

**BEFORE THE NATIONAL LABOR
RELATIONS BOARD**

BENTELER AUTOMOTIVE)
CORP.,)
)
Employer,)
)
-and-)
)
CHAUFFEURS, TEAMSTERS, AND)
HELPERS, LOCAL UNION NO.)
364, AFFILIATED WITH THE)
INTERNATIONAL BROTHERHOOD)
OF TEAMSTERS,)
)
Petitioner.)

Case 25-RC-135839

**REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

I. INTRODUCTION

Petitioner, Chauffeurs, Teamsters, and Helpers Local Union No. 364, pursuant to § 102.67 of the Board's Rules and Regulations, requests review of the October 28, 2014, Decision and Direction of Election ("Decision") of the Regional Director of Region 25. Petitioner filed a petition under Section 9(c) of the Act seeking to represent a unit of approximately eighty (80) technical employees employed at the Employer's manufacturing facility located in Goshen, Indiana, consisting of all employees in the following classifications: Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmer/Operators, and Automation Technicians. The Regional Director, after finding that the Tool Room Technicians were not technical employees but that all of the employees in the other petitioned-for classifications were technical employees, directed an election in a unit which includes both the technical

employees working as Maintenance Technicians, Control Technicians, Tool & Die Makers, CNC Programmer/Operators and Automotive Technicians and non-technical employees working as Set-up Technicians, Weld Technicians and the Tool Room Technicians, classifications the Employer contended should be included. All parties agreed that any unit found appropriate should exclude all production operators, shipping and receiving, material handlers, professional employees, office clerical employees, lead persons, team leaders, guards, and supervisors as defined in the Act. An election has been scheduled November 26.

The Regional Director found that the Petitioner's proposed unit was a "fractured unit" solely because it sought to include the two (2) Tool Room Technicians whom he found not to be technical employees, and that there was no basis for including those employees while excluding the other non-technical employees who work as Weld Technicians and Set-up Technicians. Rather than, consistent with Board precedent, excluding the Tool Room Technicians from Petitioner's proposed presumptively-appropriate unit including all of the Employer's technical employees, the Regional Director found that the non-technical employees working as Weld Technicians, Set-up Technicians and Tool Room Technicians shared an "overwhelming community of interest" with the technical employees in the petitioned-for classifications and directed an election in that broader unit.

Because the Regional Director's Decision departs from officially-reported Board precedent and raises substantial questions of law and policy, the Board should grant Petitioner's request for review.

II. STANDARD OF REVIEW

The Board may grant a request for review on the grounds “[t]hat a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.” § 102.67(c)(1).

III. FACTS AND ARGUMENT

Petitioner does not dispute the Regional Director’s factual findings set forth at pages 3-7 of the Decision. The Employer operates a manufacturing facility in Goshen, Indiana, at which it manufactures automotive components such as bumpers and other safety and structural components. (Decision, p. 3). It employs at that facility a total of approximately 586 employees. (*Id.*). Neither party urges a unit consisting of all hourly production employees in the plant. Rather, Petitioner seeks to represent a unit of all of the Employer’s approximately eighty (80) technical employees.¹ The Employer, on the other hand, claims that the unit must include both technical and non-technical employees, including those working as Weld Technicians, Set-up Technicians and Tool Room Technicians. Although the Employer had contended that the Weld Technicians and Set-up Technicians are technical employees, the Regional Director rejected that contention, noting that the jobs of the Weld Technicians, Set-up Technicians and Tool Room Technicians “do not require specialized training or advanced education.” (Decision, p. 9). Technical employees are those “who do not meet the strict requirements of the term ‘professional employee’ as defined in the Act but

¹ See Petitioner’s Brief at p. 2 (“The Union’s proposed unit is clearly an appropriate unit under section 9(b) of the Act, as that unit consists of employees who are a readily identifiable group of technical or ‘craft’ employees. . . .”); *id.* at p. 18 (“The petitioned-for unit of skilled technical employees constitutes an appropriate unit. . . .”).

whose work is of a technical nature involving the use of independent judgment normally acquired in colleges or technical schools or through specialized courses.” *Audiovox Communications Corp.*, 323 NLRB 647 (1997) (citing *Barnert Memorial Hospital Center*, 217 NLRB 775, 777 (1975)).

Instead of directing an election only among the employees in those classifications the Regional Director determined to consist of technical employees—a presumptively appropriate unit²—the Regional Director rejected that proposed unit of technical employees solely because Petitioner had also sought to include the two (2) Tool Room Technicians³, whom Petitioner believed the evidence showed also to be technical employees but which it now accepts as being non-technical employees. (“Petitioner’s argument fails when including the Tool Room Technicians.”) (Decision, p. 9).⁴ The Regional Director found that the Tool Room Technicians are not technical employees because, unlike the remaining job classifications in the petitioned-for unit, the Employer only *prefers* but does not *requires* them to have a

² A unit consisting of all technical employees employed by an employer is a presumptively appropriate unit. *United Shoe Machinery Corp.*, 185 NLRB 200 (1970) (“The Board has long held that a unit of all technical employees is appropriate”); *Vickers, Inc.*, 124 NLRB 1051, 1053, 1055 (1959) (“It is clear from the record and the Petitioner’s brief that it alternatively seeks to represent all of the Employer’s technical employees, a unit which the Board customarily finds appropriate. *Therefore, it is necessary to determine which of the classifications of employees properly belong in a technical unit?*”) (emphasis added).

³ The Employer employs only two (2) Tool Room Technicians at its Goshen facility. (*Id.* at 6).

⁴ Although it does not challenge the Regional Director’s finding that the Tool Room Technicians are not technical employees, Petitioner had a good faith reason to believe that the Tool Room Technicians might be found to be technical employees because of their specialized skills and training.

journeyman’s card or specialized training. (*Id.*). The Regional Director found that all of the remaining employees in the petitioned-for unit are technical employees. “The jobs of other employees in the petitioned-for unit may require specialized training or advanced education, but such is not the case for *all* those classifications sought by the Petitioner [*i.e.*, the Tool Room Technicians].” (*Id.*) (emphasis added).

A certifiable bargaining unit need only be *an* appropriate unit, not *the* most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Where, as here, a petitioned-for unit describes employee readily identifiable as a group who share a community of interest, an employer must demonstrate that the proposed unit is inappropriate because it does not include additional employees. *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 16 (2011), *enfd sub nom Kindred Nursing Centers East, LLC*, 727 F.3d 552 (6th Cir. 2013) (requiring a showing of an “overwhelming community of interest” with other employees to warrant inclusion in a petitioned-for smaller unit). Here, the Regional Director neither required the Employer to prove nor did he find that a unit of all of the Employer’s technical employees—*i.e.*, the petitioned-for unit minus the (2) Tool Room Technicians—was an *inappropriate* unit under a proper application of *Specialty Healthcare*. Instead of merely excluding the two (2) Tool Room Technicians after finding they were not technical employees, *see, e.g., Vickers, Inc., supra n. 2*, and then determining whether the Employer had met its heavy burden of negating the presumptive appropriateness of a unit consisting of all of the Employer’s technical employees, he concluded that the most appropriate unit was the unit as proposed by the Employer consisting of both the petitioned-

for technical employees and certain non-technical employees who work as Tool Room Technicians, Weld Technicians and Set-up Technicians. (Decision, at 9).

Petitioner does not dispute the Regional Director's determination that found that the Tool Room Technicians are not technical employees and that they should thus have been excluded from the unit of technical employees it seeks to represent. *Vickers, Inc.*, 124 NLRB at 1053. However, Board precedent required him to consider selecting a unit that is the *smallest* appropriate unit encompassing the petitioned-for employees, *Specialty Healthcare, supra*; *Bartlett-Collins Co.*, 334 NLRB 484 (2001), which here was a presumptively appropriate craft unit consisting of all of the Employer's technical employees.⁵ Instead of doing so, the Regional Director accepted in its entirety the Employer's proposed unit, which included both its technical employees and certain non-technical employees working as Tool Room Technicians, Weld Technicians, and Set-up Technicians, thereby adding approximately seventeen (17) non-technical employees to the unit whom Petitioner does not at this time seek to represent.

In reaching his unit determination, the Regional Director found that the unit as initially proposed by the Petitioner was a "fractured" unit solely because it included one classification of two employees, Tool Room Technicians, which the Regional Director after

⁵ Moreover, Petitioner did not seek an arbitrary unit of some but not all of the Employer's technical employees as in both post- and pre-*Specialty Healthcare* cases, *Northrop Grumman Shipbuilding, Inc.*, 359 NLRB No. 163 (2011), and *TRW Carr*, 266 NLRB 326 fn. 4 (1983), where the Board held that a subunit of some but not all of an employer's technical employees may be appropriate only where the technical employees in the requested unit possess a sufficiently distinct community of interest from other technical employees to warrant their establishment as a separate appropriate unit.

reviewing the evidence found to be non-technical. A “fractured” unit is an arbitrary segment of what would be an appropriate unit that lacks a rational basis. *Specialty Healthcare, supra*, slip op. at 13; *Odwalla*, 357 NLRB No. 132 (2011). But once the Regional Director had excluded the Tool Room Technician classification as non-technical, the remaining classifications were anything but an “arbitrary” grouping. In fact, they comprised a unit of all of the Employer’s technical employees, a unit the Board has long held is presumptively appropriate. Moreover, the fact that the Regional Director found that the employees in the technical and non-technical classifications shared some community of interest factors does not, by itself, render inappropriate a separate, smaller cohesive unit of employees with shared interests, *Macy’s*, 361 NLRB No. 4 (2014); *Specialty Healthcare*, slip op. at 15, *a fortiori*, a unit of all technical employees that the Board has customarily held to be a presumptively appropriate one.

IV. CONCLUSION

For all the reasons set forth herein, Petitioner respectfully requests that its Request for Review be granted and that the Regional Director be ordered to direct an election in the classifications he found to be comprised of technical employees, but excluding all Set-up Technicians, Weld Technicians, Tool Room Technicians, all production and other employees excluded by agreement of the parties.

Respectfully Submitted,



William R. Groth

David Vlink

Attorneys for Petitioner Teamsters Local 364

FILLENWARTH DENNERLINE
GROTH & TOWE, LLP
429 E. Vermont Street, Suite 200
Indianapolis, IN 46202
Telephone: (317) 353-9363
Fax: (317) 351-7232
Email: wgroth@fdgtlaborlaw.com

Certificate of Service

I hereby certify that a copy of the foregoing brief was served upon the Regional Director of Region 25 at rik.lineback@nlrb.gov and the following party via **EMAIL TO:**

Jeffrey Fraser, Esq.
fraserj@millerjohnson.com
Attorney for Benteler Automotive Corp.
Miller Johnson
P.O. Box 306
Grand Rapids, MI 49501

this 10th day of November, 2014.



William R. Groth

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

BENTELER AUTOMOTIVE CORP.¹
Employer

and

25-RC-135839

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 364, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on September 15 and 16, 2014, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUE

The Petitioner seeks an election within a unit comprised of the approximately 80 individuals employed by the Employer as Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmers/Operators, and Automation Technicians.³

¹ Both parties' correct names appear as amended at the hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. 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 .

³ Initially, the Petitioner filed a representation petition seeking an election within a unit comprised of Maintenance, Press Room Automation, Machine Repair, Millwrights, Tool Room, Tool & Die, and Maintenance Control Technicians. At the start of the hearing, the Petitioner

The Employer contends that the petitioned-for unit is not appropriate because it does not include Set-up Technicians and Weld Technicians. The Employer contends that the only appropriate unit must also contain the Set-up Technicians and Weld Technicians which adds approximately 15 additional employees in the unit, since Set-up Technicians and Weld Technicians share an overwhelming community of interest with employees in the petitioned-for unit.⁴

II. DECISION

The Petitioner has indicated a desire to represent a bargaining unit of employees employed as Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmers/Operators, and Automation Technicians. However, for the reasons discussed in detail below, there is no rational basis for excluding Set-up technicians and Weld Technicians from the petitioned-for unit. *Odwalla, Inc.*, 357 NLRB No. 132 (2011). As contended by the Employer, the Set-up Technicians and Weld Technicians share an overwhelming community of interest with the employees in the petitioned for unit. Thus, the following constitutes a unit appropriate for purposes of collective bargaining:

All full-time Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmers/Operators, Automation Technicians, Set-up Technicians, and Weld Technicians employed by the Employer at its facility located in Goshen, Indiana; BUT EXCLUDING all production operators, shipping and receiving, material handlers, professional employees, office clerical employees, lead persons, team leaders, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 95 employees for whom no history of collective bargaining exists.

amended the unit in the petition to comprise of Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, and CNC Programmers/Operators. Prior to the conclusion of the hearing, the Petitioner further amended the petition to include Automation Technicians in the unit and exclude all production operators, shipping and receiving, material handlers, professional employees, office clerical employees, lead persons, team leaders, Set-up Technicians, Weld Technicians, guards, supervisors as defined in the Act, and all other employees.

⁴ In addition to its substantive brief, the Employer filed a Motion to Strike Portions of Petitioner's Post-Hearing Brief for failure to effectuate proper service under Section 102.114 of the Board's Rules and regulations and a reply to the Petitioner's Response to the Employer Motion to Strike Petitioner's Post-Hearing Brief. Since the Employer was served prior to any Decision issuing in this matter and the Employer was not prejudiced by the Petitioner's alleged inadvertent error, the Employer's Motion to Strike is denied.

III. STATEMENT OF FACTS

The Employer is a corporation which operates a facility located in Goshen, Indiana. That facility called the Benteler Goshen facility manufactures special automotive components including bumpers, structural components, and safety components for the front, sides, rear and top of vehicles for automotive manufacturers such as Chrysler, Ford, General Motors, and Nissan. The facility is also referred to as a “just in time” facility, which means that customer orders and demands are prepared and delivered to the customers by the next business day.

The Employer’s employees work in several separate departments: the Press/Cold Stamp Business Unit, the Hot Stamp Business Unit, the Weld Business Unit, Tool & Die Department (Tool& Die Room), Maintenance Department, Shipping & Receiving Department, Logistics Department, Engineering Department, and Human Resources Department. The Petitioner’s and the Employer’s proposed units are part of the facility’s manufacturing operation. The manufacturing operations include the Maintenance Department and the Tool and Die Room as well as the three business units: the Press/Cold Stamp Business Unit, the Hot Stamp Business Unit, and the Weld Business Unit. The Press/Cold Stamp Business Unit is a stamping operation which utilizes presses and dies to form automotive parts through a process in which unheated steel is formed in the designated presses into the shape of the selected part. Specifically, steel from rolls or steel blanks are fed into five presses. Each press has a die which is loaded into the press with tools which punch, cut, puncture, form, shear and shape the steel. The steel is formed in the designated presses into the selected part. The Hot Stamp Business Unit operates very similarly to the Press/Cold Stamp Business Unit, except only steel blanks are used and fed into eight hot stamp presses by robots. The blanks are heated before they are pressed in the die. A robot then removes the completed part. The Weld Business Unit consists of 26 weld cells. Various steel parts are either welded together or other components are welded to the steel parts. Some of the welding is automated incorporating over 60 robots. However, there are operators who weld parts by hand.

The Employer employs approximately 586 individuals at the facility. This includes full-time and temporary employees as well as supervisors and managers. The Plant Manager has overall responsibility for the facility. The Press/Cold Stamp Business Unit, the Hot Stamp Business Unit, and the Weld Business Unit have one Business Unit Leader who oversees each Business Unit. The Business Unit Leaders report to the Plant Manager. Each Business Unit has three shifts. A Shift Supervisor or Team Lead supervises each shift. The Shift Supervisors or Team Leads report to the Business Unit Leaders. The Automation Technicians and Control Technicians report to the Shift Supervisors or Team Leaders in the Business Unit in which they work. Facilities Maintenance Repair Persons⁵ report to the Technical Services Manager.

The Tool & Die Room Manager has overall responsibility for the Tool & Die Room. The Tool & Die Room Manager reports to the Plant Manager. The Tool & Die Room has four shifts. A Shift Supervisor supervises each shift. The Tool & Die Room Supervisors report to the Tool

⁵ As discussed below, two of the Control Technicians are also classified as Facilities Maintenance Repair Persons.

& Die Room Manager. The Tool & Die Makers, CNC Programmers/Operators, and Tool & Die Room Technicians report to the Tool & Die Room Shift Supervisors. The Maintenance Department Supervisor has overall responsibility for the Maintenance Department. The Maintenance Department Manager reports to the Plant Manager. The Maintenance Department has three shifts. The Weld Team Leader in the Weld Business Unit supervises the Maintenance Technicians in that Business unit. The Maintenance Supervisor supervises the other Maintenance Technicians.

The Set-up Technicians report to Shift Supervisors or Team Leaders in the Press/Cold Stamp and Hot Stamp Business Units. The Weld Technicians report to Shift Supervisors or Team Leaders in the Weld Business Unit

The facility operates 24-hours per day. The Press/Cold Stamp Business Unit, the Hot Stamp Business Unit, and the Weld Business Union as well as the Maintenance Department each have three shifts. 1st shift runs from 5:30 A.M. or 6:30 A.M. to 1:30 P.M. or 2:30 P.M. 2nd shift runs from 1:30 P.M. or 2:30 P.M. to 9:30 P.M. or 10:30 P.M. 3rd shift runs from 9:30 P.M. or 10:30 P.M. to 5:30 A.M. or 6:30 A.M. The employees who work on any of these shifts receive two paid ten-minute breaks and a twenty-minute paid lunch. The Tool & Die Room has four shifts: A1, A2, B1, and B2. A1 and B1 run from 6:00 A.M. to 6:00 P.M. A2 and B2 run from 6:00 P.M. to 6:00 A.M. The employees who work on any of these 12-hour shifts receive one additional ten-minute paid break.

All employees receive the same health care benefits and are subject to the same work rules. All employees have the option of wearing the same uniform. All hourly employees are paid pursuant to a standardized pay scale that ranges from pay grade 3 to pay grade 10, which is at the top of the pay scale.

The Employer categorizes its employees based on whether the employee classification is direct or indirect labor. Indirect labor classifications do not add particular value to the product. All of the following classifications are considered indirect labor: Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmers, Automation Technicians, Set-up Technicians and Weld Technicians.

A. Maintenance Technicians

The Employer employs approximately 25 Maintenance Technicians at the facility. Maintenance Technicians are assigned to work in the Press/Cold Stamp, Hot Stamp, and Weld Business Units. Maintenance Technicians are responsible for maintaining and repairing machines. There are two Maintenance Technicians who work on each of the three shifts in the Press/Cold Stamp Business Unit. There are 13 Maintenance technicians who work in the Hot Stamp Business Unit: four on 1st shift, four on 2nd shift, and five on 3rd shift. There are two Maintenance Technicians who work on each of the three shifts in the Weld Business unit. They also help train Weld Technicians.

Maintenance Technicians are generally referred to as Journeyman Maintenance employees. According to the job description for Journeyman Maintenance employees, they are required to have eight years of work experience in a particular craft (mechanical, electrical, welding, machine repair) and/or a journeyman certificate; an Employer forklift license; and must possess technical skills such as electronic circuitry, machine repair, etc. Maintenance Technicians are paid at the Grade 9 level which starts at \$22.97 per hour.

B. Control Technicians

The Employer employs approximately nine Control Technicians at the facility. They primarily work in the Hot Stamp Business Unit. However, they are available to answer temporary calls in the Press/Cold Stamp and Weld Business Units. Control Technicians troubleshoot issues, repair and maintain production equipment, facility equipment, buildings, and complex equipment systems. The Employer also employs two Control Technicians, who are classified as Facilities Maintenance Repair Persons, are responsible for managing all facility related repairs and improvements including environmental compliance.

There is no job description for Control Technicians specifically. However, the job description for Hot Stamp and Shotblast Maintenance Controls Technicians requires that they possess at least an Associate's Degree in electronics or electronics technology; a valid forklift license; documented five years of experience in an electronics and controls craft and/or journeyman certificate; two years of experience in PLC programming, robot programming, automation interfaces, networking, and application, and other technical skills. Also, according to the job description for Facilities Maintenance Repair Persons, they are required to possess at least a high school diploma or equivalent; a two-year technical degree; and one-year experience in maintenance/facility management; and other technical skills. All Control Technicians are paid at the Grade 10 level, which starts at \$24.74 per hour.

C. Tool & Die Makers

The Employer employs approximately 17 Tool & Die Makers at the facility. The Tool & Die Makers generally work in the Tool & Die Room. However, Tool & Die Makers also work in Press/Cold Stamp and the Hot Stamp Business Units if there are any problems with dies and tools in those areas. Tool & Die Makers generally spend little to no time in the Weld Business

Unit. Tool & Die Makers perform machining operations to construct, modify and repair tools, dies, and gauges.

There is no job description for Tool & Die Maker specifically. However, according to the job description for toolmakers, they are required to possess a journeyman's card or certificate of apprenticeship in Tool & Die; a minimum of five years experience with blanking, progressive, and transfer dies; and technical skills such as machine operations. Tool & Die Makers are paid at the Grade 10 level.

D. Tool Room Technicians

The Employer employs two Tool Room Technicians at the facility. One of the Tool Room Technicians is a welder. The other Tool Room Technician performs work on sensors. They work exclusively in the Tool & Die Room.

Even though there is no separate position description for Tool Room Technicians, the evidence demonstrates that the Tool Room Technician who performs work on sensors possesses a journeyman's card. The other Tool Room Technician is a certified welder. The Tool Room Technicians are paid at the Grade 7 Level, which starts at \$19.78 per hour. Tool Room Technicians report to the Tool Room Supervisors or Tool Room Team Leaders.

E. CNC Programmers/Operators

The Employer employs approximately four CNC Programmers/Operators at the facility. CNC Programmers/Operators are assigned to the Tool & Die Room. They operate the CNC machines, manual mills, grinders, lathes, drill presses, honing equipment, 2-axis CNC mills and all other Tool Room equipment related to die details.

According to the job description for CNC Programmer/Operator, they must complete a federally-approved apprenticeship program as a machinist, toolmaker, or tool & die maker to be hired or work as a CNC Programmer/Operator and possess a minimum of one year of experience in CNC machining. The CNC Programmers/Operators are paid at the Grade 10 level.

F. Automation Technicians

The Employer employs approximately 21 Automation Technicians at the facility. The Automation Technicians are assigned to work in the Press/Cold Stamp, Hot Stamp and Weld Business Units. Automation Technicians are primarily responsible for moving material in and out of the dies, moving scrap out of the presses and transferring materials, building fingers and installing the sensors in the fingers which detect the material, troubleshooting and repairing systems, and developing and executing preventive maintenance plans for equipment.

There are approximately six Automation Technicians in Press/Cold Stamp Business Unit, who are classified as Automation Team Member Stamping. They work on the fingers on the presses grabbing the parts and move them from operation to operation. There are approximately

nine Automation Technicians in the Hot Stamp Business Unit, who are classified as Hot Stamp and Shot Blast Automation Technicians. They regularly perform preventative maintenance on equipment and tools, troubleshoot issues, and check simple sensors and clipper cylinders. They also work with Maintenance Technicians in the performance of their duties. There are also approximately six Automation Technicians in the Weld Business Unit. They are responsible for maintaining robotic equipment. They also help train Weld Technicians.

According to the job description for Automation Team Members Stamping, they are required to have a journeyman's card or certificate of apprenticeship in Tool & Die or Maintenance; four years of experience in Tool & Die or Maintenance; and other technical skills. All Automation Technicians are paid at the Grade 9 level.

G. Set-Up Technicians

The Employer employs approximately nine Set-Up Technicians at the facility. They are assigned to work in the Press/Cold Stamp and Hot Stamp Business Units. They are responsible for changing dies in the Press/Cold Stamp Business Unit area. In the Hot Stamp Business Unit, they are responsible for ensuring that all equipment and work areas are cleaned. They also assist with repairing hydraulic, pneumatic and water systems.

According to the job description for Set-up Technicians, they are only required to have a high school diploma; a valid forklift license; and five years of experience in stamping/metal forming environment. The Set-up Technicians are paid at the Grade 7 level.

H. Weld Technicians

The Employer employs approximately six Weld Technicians at the facility. They are assigned exclusively to the Weld Business Unit. Weld Technicians are responsible for resetting any faults that the robotic machines have in the Weld area, adjusting welds as needed, troubleshooting equipment problems relating to robotic machines, and performing preventative maintenance.

According to the job description of Weld Technicians, they are only required to possess certain technical skills, such as equipment maintenance, instructing, and equipment selection. The Weld Technicians are paid at the Grade 7 level.

IV. DISCUSSION

The Union seeks to represent all full-time Maintenance Technicians, Control Technicians, Tool & Die Makers, Tool Room Technicians, CNC Programmers/Operators, and Automation Technicians employed by the Employer. The Employer argues that the only appropriate unit would also include Set-up Technicians and Weld Technicians employed by the Employer. Since the petitioned-for-unit is smaller than the Employer's proposed expanded unit, the Board's decision in *Specialty Healthcare* is controlling. In *Specialty Healthcare*, the Board held that the petitioner bears the burden of proof to show that the petitioned-for unit is readily identifiable as a

group (based on job classifications, departments, functions, work locations, skills, or similar factors) and shares a community of interest. If the petitioner meets its burden of proof, the burden shifts to the party seeking the expanded unit to show that the expanded unit shares an “overwhelming community of interest” with the petitioned-for unit. *Specialty Healthcare & Rehabilitation Ctr.*, 357 NLRB No. 83, slip op. at 12-13 (2011). The Board further explained in *Specialty Healthcare* that “employees inside and outside a proposed unit share an overwhelming community of interest when the proposed unit is a ‘fractured’ unit.” *Id.* at 13. The Board will not approve of fractured units: that is combinations of employees that have no rational basis. *Odwalla, Inc.* 357 NLRB No. 132 (2011); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Here, the petitioned for unit is a fractured unit and the Employer has demonstrated that there is no rational basis for excluding employees in the classifications of Set-up Technician and Weld Technician while including all the other classifications in the unit. Thus, the Set-up Technicians and Weld Technicians share an “overwhelming community of interest” with the employees in the petitioned-for unit and form an appropriate unit.

As an initial matter, the unit sought by the Petitioner does not track any lines drawn by the Employer, such as classification, department, or function. It is not classification or department based, as it incorporates several classifications which work across several of the Employer’s departments and Business Units. Indeed, some of the included classifications work in multiple departments and Business Units, i.e. Maintenance Technicians and Automation Technicians. Nor is the unit sought drawn along functional lines, as the Maintenance Technicians, Control Technicians, Tool & Die Makers, CNC Programmers/Operators, Automation Technicians regularly interact with Set-up Technicians and Weld Technicians and perform similar job functions. In the Press/Cold Stamp Business Unit, Maintenance Technicians, Control Technicians, Tool & Die Makers, Automation Technicians, and Set-up Technicians work together troubleshooting, maintaining, and repairing machinery including press lines. In the Hot Stamp Business Unit, Maintenance Technicians, Control Technicians, Tool & Die Makers, and Automation Technicians work together troubleshooting, maintaining, and repairing machinery including hot stamp presses. In the Weld Business Unit, Maintenance Technicians, Control Technicians, Automation Technicians and Weld Technicians work together troubleshooting, maintaining, and repairing machinery including robotic machines. Also, Maintenance Technicians and Automation Technicians help train Weld Technicians to perform their duties. Tool & Die Makers are called regularly to work with Maintenance Technicians, Control Technicians, CNC Programmers/Operators, Automation Technicians, and Set-up Technicians in the Press/Cold Stamp and Hot Stamp Business Units when there are any problems with dies and tools in those areas.

The petitioned for unit is also not structured along lines of supervision. The Maintenance Technicians, Control Technicians, Automation Technicians, Set-up Technicians, and Weld Technicians share some degree of common supervision. As noted above, Maintenance Technicians, Control Technicians, Automation Technicians, and Set-up Technicians work together in the Press/Cold Stamp Business Unit. While Maintenance Technicians report to the Maintenance Supervisor, Control Technicians, Automation Technicians, and Set-up Technicians report to the supervisors or team leaders in that Business Unit. Maintenance Technicians,

Control Technicians, Automation Technicians, and Weld Technicians also work together in the Weld Business Unit. Each of these employees report to the Weld Team Leader.

Additionally, the Tool Room Technicians, Set-up Technicians, and Weld Technicians receive the same basic level of compensation. Tool Room Technicians, Set-up Technicians, and Weld Technicians are all paid at the Grade 7 level even though the other employees in the petitioned-for unit are paid at the Grade 9 level or higher. Additionally, the Set-up Technicians and Weld Technicians work the same eight hour shifts as the Maintenance Technicians, Control Technicians, CNC Programmers/Operators and Automation Technicians. While the Tool & Die Makers and Tool Room Technicians work on one of four twelve-hour shifts. All employees, including the above-noted classifications, receive the same health care benefits, are subject to the same work rules, and have the option of wearing the same uniform.

The Petitioner argues that the unit sought consists of a readily identifiable group of highly skilled technical employees. However, the Petitioner's argument fails when including the Tool Room Technicians. Technical employees are those whose work is of a technical nature involving the use of independent judgment usually acquired in colleges or technical schools or through special courses. *Audiovox Communications Corp.*, 323 NLRB 647 (1997), *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975). In the instant case, while the Employer may prefer the Tool Room Technicians to have a journeyman card or technical training, there is no evidence that such is required. Indeed, the Tool Room Technicians, Set-up Technicians, and Weld Technicians all share similar job qualifications. Their jobs do not require specialized training or advanced education. Tool Room Technicians and Weld Technicians are not required to have high school diplomas, journeyman's cards, or have completed formal apprenticeships. Set-up Technicians are only required to have high school diplomas and forklift licenses. The jobs of other employees in the petitioned-for unit may require specialized training or advanced education, but such is not the case for all those classifications sought by the Petitioner. Therefore, the petitioned-for unit is not one of technical employees. *Audiovox Communications Corp.* 323 NLRB 647 (1997). Such factors of qualifications and compensation which may distinguish the Set-Up Technicians and Weld Technicians from some of those classifications included in the proposed unit, also establish a community of interest with the Tool Room Technicians. Additionally as discussed above, all of the classifications sought by the Petitioner, as well as the Set-Up Technicians and Weld Technicians, perform similar maintenance and support functions for the Employer's production.

For the reasons discussed above, it is concluded that the Employer has carried its burden of proving that the Set-Up Technicians and Weld Technicians share an overwhelming community of interest with the employees in the petitioned-for unit because none of the traditional bases for drawing unit boundaries used by the Board supports excluding these classifications while including the remaining employees.

The Petitioner stated, at hearing, it was willing to proceed to an election in a larger unit if that unit was found to be appropriate. Pursuant to Section 11031.1(c) of the National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings, I have reviewed the Petitioner's showing of interest already on file and have determined that it is sufficient for the enlarged unit in which I have directed an election.

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 purposes of collective bargaining by the Petitioner. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

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

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

B. Employer to Submit List of Eligible Voters

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

Accordingly, it is hereby directed that within 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). The 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 the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana 46204 **on or before November 4, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, www.nlr.gov,⁶ by mail, or by facsimile transmission at (317) 226-5103. The burden of establishing the timely filing and receipt of the list will continue to be placed on 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 or electronically filed, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

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

VI. RIGHT TO REQUEST REVIEW

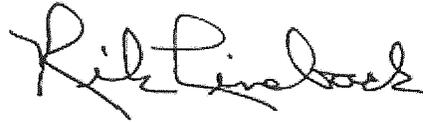
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on November 11, 2014, at 5:00 p.m. (ET), 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

⁶ To file the list electronically, go to the Agency's website at www.nlr.gov, select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

period within which to file.⁷ 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.

SIGNED IN Indianapolis, Indiana, this 28th day of October 2014.



Rik Lineback
Regional Director
National Labor Relations Board
Region 25
575 North Pennsylvania St., Rm 238
Indianapolis, IN 46204

⁷ 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.