment benefits. Crawley supplies the requisite forms and gives directions to the individuals who handle

^{3/} I cannot determine from the record before me which entity or entities within Champion employ these individuals. For example, COO Jones was not sure whether he was employed by HoldCo or ManuCo. Assistant Human Resources Director Crawley testified that she was employed by the Employer.

^{4/} There is no record evidence that production employees have e-mail accounts.

these matters for Champion Doors and ESI, but personally handles such matters for the Employer. On occasion Crawley has handled these matters for employees of Champion Doors and ESI, respectively, but the record does not clearly reflect how frequently this occurs. It is undisputed that each corporation physically maintains its own personnel records.

B. Operations and Physical Layout

The Employer, which employs approximately 160 production employees, has two shifts. The first shift operates from 7:00 a.m. to 4:45 p.m., Monday through Thursday and from 7:00 a.m. to 11:00 a.m. on Fridays. The second shift operates from 5:00 p.m. to 1:30 a.m., Sunday through Thursday. In addition to Allen George, its plant manager, the Employer also has two assistant plant managers on first shift, two supervisors on second shift, a purchasing manager and a quality control manager. COO Jones testified that the Employer has a maintenance supervisor who supervises its two maintenance employees. In contrast, both Champion Doors and ESI operate on one shift. Champion Doors' hours are the same as that of the Employer's first shift whereas, ESI's shift is from 7:00 a.m. to 3:35 p.m., Monday through Friday. Neither Champion Doors, which employs approximately 32 production employees, nor ESI, which employs approximately 28 production employees, have any supervisors reporting to their respective plant managers.

Champion's home office and the three manufacturing corporations are contained within two buildings located on what is described in the record as its "campus."^{5/} The first building, which is approximately 400,000 square feet, houses Champion's corporate offices, together with its retail showroom, the Employer, Champion Doors and Champion University.^{6/} Champion's corporate offices and showroom collectively occupy about 100,000 square feet and are located at the front of the building. The Employer occupies a 200,000 square feet space behind the corporate office/showroom area, with which it shares the same address – 12121 Champion Way. Champion Doors, which occupies 50,000 square feet of space, is located behind the Employer and has its own address – 12119 Champion Way. A wall separates the Employer's operation from that of Champion Doors.

From 2000 to 2003, the Employer and Champion Doors shared the space that is now occupied in its entirety by the Employer. Champion Doors moved into its current space in 2003, after an unrelated tenant who had been leasing the space moved out. Champion University is located in an area behind Champion Doors, but the record does not indicate whether a wall separates the two operations or whether they share the same address. The second building, of approximately equal size and located across the street, houses ESI and Champion Trucking. ESI has its own address in this building – 12111 Champion Way – but it is not clear from the record whether it shares this address with Champion Trucking.

^{5/} There is a third building on the grounds that is occupied by an unrelated company and whose employees are not involved in this proceeding.

^{6/} Champion also leases 40,000 square feet of the first building to an unrelated tenant, Palmer Donovan. Palmer Donovan is located at the back of the building and its employees are not involved in this proceeding.

The first building which houses the Employer and Champion Doors is flanked by a parking lot to its front and left that is jointly used by employees of both the Employer and Champion Doors. Although the record is not clear regarding where employees of ESI park, the record reflects that there is no designated parking in any parking lot. The right side of the first building is flanked by shipping and receiving docks. While each manufacturing corporation has its own receiving docks where the corporation receives raw materials to manufacture its product, the Employer and Champion Doors share eight shipping docks where they load their product onto delivery trucks operated by Champion Trucking. The docks are located off of the Employer's operation. Thus, when Champion Doors moved out of the shared area with the Employer and into the abutting space, Champion installed two points of access on the wall separating the two entities: a "regular sized" door and a garage door that is approximately 12x12 feet. The garage door remains open throughout the Employer's first shift, but is typically closed during second shift. ^{7/} It is used by Champion Doors' employees to transport finished entry doors by forklift for loading at the shared shipping docks.

The Employer has five shipping employees; Champion Doors has five employees who are certified to do shipping, i.e., they can drive a forklift, but only one of them serves as the primary shipper at any given time. The remaining four employees do production work and provide back up in the absence of the primary shipper. The shipping employees from the Employer inform Champion Doors' personnel when they can bring their product to the dock to load. The Champion Doors' primary shipper then forklifts the finished entry doors to the appropriate loading dock, depending on the city to which it is being delivered, and then loads them onto the truck. If the employee is delivering a large-sized door or a large number of doors, he may get assistance from one of the Employer's shipping employees. Depending on production needs, the primary shipper may leave the doors in the staging area for the appropriate dock so that it can be loaded by one of the Employer's employees. On average, the primary shipper takes product to the Employer 8 to 12 times a day.

Products from the Employer and Champion Doors are regularly delivered in the same trucks and each entity pays the respective costs for such delivery based on the square footage it uses. Less frequently, at most up to several times a week during its busy season, ESI co-ships its product with that of the Employer. In this instance, ESI employees bring the product to the Employer's loading dock on a pick up truck and load it onto the delivery truck. On occasion, the Employer's employees will assist in loading. The joint shipping arrangements are coordinated by Tina Nussbaum, the Employer's assistant plant manager, who sends the weekly trucking schedule out to the various corporations. Champion Doors and, less frequently, ESI reserve space on a truck depending on their orders for the week. Mike Bellman, the Employer's materials manager, reserves space for the Employer.

The Employer, Champion Doors and ESI have separate employee entrances, time clocks, employee break rooms and restrooms. The Employer's employees sign in using their hand print and ID entry, whereas Champion Doors' employees sign-in manually. The record does not disclose how ESI employees sign in. There is conflicting record evidence regarding whether

^{7/} The record does not indicate whether the "regular-sized" door remains open during both of the Employer's shifts and does not describe the frequency with which it is used by employees, if at all.

production employees of the Employer and Champion Doors ever comingle in their respective break rooms. Although Plant Manager Allen asserts that employees from both companies "sometimes" use the same break room, he did not describe the frequency with which this occurs. The Petitioner's employee witnesses testified that they only see fellow employees in the Employer's break room.

C. Integration of Operation and Employee Interchange:

There is ample evidence in the record establishing that the Employer and ESI have similar production processes and use similar equipment. There is, however, no record evidence of production employees temporarily transferring between facilities or aiding in each other's production. Moreover, job openings are not posted in each others' facilities. Regarding "permanent transfers," the record reflects that in 2007, two employees permanently transferred from Champion Doors to the Employer because they had experience with a paint bonding process that the Employer was implementing. The employees retained their same benefits and paid time off. In addition, the record reflects that two employees discharged by the Employer were later hired by Champion Doors. However, there is no evidence indicating that these employees retained the rate of pay or were credited for benefits that they earned while employed by the Employer. Further, a production employee from ESI also works part-time on the Employer's second shift to earn extra money. The record reflects that, on one occasion, the Employer's maintenance employees helped to reset and fix a conveyor belt at Champion Doors. According to COO Jones, Champion Doors does not have or need maintenance employees because its production employees are typically able to maintain their equipment.

D. Employee Compensation and Benefits

All Champion employees receive the same benefits at the same cost, e.g., medical, dental, life insurance, 401(k) and flexible spending accounts. As noted previously, the benefits are administered by Universe, a third party. All employees receive the same benefit guide explaining their benefits and a worksheet instructing them that upon attaining eligibility to call Universe to learn about and/or enroll in various plans. Assistant HR Director Crawley collects the data on all of Champion's new hires and sends the information to Universe. She also corresponds with all corporations within Champion to ensure that the relevant data is correct. Universe informs her when employees have not called to set up their benefits and she, in turn, informs the respective corporation that employs the person.

The Employer, Champion Doors and ESI all maintain separate payrolls. COO Jones testified that the hourly pay for production employees at the three corporations ranges from \$9.50 to \$12 an hour, but Champion Doors' production employees earn \$12.96 on average. Both the Employer and Champion Doors have employee incentive programs; the record does not indicate whether ESI has such a program. Both the Employer and Champion Doors have the same attendance incentive program pursuant to which employees earn monetary bonuses for maintaining perfect weekly and monthly attendance. Each entity also gives their employees monetary performance incentive rewards for producing product under budget; however, the programs are structured differently.

The Employer uses a formula that associates a specific labor cost for each window produced to determine the projected labor cost on a weekly basis. If the actual labor costs are lower than the projected amount, the Employer splits the difference and shares it equally among all its employees. This incentive plan was revised by the Employer's plant manager and COO Jones. Champion Doors has three different performance incentives, two of which were created by its plant manager. One is a "labor reward" that factors in quality, which has to be 95 percent or better, and the cost of labor divided by the cost of shipping. The second is a "materials" reward and is based on employees using the least amount of material to make doors. The third is a "wallet" reward pursuant to which employees are given a cash reward for coming up with ideas to improve efficiency. Champion Doors splits the saved costs from the labor and materials incentive rewards with its employees.

III. LEGAL FRAMEWORK

A single employer exists when two or more employing entities are, in reality, a single-integrated enterprise. See, *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283 (2001). In determining single-employer status, the Board and courts consider four factors: (1) common ownership; (2) common management; (3) centralized control of labor relations; and (4) interrelation of operations. See, *Radio Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965); *Emsing's Supermarket*, 284 NLRB 302 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989). However, all of these criteria need not be present to establish single-employer status, which ultimately depends on all the circumstances of a case and is characterized by the absence of an arm's-length relationship found among unintegrated companies. *Central Mack Sales*, 273 NLRB 1268, 1271-72 (1984); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), enfd. mem. 626 F.2d 865 (9th Cir. 1980); *Emsing's Supermarket*, 284 NLRB at 304; See also *Lebanite Corp.*, 346 NLRB 748 (2006). Although none of these factors are controlling, the Board has stressed the importance of the first three factors, particularly centralized control over labor relations. *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001); *Herbert Industrial Insulation Corp.*, 319 NLRB 510 (1995)

A determination of single-employer status, however, does not resolve the issue of whether a requested unit is appropriate. While the single employer analysis focuses on ownership, structure and integrated control of separate corporations, consideration of the scope and composition of the bargaining unit requires examination of traditional community of interest factors. *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976); *Peter Kiewit Sons Co.*, 231 NLRB 76 (1977); *Lawson Mardon U.S.A.*, 332 NLRB 1282 (2000). Such factors include degree of functional integration, common supervision, the nature of employee skills and functions, interchange and contact among employees, work situs, and fringe benefits and pay. See, e.g., *Casino Aztar*, 349 NLRB 603 (2007); *United Operations, Inc.*, 338 NLRB 123 (2002); *United Rentals, Inc.*, 341 NLRB 540 (2004) and *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004). Furthermore, the Act requires only that a unit for collective bargaining be an appropriate unit and not the ultimate or most appropriate unit. *Barlett Collins Co.*, 334 NLRB 484 (2001). A union is not required to seek representation in the most comprehensive grouping of employees. *P. Ballantine & Sons*, 141 NLRB 1103 (1963) Thus, where a union seeks to represent the employees of only one entity within a single-integrated enterprise, i.e. single employer, and such unit is otherwise appropriate, the relevant inquiry is whether the excluded employees employed by

the remaining entities possess such a substantial community of interest with the requested unit as to compel their inclusion in the same unit. *Lawson Mardon*, supra; *J&L Plate*, 310 NLRB 429 (1993); Also compare, *Bartlett Collins*, supra.

IV. ANALYSIS

A. Single Employer Status

I find that the Employer, Champion Doors and ESI constitute a single employer. Although each entity possesses a certain degree of autonomy, they operate within an organizational structure that is strongly marked by the indicia of a single-integrated enterprise. Before I specifically examine each element relevant to a single-employer analysis, I note that, notwithstanding its corporate structure of separately incorporated entities, Champion essentially holds itself out to the public as a single enterprise, right down to the ownership of its own delivery trucks. It markets and sells its product under the Champion name, without distinction between its various manufacturing facilities. Moreover, with the exception of its retail affiliates and its Denver, Colorado production facility, its operation is housed on a discrete "campus," albeit in separate buildings, branded with the Champion name.

The record establishes that the Employer, Champion Doors and ESI are commonly owned and share common management. They are all owned by ManuCo, and they are all financed by ManuCo's parent, OpCo, which manages each of their financial accounts through CFO Faisant. COO Jones sets each entity's budget. Thus, even though each entity is responsible for managing its own spending, control over their budgets and daily operating expenses is centrally exercised by Champion's top management. The three entities share the same board of directors and the plant manager at each entity reports to the same Champion executives, COO Jones and CEO Manes. I am mindful of the fact that significant daily and managerial authority over the three entities is exercised independently at the plant-level, but common management need not exist at all levels to find single-employer status.

Although each entity has control over certain labor matters, such as hiring, wages and bonuses, the record reflects that the companies are guided by policies and procedures emanating from the corporate hierarchy. Champion's Human Resources issued the employee handbook used by the Employer, Champion Doors and ESI, as well as the safety manual covering all Champion employees. It also developed the safety orientation that each entity is required to conduct for its new hires. Personnel from corporate human resources use a uniform job application for all entities and, by conducting the initial screening of applicants, create the pool of applicants from which the plant managers make their final hiring selection. Champion's corporate human resources also consult with plant-level human resources personnel on various matters such as FMLA and short-term disability leave. Finally, and perhaps most notably, Champion's corporate human resources control and administer many of the employee benefits, e.g., medical and life insurance, 401(k) plans, etc. which are the same for all Champion employees.

Each corporation exercises autonomy over the hiring and firing of their respective employees, the setting of wages, the granting of bonuses, and the approval of leave requests. Nevertheless, such authority possessed by the plant managers does not diminish the centralized

residual control where, as here, there are a number of other indicators tending to show that it is an integrated enterprise. Indeed, the extent to which each plant manager may grant wage increases and incentives is subject to his respective budget, which is set by COO Jones. Thus, on balance, I find that the record supports a finding that there is a sufficient amount of common control over certain labor relations matters to support a finding of single-employer status.

In regards to interrelation of operations, the record reflects that each manufacturing corporation essentially stands on its own in producing its product, with the exception of co-shipping of products and joint ordering of raw materials used by the Employer and ESI. I also note that the Employer and Champion Doors use the same e-mail and phone systems. Thus, there is some interrelation between the manufacturing entities. There is much higher interrelation between the manufacturing facilities and the retail affiliates because they supply the products that are installed by the affiliates. Viewing Champion as a whole, there is sufficient interrelation of operations to support a finding that it is a single employer.

B. Appropriateness of the proposed unit

Despite my conclusion that these entities constitute a single-integrated enterprise, I find, as will be discussed in more detail below, that the degree to which each corporation dictates the terms and condition of employment of their respective employees supports my finding that the unit sought by the Petitioner is an appropriate unit for collective bargaining with a distinct community of interest. The record does not establish that the production employees of Champion Doors and ESI share such a substantial community of interest with the Employer's employees as to compel their inclusion in the unit sought by the Union. In reaching my conclusion, I reiterate that a union need not seek to represent employees in the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950); compare, *Lawson Mardon*, supra. Rather, Board law requires only that a unit for collective bargaining constitute an appropriate unit. *Ibid.* No party disputes that the Employer's production employees share a substantial community of interest. Without enumerating all of the factors supporting my conclusion, I note that the Employer's production employees produce the same products under the primary authority of the same plant manager, with the same terms and conditions of employment, e.g., wages, bonuses, benefits, disciplinary policies and work hours.

Both the Petitioner and the Employer urge that I apply the "single plant" presumption to find in their respective favor, with the Petitioner arguing that the Employer's window manufacturing facility is a single plant and the Employer asserting that the Employer and Champion Doors together constitute a single plant and thus the smallest appropriate unit. A single plant unit is presumptively appropriate, unless it is so functionally integrated with other operations that it loses its separate identity. *Hegins Corp.*, 255 NLRB 1236 (1981); *Trane*, 339 NLRB 866 (2003). The party seeking to expand a single-plant unit to a multifacility unit bears the burden of rebutting this presumption. *Hilander Foods*, 348 NLRB 1200 (2006). Initially I note that it is not necessary for me to rely on the single-plant presumption in my analysis because the record strongly establishes that the bargaining unit employed by the Employer shares a separate community of interest from both Champion Doors and ESI. See, *Lawson Mardon*, 322 NLRB at 1283, fn. 1.

Although located at the same building, I conclude that the Employer and Champion Doors should be viewed as separate facilities. Physically, they have separate addresses, work areas, production equipment, receiving docks, employee entrances, restroom and eating areas, and are, in fact, separated by a wall. Indeed, the space in which Champion Doors has been located since 2003 was formerly leased by an unrelated tenant of Champion. Another unrelated tenant presently occupies space in the building with the Employer and Champion Doors and it also has a separate address. From an organizational and operational standpoint, even though part of a single-integrated enterprise, the Employer and Champion Doors are separately incorporated, operate under separate day-to-day supervision and do not share integration of production processes. The only factor supporting a finding that they share a single facility is the garage door used by the Champion Doors employees to access the shipping docks used by Champion Doors and the Employer. This is insufficient to establish that they are a single plant in light of the overwhelming evidence to the contrary. Thus the burden falls on the Employer to rebut the presumed appropriateness of the unit sought by the Petitioner. *Hilander Foods*, supra. The factors that I take into account in determining whether the Employer has met this burden are essentially the same factors that are examined in a community of interest analysis. Compare, e.g., *Hilander Foods*, supra, and *Brand Precision Services*, 313 NLRB 657 (1994). Based on my examination of such factors, set forth below, I would find that the Employer failed to meet its burden to rebut the single plant presumption.

The high degree of autonomy that each of the three entities in question possess in producing their respective products, determining the working conditions of their employees and managing their day-to-day operations, coupled with the low level of employee interchange and interaction between the three entities clearly establishes that the unit limited to the Employer's employees is appropriate. *Lawson Mardon*, supra; compare, *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB 689 (2005). Although certain terms affecting the Employer's employees, such as benefits, safety orientation and initial job screening, are the same as those experienced by other Champion employees and are centrally administered by corporate human resources, their working conditions are affected primarily by the plant manager, by the other supervisors who oversee their work and by certain terms of employment that are specific to the Employer's operations. The Board accords little weight to examples of centralized administration and control over personnel matters where other evidence establishes that the entity employing the petitioned-for unit possesses local autonomy which militates toward a separate unit. *Cargill, Inc.*, 336 NLRB 1114 (2001); *New Britain Transportation Co.*, 330 NLRB 397 (1999).

Here, the record reflects that the Employer's plant manager and/or the supervisors under his authority are solely responsible for hiring, supervising and disciplining the Employer's employees. The Employer maintains their personnel records. While it appears that their wage scale is similar to that of employees at Champion Doors and ESI, and they enjoy the same attendance incentive as these employees, the Employer's plant manager sets their starting wages and wage increases, albeit in consultation with Champion's "human resources." Moreover, the Employer's employees enjoy a performance incentive that is unique to their operation and based on the production of windows and patio doors only. Such performance incentive was modified with the plant manager's input. Although the Employer, Champion Doors and ESI share common upper management, the record establishes that Employer's employees have little daily contact with corporate personnel. Their daily work is supervised at the plant level. The foregoing factors exemplify the separate and

distinct community of interest shared by employees in the petitioned-for unit. See, *Lawson Mardon*, 332 NLRB at 1282-1283.

The lack of functional integration between the operations of the three entities along with the dearth of employee interaction and interchange between the respective employee complements underscore the separate nature of each facility. cf. *Cargill, Inc.*, supra. With the exception of the co-shipping arrangement, there is no integration between the operations of each of the manufacturing entities. The Employer heavily relies on the fact that both it and Champion Doors, co-ship their products and it emphasizes the employee cooperation and interaction that occurs between the employees of the three entities in performing this function. Such interaction involves only 5 out of the Employer's approximately 160 production employees and 1 Champion Doors' production employee who comes to the Employer's shipping area about 8 to 12 times a day to drop off and load product. Although the Employer's 5 shipping employees have daily contact with the Champion Doors shipper, they represent a very small portion of the unit and their interaction is not sufficient to establish a community of interest between the three entities. *Lawson Mardon*, 332 NLRB at 1283 (Insufficient evidence of employee interaction where the daily contact between the employees in a petitioned-for unit and the excluded employees employed by its sister corporation consisted mainly of transporting products or materials to and from each other's respective operations.) Notably, in *Lawson Mardon*, supra, a much higher percentage of the proposed unit, 60 out of 148, interacted with employees from a sister corporation and the Board found this insufficient under the circumstances. The record does not disclose the number of ESI employees who interact with the Employer's employees to ship product, but I note ESI co-ships its product on a much less frequent basis. I find the evidence regarding the employee interaction that allegedly takes place in the break rooms and Champion University, including the Argon testing, to be anecdotal and not probative of the community of interest issue.

The record is otherwise devoid of evidence showing any interaction between the production employees at the three facilities. They receive separate training, work separately on different products, albeit using similar equipment, and take their lunch and breaks in different areas. In a similar vein, the purported incidents of transfers between the three facilities, upon which the Employer also relies, do not establish that there is regular and substantial employee interchange indicating a shared community of interest. In this regard, the record reflects that there are no temporary transfers between the entities and only two employees have permanently transferred between the entities, from Champion Doors to the Employer approximately 3 years ago. The entities do not post notice of job openings at each other's facilities, but rather fill openings through new applicants. The example of the one ESI employees working part-time on the Employer's second shift does not constitute interchange, particularly since the record discloses that the employee sought the job with the Employer to earn extra money. The Employer failed to adduce any evidence showing that he remains on ESI's payroll when working for the Employer or that he is being used to fill-in for employee absences or help with increased production. Finally, the example of the two employees who were fired by the Employer and later hired by Champion Doors does not constitute a transfer and demonstrates the independent hiring decisions exercised by each company. There is no evidence that the individuals hired by Champion Doors retained any wage rates, benefits or seniority that they had accumulated from their employment with the Employer.

I have reviewed the cases cited by the Employer in its brief in support of its position. I find that they are distinguishable from the facts of the instant case and do not compel the inclusion of employees from all three entities, or even those of just the Employer and Champion Doors, in the same bargaining unit. Thus, in *Boeing Company*, 337 NLRB 152 (2001), cited by the Employer, involving an employer who contracted with the federal government to service and repair C-17 engine aircrafts, the Board found that the petitioned-for unit limited to recovery and modification (“RAM”) employees was inappropriate because they were highly integrated with the engine support equipment (“ESE”) and repair of repairables (“ROR”) employees, and received the same employer provided training and certification classes. The ESE group supplied and serviced the equipment used by the RAM group to perform repairs and, significantly, repaired the aircrafts that the RAM groups were unable to repair. *Boeing Company*, supra at 153. The ROR group supplied the testing kits used by RAM to detect problems in the aircrafts. *Ibid.* These factors far outweighed the lack of interchange and common supervision among the employees. Indeed, the Board noted that the servicing of the aircrafts could only be accomplished through the coordinated efforts of all three groups. *Ibid.* The presence of such integration in production and daily operations is absent in this case. The Employer also cites, *Jerry’s Chevrolet*, 344 NLRB 689 (2005), where the Board found the petitioned-for single plant unit inappropriately excluded employees from the employer’s neighboring dealerships because it lacked the overall indicia showing that it was separate from such dealerships. However, in reaching its conclusion, the Board noted that the local autonomy of each dealership was “minimal,” with their respective service managers having no authority over labor relations or personnel matters such as hiring, firing or disciplining. *Id.* at 691. Control over such matters was completely centralized and handled by upper management, which also set all personnel policies and wages. *Ibid.* In contrast, the plant managers here possess the very kind of authority and autonomy over personnel matters that was absent in *Jerry’s Chevrolet*, supra. In *Publix Super Markets, Inc.*, 343 NLRB 1023, 1029 (2004), the Board reversed the Regional Director’s decision excluding employees who worked at three satellite locations finding that they shared an extensive community of interest with employees in the unit. In this regard, the Board noted that the satellite employees had constant and significant contact with employees in the unit, shared identical terms and conditions of employment with them, and were subject to the same control over labor relations matters. *Publix*, supra at 1028. In contrast, a very limited number of the Employer’s employees have any contact with employees from Champion Doors and ESI and the record does not demonstrate that such contact is significant. Moreover, the Employer’s employees have certain terms and conditions of employment that are unique to them and the Employer asserts control over certain aspects of personnel matters. In *Acme Markets, Inc.*, 328 NLRB 1208 (1999), the evidence failed to establish that the proposed unit encompassing employees in three states shared a sufficiently distinct community of interest to warrant the exclusion of employees in a fourth state. Here, such evidence is overwhelming. Finally, I find that the facts and corresponding issues raised in *Bartlett Collins Company*, 334 NLRB 484 (2001), cited by the Employer, are not sufficiently analogous to the facts and issues herein. In *Bartlett*, supra, the Board examined whether the Regional Director had properly concluded that a petitioned-for unit of mold repair employees constituted a craft unit entitled to special treatment under Section 9(b)(2) of the Act. Upon determining that the mold repair employees were not a craft unit, the Board applied traditional community of interest factors, including the proximity of mold repair employees to other excluded employees, in concluding that they did not constitute an appropriate unit. The Employer has failed to advance any arguments or

case law that compel the inclusion of the Champion Doors and ESI employees into the proposed unit, which has a sufficiently distinct community of interest to constitute an appropriate unit.

V. EXCLUSIONS

The parties stipulated and the record shows that the following employees are supervisors with the authority defined by Section 2(11) of the Act and, accordingly, I will exclude them from the unit found appropriate: Production Supervisors Wendell Brown, Matt Thieken and Sean Barbash, Shipping Manager Russell Myers, Second Shift Supervisors James Daley and Harleen Carter, Maintenance Supervisors Ben Thurman and Ted Matson, Assistant Plant Managers Danny Mickle, Tina Nussbaum and Brad Williams, Purchasing Manager Mike Bellman, Installation Manager Joel Poulin and Plant Manager Al George.

VI. CONCLUSIONS AND FINDINGS

Based upon the foregoing and the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. 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. ^{8/}
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. 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 hourly production, maintenance, shipping and receiving employees, line leaders, and plant clerical employees employed at the Employer's windows operations facility located at 12121 Champion Way, Cincinnati, Ohio, but excluding all logistics employees, administrative employees, office clerical employees, confidential employees, professional employees, and all guards and supervisors as defined by the Act.

^{8/} At hearing, the parties stipulated that during the past 12 months, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 from its Cincinnati, Ohio facilities directly to points outside the State of Ohio. During the same representative period, the Employer purchased and received goods valued in excess of \$50,000 at its Cincinnati, Ohio facilities directly from points outside the State of Ohio.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate. The employees will vote on whether they wish to be represented for purposes of collective bargaining by Iron Workers Shopmen's Local Union No. 468. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

VI. VOTING ELIGIBILITY

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

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

VII. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the 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.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, Ohio on or before **July 2, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the

requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Because the list will be made available to all parties if it is determined to proceed to an election, please furnish **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

VIII. NOTICE OF POSTING OBLIGATIONS

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

IX. RIGHT TO REQUEST REVIEW

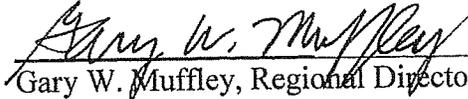
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 9, 2010, unless filed electronically**. Consistent with the Agency's E-Government initiative, parties are **encouraged to file a request for review electronically**. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.^{9/} A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not excused on the basis that the transmission could not be accomplished

^{9/} A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Cincinnati, Ohio this 25th day of June 2010.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
Room 3003, John Weld Peck Federal Building
550 Main Street, Room 3003
Cincinnati, Ohio 45202

Classification Index

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