

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

BATTELLE MEMORIAL INSTITUTE,)
)
 Employer,)
)
 and)
)
 PACIFIC NORTHWEST REGIONAL)
 COUNCIL OF CARPENTERS, LOCAL)
 UNION 2403,)
)
 Petitioner,)
)
 and)
)
 HANFORD ATOMIC METAL TRADES)
 COUNCIL,)
 Intervenor.)
 _____)

Case No. 19-RC-135888

INTERVENOR’S OPPOSITION TO PETITIONER’S REQUEST FOR REVIEW

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STATEMENT OF THE CASE

Intervenor, Hanford Atomic Metal Trades Council (“HAMTC”), implores the Board to not grant Petitioner’s, Pacific Northwest Regional Council of Carpenters, Local 2403 (“PNRCC”), Request for Review (“Request”) of the Regional Director’s well-reasoned decision issued October 16, 2014. The Request raises no substantial issues warranting review. It fails to point to any substantial question of law or policy mishandled by the Regional Director. The Regional Director did not make any “clearly erroneous” factual findings on any substantial issue that prejudices the Petitioner. And, there are no compelling reasons for reconsideration of established Board law with regard to severance of represented persons.

HAMTC is confident that the Decision is sound. It submits this opposition to correct PNRCC’s misstatements of fact, mischaracterizations of law, and mischaracterizations of the Regional Director’s decision contained in the Request for Review.

BACKGROUND

This action derives from a dismissed PNRCC petition for craft severance. The petition sought severance of 21 carpenters and millwrights from their collective bargaining representative of 60 plus years. See Regional Director’s Decision (“Dec.”) at 2; see also Intervenor’s Post Hearing Brief (“IB”) at 22 (citing Tr. 366-67, 524-25; Jt. 1; I-10). The employees work for Battelle Memorial Institute (“Battelle” or “Employer”) at the Richland, Washington Pacific Northwest National Laboratory (“PNNL”). After a careful review of the hearing record, the facts, and the parties’ briefing, the Regional Director found, “based on the evidence and the Board’s craft severance standard as articulated in Mallinckrodt Chemical Works, 162 NLRB 387, 393 (1967), the unit sought by Petitioner cannot be properly severed from the existing unit as a separate craft unit.” Dec. at 2. The Director explained, only *one* of six Mallinckrodt factors

was met; and therefore, the wall-to-wall maintenance unit was the only appropriate unit. Dec. at 18.

Following the Director's Decision, PNRCC filed its Request for Review. The Request should be denied because: it relies on irrelevant facts and hypothetical horrors; it cites Board precedent not applicable, given the specific facts here; it misconstrues the controlling legal authority of Mallinckrodt, as it pertains to severance cases involving mixed-craft represented employees; and it ignores the current stable labor structure and the 60 year long stable bargaining history the severance would disrupt. The Request simply does nothing to discredit the Director's Decision.

FACTS

The relevant facts are set out in the Regional Director's Decision. A full recitation of those facts here is not warranted. Instead the Regional Director's Decision and the Intervenor's Post-Hearing Brief are incorporated herein by reference and attached hereto as exhibits A and B, respectively. As the party with the burden, PNRCC presents its relevant facts in its Request for Review. Therefore, it is not necessary to attach Petitioner's post-hearing brief.

Battelle is run in a substantially similar fashion to other Department of Energy Research sites across the nation. IB at 14; Dec. at 16-17. The industry pattern of bargaining at DOE laboratories is a single, multi-craft bargaining unit for all maintenance personnel. Id. The parties do not dispute that HAMTC and Battelle have negotiated multiple collective bargaining agreements for the maintenance unit for over 60 years. Dec. at 5. The parties' bargaining relationship historically is stable, with only one or two strikes, the last in 1976. Dec. at 2.

Maintenance personnel at Battelle are assigned to multi-craft work-teams, which are assigned to specific locations. Dec. at 13

PNRCC acknowledges that the employees it seeks to sever, classified as carpenters and millwrights, are represented by two HAMTC affiliated unions, the Sheet Metal Workers and the Machinists, respectively. RFR at 11. The workers at issue have been so affiliated since their disaffiliation from PNRCC in June of 2014. Petitioner simply argues that it would better represent those classifications.

Since disaffiliation, the carpenters and millwrights have continued to have the same high level of representation they have always enjoyed. Both craft classifications continue to be represented by shop stewards specific to the craft. IB at 12; Dec. at 6. Both crafts continue to be represented on the HAMTC bargaining, grievance, and executive committees, albeit under the umbrella of different affiliates. Dec. at 14 (“Petitioner argues that following disaffiliation, carpenters and millwrights “lost” a chief steward, and accordingly a seat on the HAMTC bargaining committee, grievances committee, and executive board. However, this is not an accurate description of what has transpired, as carpenters and millwrights have not been left unrepresented, but are now represented by the Sheet Metal Workers and Machinists.”)

To ensure the classifications security, Battelle and HAMTC have negotiated MOUs guaranteeing the classifications continued jurisdictional distinctions. IB at 17-18; and RFR at 11. Additionally, HAMTC leadership has made clear to all crafts that the carpenters and millwrights will maintain the protections and representation they have always enjoyed. *Id.* The PNRCC responds that the assurances are illusory and superficial. RFR at 11. But, Petitioner offers no evidence supporting its claim.

The PNRCC acknowledges that the two classifications it seeks to sever are unique and distinct from each other. RFR 33, 34, and 36. It argues that the joint severance is appropriate because of the two classifications’ shared history. *Id.* It ignores the more relevant history, that

HAMTC has been the sole bargaining agent for all classifications for over 60 years. During that time the carpenters and millwrights have maintained their work jurisdiction. See Dec. at 3 (“[w]ithin the maintenance department the Employer recognizes the separate craft jurisdictions of each HAMTC union. Accordingly the carpenters and millwrights have exclusive jurisdictions and perform all work within those two separate jurisdictions”).

The two classifications and their distinct work jurisdictions are well represented by HAMTC. Both HAMTC, the employer, and the two affiliates now representing the carpenters and millwrights have guaranteed to protect those jurisdictions going forward. IB at 17-18; and RFR at 11.

ARGUMENT

I. THE LEGAL FRAMEWORK FOR A REQUEST FOR REVIEW

Under the Board’s rules and regulation, review of a regional director’s decision is only granted where one or more of four compelling reasons exist for review:

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
- (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 CFR § 102.67(c)(1)-(4). These are the only reasons that may be considered.

Here, PNRCC argues the Regional Director’s Decision should be reviewed pursuant to § 102.67(c)(1), (2), and/or (4). RFR at 6. Its argument fails on all counts.

II. 102.67(c)(1) – THE PETITIONER’S REQUEST FOR REVIEW FAILS TO POINT OUT ANY SUBSTANTIAL QUESTION OF POLICY OR LAW RAISED BY THE DIRECTOR’S DECISION

PNRCC does not dispute that the Mallinckrodt standard is the correct standard. RFR 30-41. PNRCC argues that the standard is incorrectly applied in the Director’s Decision. *Id.* The PNRCC’s arguments fail.

The Director’s Decision clearly and correctly lays out the standard for severance actions and the burden on petitioners. The parties agree, craft severance determinations are to be made on a case-by-case basis and after weighing all the relevant factors. See RFR at 30 (PNRCC acknowledges “Determinations are to be made on a case-by-case basis....[Citation omitted].”)

The Director, citing long standing Board precedent, correctly states the burden on severance petitioners specific to these facts:

In allowing craft severance, whereby a group of employees in a separate and distinct craft leave a larger, existing bargaining unit, the Board balances the interest of the larger group of employees in maintaining the stability of labor relations, and the benefits of an historical plant-wide bargaining unit, against the interest of a portion of that group in having the freedom of choice to break away from the historical unit. Mallinckrodt Chemical Works, 162 NLRB 387, 392 (1966). Although it balances these interests, the Board has not allowed severance lightly, as the party seeking severance clearly bears a “heavy burden.” Kaiser Foundation Hospitals, 312 NLRB 933, 935 fn. 15 (1993).

Dec. at 10. The Director expounds on his explanation:

In placing this heavy burden on a petitioner, the Board has explained it “is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio.” [Kaiser] at 936.

Dec. at 11. Inherent in the application of this rule is the consideration of prior bargaining history.

Kaiser, above, is particularly instructive here. There, the petitioner sought to sever a group of skilled maintenance employees from a larger bargaining unit. Kaiser at 933. The larger

bargaining unit had enjoyed 40 years of bargaining history with only two strikes. Id. The Board held that the interest of the larger unit outweighed those of the maintenance employees. It explained that despite that the petitioned for unit might be a better aligned unit, the risk of disturbing a stable relationship outweighed that consideration; and thus, severance was not appropriate. Id. at 936.

Here, PNRCC seeks to sever a smaller group of maintenance employees from a larger bargaining unit of maintenance employees. The larger bargaining unit has enjoyed a long history of stable labor relations, spanning over a half century, with only two strikes. Dec. at 5. Here, like Kaiser, the severance should not be allowed because of (1) the integration of the maintenance employees, and (2) the substantial successful bargaining history of the larger bargaining unit.

Interestingly, the PNRCC does not challenge the precedential value of the cases cited by the Director. Instead, it fails to acknowledge them, and relies instead on inapposite authority. See generally RFR 30-41 (MGM Grand d/b/a the Mirage Casino-Hotel, 338 NLRB 529 (2002), and Burns and Roe Services Corp., 313 NLRB 1307 (1994)). In both MGM and Burns, the petitioner was seeking to sever a larger group of *unrepresented* employees with *no bargaining history*. See MGM at 532 (“There is no bargaining history at the Employer’s site; and no other union is seeking to represent the petitioned-for employees in a larger unit.”); and see Burns at 1308 (“there is no bargaining history at this facility”; and “there is no labor organization seeking to represent the petitioned-for employees on a broader basis”). These cases did not have to deal with the balancing of interest present here.

Here, Petitioner seeks to sever a large represented group. That larger group's interest and stable collective bargaining history must be balanced against the smaller group's interests. In MGM and Burns no such balancing was required.

There is no basis for review under 102.67(c)(1). The Mallinckrodt standard applies, and it is the Petitioner, not the Director, that misapplies Board precedent.

III.102.67(c)(2) – THE DIRECTOR'S FACTUAL FINDINGS ARE CORRECT, NOT CLEARLY ERRONEOUS

The Petitioner's Request alleges that the Director's Decision, as to substantial factual issues, was clearly erroneous and prejudicial to PNRCC. To the contrary, the Director's Decision rests on sound factual footing.

Under Mallinckrodt, craft severance is determined by considering six factors:

(1) Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists. (2) The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation. (3) The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation. (4) The history and pattern of collective bargaining in the industry involved. (5) The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit. (6) The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Mallinckrodt at 397. Here, the Director found that all but the sixth factor weighed against PNRCC.¹ The Director's findings are sound.

Factor (1) – Homogeneous group of skilled craftsman or functionally distinct department.

The PNRCC does not claim that the two crafts at issue create a functionally distinct department. Thus, the only inquiry is whether they create a homogeneous group of skilled craftsman. Dec. at 12. They do not.

The Director correctly reasoned that the carpenters and millwrights could not be considered a homogeneous group. He noted the lack of apprenticeship programs, the lack of apprenticeship requirements, the fact that hiring decisions were need-based and employer determined, and that the employer aligned its workforce into multi-craft work teams that helped each other out and shared some tools. Dec. at 12. The foregoing all weighed against a finding that the carpenters and millwrights were a homogeneous group of skilled craftsmen.

PNRCC does not dispute these facts. RFR 33-34. Rather it argues that the jurisdictional assignments of work along craft lines and craft specific work-loads evidences that carpenters and millwrights are allied crafts that are homogeneous and distinct from all other crafts. *Id.* That argument ignores the most important and undisputed fact. Carpenters and millwrights are *distinct crafts with no functional relation to each other*, only a shared history of being represented by the United Brotherhood of Carpenters. As the Director explains, “in function, there is no basis for finding carpenters and millwrights are a “distinct and homogeneous group” separate from the other trades.” Dec. at 13. “[I]n regard to their work, they are either two parts of a large functionally integrated department, or two distinct crafts Petitioner seeks to sever into

¹ The Director's Decision analyzes the facts in slightly different order than that used in Mallinckrodt. The sixth factor in Mallinckrodt is listed as the fifth factor in the Director's Decision. This brief follows the Mallinckrodt order, which is the same order followed in Petitioner's RFR.

one unit.” *Id.* They undisputedly do not constitute a single craft. Therefore, they are not homogeneous and the first factor weighs (heavily) against Petitioner.

Factor 2 – History of collective bargaining of employees sought to be represented.

When there is no problem to be fixed any solution risks becoming the problem. PNRCC argues that this factor weighs in its favor because the evidence shows that it is likely that the severance of the carpenters and millwrights will not disrupt the long history of stable collective bargaining between HAMTC and Battelle. RFR at 34-35. This is not the correct standard, and PNRCC cites no supporting authority.

For 60 plus years HAMTC has negotiated CBA’s with Battelle for all job classifications. Dec. at 5. That relationship has resulted in stable collective bargaining, with only two strikes over its lifetime. *Id.* The disturbance of such a stable structure is a prime concern for the Board in a severance petition. See Kaiser, 312 NLRB at 935 fn. 15. The Board is reluctant, absent compelling circumstances, to disturb such stable arrangements. *Id.* PNRCC presents no such compelling circumstances. Thus, the Director’s finding on this factor is not “clearly erroneous.”

Factor 3 – Separate Identity.

The Director correctly points out that the considerations for the third factor are similar to those of the previous factors. Those considerations weigh against severance. Dec. at 15-16. The strongest argument the PNRCC has in support of maintaining a separate identity is the preservation of the carpenters’ and millwrights’ exclusive, albeit separate work jurisdictions. *Id.* However, the two classifications it seeks to sever have a shared bargaining history with all other classifications. They share the commonalities of insurance and retirement benefits, vacation and holidays, working hours and shift schedules. *Id.* Those commonalities and the fact that the

carpenters and millwrights are classifications distinct from each other, means they are no more separate from the remaining classifications than they are from each other.

PNRCC counters that they shared who they paid dues to, the local they belonged to, and the chief steward they elected. RFR at 36. However, these commonalities are offset by the organizational structure of the Employer, which was formed around multi-craft teams and joint supervision of those teams. The Director's finding on this factor is not "clearly erroneous."

Factor 4 – History and pattern of collective bargaining in the industry. PNRCC does not argue that this factor weighs in favor of severance. Instead it argues "[t]he evidence on the record ... did not establish this Mallinckrodt factor against Petitioner. If anything, the record is inconclusive." RFR at 36. This argument is flawed on two accounts. First, it is clear from the record that the industry at issue, Department of Energy Laboratories, share similar collective bargaining models to the one at this DOE lab. See IB at 24-25 (citing numerous exhibits and the record at 583, 592), and Dec. at 16-17. Second, but most importantly, PNRCC is the petitioner seeking action on the part of the Director. The burden of proof rest on the Petitioner. The argument that evidence on the records is inconclusive, weighs against PNRCC's petition for severance.

Factor 5 – Degree of integration of the Employer's production processes. The Director's determination that Battelle's integrated multi-craft work teams weighs against PNRCC on this factor is clearly correct. Petitioner seeks to discredit the Director, citing numerous Board decisions it claims supports its position that there is no meaningful integration. RFR at 36-40. The authority relied upon by the PNRCC is either materially different from the case at hand, or supports the Director's Decision.

The PNRCC's first two authorities, MGM Grand (RFR at 37) and Anheuser-Busch, Inc., 170 NLRB 46 (1968) (RFR at 38) are distinguishable. Both involve the initial establishment of a union, not a craft severance from a larger represented group. See MGM discussion supra at 7, and Anheuser at 47 (“we view the situation in the present case as the initial establishment of a unit rather than a case of severance from a traditional unit. *While not controlling in a nonseverance situation*, the Mallinckrodt tests are useful in our determination of the appropriateness of the unit requested here” (emphasis added)). The third case, Dow Chemical Co., Rocky Flats Div., 202 NLRB 17 (1973) (RFR at 38), while very analogous to this case, supports the Director's conclusion, not the Petitioner's. See id. at 19 (“[a]lthough the craftsmen possess to some extent a separate identity by reason of their skills, they also share a close community of interest with other employees in the existing production and maintenance unit, both because of their long and uninterrupted association in that unit and because their work is functionally integrated with other work performed in that unit.... In our opinion, the interests to be served by maintaining the established bargaining unit far outweigh [sic] any interests that may be served by affording the craftsmen herein an opportunity to change their mode of representation”). The fourth case, E.I. DuPont de Nemours and Co., 162 NLRB 413 (RFR at 38), is also materially different because there was no prior history of bargaining. See id. at 418 (“there is no history of bargaining at the Employer's May plant.”). Finally, Burns and Roe Services Corp., 313 NLRB 1307 (RFR at 38), is wholly distinguishable on this factor. In Burns there was no prior bargaining history, and it was not a severance petition. See discussion supra at 6-7, and Burns at 1308 (“there is no bargaining history at this facility”; and “there is no labor organization seeking to represent the petitioned-for employees on a broader basis”). These cases simply do not define the burden or factors relevant to severance cases, such as the one here.

Factor 6 – Qualifications of the PNRCC. The PNRCC and the Director both agree that the sixth factor weighs in support of PNRCC’s petition. And while HAMTC disagrees, that is not relevant for this discussion of reviewability.

In summary, there were no “clearly erroneous” findings by the Director. The Director’s analysis was correct, and the facts used in that analysis were largely undisputed. PNRCC’s request for review should not be granted under 102.67(c)(2).

IV.102.67(c)(4) – THERE IS NO OTHER BASIS FOR REVIEW OF THE DIRECTOR’S DECISION

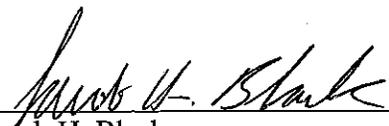
PNRCC’s Request for Review provides no compelling reason why the Board should overturn its long standing precedent established in Mallinckrodt and applied to cases such as this and Kaiser Foundation, 312 NLRB 933. For a Board to review a decision under 102.67(c)(4), there must be a “compelling reason for reconsideration of an important Board rule or Policy.” And while PNRCC argues on page six that review is appropriate under this subsection, nowhere in the remainder of its brief does it explain why. The only hint that PNRCC may be asking for a review of settled precedent arises on page 43 of 45. Petitioner, in a footnote, cites to a Region 7 decision, Electric Boat Corp. 1-RC-124746. In that decision the Regional Director granted the petitioner Carpenters Union’s petition for a severance election, which appears to go contrary to established Board precedent. Regardless, that decision was based on the analysis of Burns and Roe. Again, in Burns the issue was not a severance petition “as there [was] no labor organization seeking to represent the petitioned-for employees on a broader basis.” Burns at 1308. Thus, it is not relevant to the issue here. And, review is not appropriate under 102.67(c)(4), or any of the subsections of 102.67(c).

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CONCLUSION

PNRCC has not articulated an error by the Regional Director that supports review under 102.67(c). Accordingly, Board should deny Petitioner's Request for Review of the Regional Director's reasoned decision.

DATED this 14th day of November, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2014, I caused the original of the foregoing **INTERVENOR'S OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW** to be filed with the National Labor Relations Board, via the NLRB's e-filing system with:

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Office of Executive Secretary
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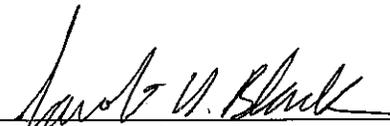
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On this same date, I also certify that a true and correct copy of the same was served via electronic mail to:

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BATTELLE MEMORIAL INSTITUTE

Employer

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**PACIFIC NORTHWEST REGIONAL
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Case 19-RC-135888

Petitioner

and

**HANFORD ATOMIC METAL TRADES
COUNCIL**

Intervenor

DECISION AND ORDER

The above-captioned matter is before the National Labor Relations Board (“the Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (“the Act”), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.¹

I. SUMMARY

The Employer operates the Pacific Northwest National Laboratory (“PNNL”), a United States Department of Energy facility located in Richland, Washington. The Employer recognizes the Intervenor (or “HAMTC”) as the collective bargaining representative of approximately 240 employees employed at PNNL. Historically HAMTC has consisted of 13 separate local trade unions of which these employees are members. Earlier this year, after a lengthy dispute, HAMTC removed the Petitioner from the HAMTC organization. Since the Petitioner’s removal (which the parties at hearing referred to as a disaffiliation), the approximately 21 carpenters and millwrights employed by the Employer have been represented by other HAMTC member unions.

Petitioner filed the instant petition seeking to sever the Employer’s carpenters and millwrights, eight job classifications in all, from the existing HAMTC unit and to represent

¹ The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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.

them in a separate unit. However, HAMTC opposes the petition on the basis the current multi-craft bargaining unit is an integrated whole with a long stable and productive bargaining history. The Employer takes no position on the appropriateness of the petitioned-for unit.

I have carefully reviewed and considered the record evidence, and the arguments of the Petitioner and the Intervenor at both the hearing and in their post-hearing briefs. Consistent with the Intervenor, I find that based on the evidence and the Board's craft severance standard as articulated in *Mallinckrodt Chemical Works*, 162 NLRB 387, 393 (1967), the unit sought by Petitioner cannot be properly severed from the existing unit as a separate craft unit.

Below I have set forth the record evidence relating to the factors the Board considers with respect to petitions for craft severance. Following that is an analysis of the *Mallinckrodt* standard, as well as my application of that standard to the record before me. In conclusion, I have set forth my Order dismissing the instant petition and address the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. BACKGROUND

PNNL is part of the Hanford site, a sprawling Department of Energy complex located on the Columbia River near Richland, Washington. Thousands of researchers and scientists are employed at the PNNL campus, working in numerous buildings and laboratories. In addition to PNNL, the Hanford site contains a separate decommissioned Department of Energy plutonium processing facility, where significant waste management and environmental restoration work is performed by numerous contractors. HAMTC has also had long stable collective-bargaining relationships with most of these other contractors.

HAMTC, an affiliation of trade unions, was certified as the exclusive collective bargaining representative of various employees at the Hanford site in 1949. HAMTC has negotiated successive collective bargaining agreements with the various contractors at Hanford in the subsequent 65 years. The Employer has operated PNNL since 1965, and the Employer and HAMTC have been party to numerous collective bargaining agreements during that time, the most recent of which was effective from 2010 to 2013. The Employer and HAMTC are currently engaged in successor contract negotiations. Thus, no party raises a contract as a bar to further processing of the instant petition.

During HAMTC's 65 years of representation, labor relations at the Hanford site have been generally uneventful, with minimal history of strikes, lockouts, or other work stoppages. There have been two strikes during Battelle's operation of PNNL, but the last one occurred almost 40 years ago in 1976. During the same period, HAMTC and the Hanford contractors have negotiated numerous collective bargaining agreements.

Until June 1, 2014, Petitioner was one of the 13 affiliated local unions that constituted HAMTC.² At that time, HAMTC disaffiliated Petitioner, the culmination of a 15-year dispute involving Petitioner and Intervenor's respective parent organizations. Following disaffiliation HAMTC directed that carpenters and millwrights would be represented by the Sheet Metal Workers and Machinists respectively.

Until June 2014, Petitioner had 77 members, all of whom are employed at the Hanford site. Of these members, 21 are employed by Battelle at PNNL and are the subject of the instant petition. The remainder of the carpenters and millwrights represented by HAMTC are employed by other contractors on the Hanford site. Thus, the instant petition does not involve carpenters or millwrights working for these other contractors.

B. EMPLOYEES AT ISSUE

1. True Craft or Functionally Distinct Department

Petitioner seeks to sever 21 carpenters and millwrights from an existing bargaining unit consisting of tradespersons in 13 separate crafts, approximately 240 employees total. This existing unit of HAMTC represented employees is largely located in the Employer's Maintenance and Fabrication Services department ("maintenance department") and is generally referred to by the parties as a maintenance unit.

Maintenance department employees perform traditional maintenance work, as well as fabrication work unique to PNNL. Traditional maintenance work involves repairs, inspections, and preventative maintenance. Fabrication involves creating specialized "widgets" for the PNNL researchers; unique items needed by the researchers, but that cannot simply be purchased.³ Instead, widgets must be designed and built by the maintenance department employees in close conjunction with the scientific staff.

Within the maintenance department the Employer recognizes the separate craft jurisdictions of each HAMTC union. Accordingly the carpenters and millwrights have exclusive jurisdictions and perform all work within those two separate jurisdictions. Specifically, carpenters build scaffolding, shipping crates, and widgets made of wood, plastic, and Plexiglas. They also perform roofing work, work with doors on tasks such as lock installation and repair and weather-stripping, and open all shipping crates. Millwrights are responsible for machine alignment, as well as the maintenance and inspections of pump shafts, motors, hoisting and rigging. Metal work in general is divided by the gauge of the

² In addition to Petitioner, member unions include: International Brotherhood of Boilermakers, Local 242 ("Boilermakers"); International Brotherhood of Electrical Workers, Locals 77 and 984 (collectively "IBEW" or "Electricians"); International Union of Operating Engineers, Local 280 ("Operating Engineers"); International Union of Painters and Allied Trades, Local 437 ("Painters"); International Association of Machinists, Local 1951 ("Machinists"); United Association of Plumbers and Pipefitters, Local 598 ("Pipefitters"); International Association of Insulators, Local 120 ("Insulators"); International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 14 ("Ironworkers"); Sheet Metal Workers International Association, Local 55 ("Sheet Metal Workers"); United Steelworkers, Local 12-369 ("Steelworkers"); and International Brotherhood of Teamsters, Local 839 ("Teamsters").

³ Because fabrication work is varied and the designed items are unique, witnesses at hearing and the parties on brief simply refer to the fabricated items collectively as "widgets." Thus, the term is used in the same manner in this Decision.

metal, with millwrights handling metal below a certain gauge and sheet metal workers handling metal above a certain gauge. Millwrights are also responsible for filter changes in PNNL's specialized air filtration system.

One implication of the strict observation of jurisdictional lines is that the work of each employee is almost exclusively limited to their trade; few tasks have not been claimed as exclusive by one trade or another. The maintenance department manager estimated that an employee in the maintenance department, regardless of trade, spends approximately 90 percent of their work day exclusively performing craft specific work.

Jurisdictional lines have some bearing on the tools and equipment used by maintenance department employees. The maintenance department maintains a primary shop and several satellite shops at the PNNL campus. Two of the satellite shops contain tools frequently used by carpenters, such as band saws and Plexiglas heaters. The evidence is in dispute regarding whether any of these tools are craft specific. Several tools, such as a band saw, are described by some witnesses as craft specific, in that a carpenter is the only craft to use a blade for cutting wood on a band saw. However, carpenters are not the only craft with the skill, knowledge, or need to use a band saw, as a different craft may use a band saw with a different blade for cutting metal.

Carpenters and millwrights receive some training not provided to other crafts, based on their exclusive jurisdiction over these tasks. Carpenters are the only craft that receives scaffolding and locksmith training. Millwrights are the only trade that receives laser alignment training, and training related to manipulator arm installation and maintenance.

Organizationally, the maintenance department is divided into 5 work groups, with each work group consisting of between 2 and 4 work teams. Nine of the 11 work teams consist of employees in multiple crafts, with varying degrees of mixing. The petitioned-for carpenters and millwrights are located on 6 work teams, which also include electricians, teamsters, pipefitters, painters, and machinists. As a percentage of their work teams, carpenters and millwrights together make up between 5 percent (a single millwright in the 17 person "Physical Sciences Facilities 1" work team) and 31 percent (7 carpenters and millwrights on the 22 person "RCHN1" work team).

The work teams include location- and purpose-based teams. Location based work teams are assigned to a certain building and perform most of the maintenance work at the assigned location. The Physical Sciences Facilities 1 work team, mentioned above, performs most of the maintenance in the Physical Sciences Facilities 1 building. Teams with a specific purpose perform one specific task throughout the PNNL campus. For example, the Custodial and Floor Services work team will perform all carpet replacement, regardless of location at PNNL. Each work team is supervised by a team leader, who in turn reports to a group lead, who reports to the maintenance department manager.⁴

At the beginning of each day, the maintenance department manager, the group leads, and the team leaders meet to distribute work assignments for the day. The team

⁴ The parties stipulate that the work group team leaders are supervisors within the definition of § 2(11) of the Act. It also appears that the parties have historically excluded the work group team leaders from the existing unit.

leaders then take these assignments to their respective team's report location and distribute assignments to the individual employees. The record indicates that normally assignments require multiple crafts to complete a task. Who will perform what work is a decision that is made throughout the assignment process, with the maintenance department manager, the group leads, and the team leaders all making these decisions in the assignment process. An assignment may designate a "lead craft," but such a designation is not required.

The Employer performs all hiring for the maintenance department; union hiring halls are not utilized. The Employer does not require applicants to have completed an apprenticeship for their craft, and the Employer does not provide an apprenticeship program. However, after hire the Employer provides all new maintenance department employees core training related to working at the Hanford site. As described above employees receive some limited craft specific training as well.

2. History of Collective Bargaining of Employees Sought to be Represented

a. Contract Bargaining

The Employer and HAMTC have negotiated multiple collective bargaining agreements covering employees' terms and conditions of employment over the last 50 years. These agreements address employees' terms and conditions of employment as a single group, without reference to craft, although in areas, such as wages, craft differences are recognized. The agreement also contains an "Appendix A" specific to each craft. This appendix contains the job descriptions for the classifications in each craft, and a description of the craft's jurisdiction. When bargaining on a successor contract is set to begin, the affiliate unions have the ability to request their Appendix A be re-opened if they have craft specific issues to address.

It is undisputed that when Appendix A bargaining occurs, both a HAMTC representative and a representative of the germane member union meet with the Employer's representative. However, Petitioner and HAMTC disagree regarding the relative roles of the union representatives at the table. Petitioner maintains that its representative negotiates the agreement, while the HAMTC representative is present as a passive note taker or observer. HAMTC asserts it negotiates any changes, and the craft representative is merely present to assist. However, the record reveals that final authority rests with HAMTC rather than with a member union over a final Appendix A agreement. Further, HAMTC reviews negotiated appendices to ensure that no conflicts exist relative to the other trades' respective work jurisdictions. Regardless of the specific dynamics at the bargaining table, no changes in a craft's Appendix A takes place until the appendices are incorporated into a successor collective bargaining agreement, which is ratified as a whole.

According to Petitioner's business representative, Petitioner re-opened its respective Appendix A in both 2005 and 2010, proposing additional training, a new procedure for transferring between teams, increased pay, and changes in overtime procedures. There is no assertion that these proposals were outside the bounds of acceptable Appendix A bargaining, or that they were somehow inappropriate proposals. However, it also appears from the record the Employer rejected the proposals outright, or said it would take them under consideration; regardless, no such changes took place. A successor collective

bargaining agreement was executed in each instance; the lack of agreement on the Appendix A applicable to carpenters did not prevent an overall agreement. There is no evidence in the record of any individual affiliate union entering into any contract, memorandum of understanding, side agreement, or other binding agreement with the Employer separate from HAMTC.

Under the collective bargaining agreement between the Employer and HAMTC, each HAMTC affiliate union is entitled to a chief steward. Further, when successor contract bargaining begins, HAMTC creates a bargaining committee consisting of the chief steward of each affiliate union. Each affiliate union is entitled to a chief steward, not each craft. Because Petitioner has historically represented two separate crafts, carpenters and millwrights, these two crafts have had a single representative at the bargaining table.

HAMTC and the Employer are currently bargaining for a successor agreement, and presently, disaffiliation has not modified HAMTC's bargaining committee. At the time bargaining began, prior to disaffiliation, Petitioner's chief steward was placed on the bargaining committee. To date he has retained this position. However, it does not appear to be in dispute that in the next round of collective bargaining, this will not be the case because HAMTC will have one less representative, and the carpenters and millwrights will be represented by the Sheet Metal Workers and Machinists respectively. However, this is not to say that the Petitioner's current chief steward or some other carpenter and/or millwright could not be selected as a future chief steward.

b. Grievance Handling

In addition to chief stewards, the Employer also recognizes primary stewards and shop stewards. As noted above, chief stewards have a role at the bargaining table; shop stewards are primarily involved in grievance processing. Within the ranks of the shop stewards, a single steward in each craft is designated the primary steward. The record suggests the primary steward has greater responsibility for jurisdictional grievances, but the nature and extent of this responsibility are not fully detailed in the record.

Step 1 in the grievance process involves the shop steward and front-line supervisor attempting a resolution on the shop floor. If step 1 does not resolve the dispute, a grievance is reduced to writing by the shop steward and submitted to HAMTC's grievance committee, step 2 in the grievance process. HAMTC's grievance committee consists of a representative from each affiliate union. The committee determines whether a grievance is advanced to arbitration on behalf of HAMTC. Affiliate unions apparently have some ability to advance grievances to arbitration if they pay the legal fees and costs, but the specifics of this ability to arbitrate independently of HAMTC are not fully detailed in the record.

Since disaffiliation, Petitioner's former chief steward has become a shop steward with and a member of the Sheet Metal Workers, although he continues to be recognized as the primary steward for the carpenters. The pre-disaffiliation primary steward of the millwrights is similarly still recognized as the millwright's primary steward, and he has become a member of the Machinists. In regard to what changes have resulted, The Petitioner's former chief steward testified that prior to disaffiliation he could decide whether to take a grievance to arbitration, assuming Petitioner paid the associated costs. He maintains that as a primary or shop steward he no longer has that ability, as he must submit

any grievances to the HAMTC committee and can only move grievances to arbitration with HAMTC approval.

c. Jurisdictional Disputes and other Intra-Union Matters

Each member union in HAMTC has the ability to file a grievance over a jurisdictional dispute. It is not clear from the record whether only a chief steward can file a jurisdictional grievance, or merely the practice has developed whereby the chief steward usually handles jurisdictional grievances. Sheet Metal Workers Chief Steward Kurt Watts testified that the chief steward "...kind of makes the decision on what the craft is going to do," on a jurisdictional grievance, but did not reference any rule or bylaw that dictated this approach. As noted at other places in the record, the primary stewards have a role in the filing and processing of jurisdictional grievances.

Once filed, the collective bargaining agreement establishes a separate procedure for grievances addressing jurisdictional disputes. At step 2, jurisdictional grievances are referred to the Council Grievance Committee, a committee with a member for each affiliate union. If the dispute cannot be resolved by the committee, the involved unions may advance the dispute to arbitration, if they choose to incur the associated legal fees and costs.

With disaffiliation, Petitioner no longer has a representative on the Council Grievance Committee. Petitioner's witnesses assert this is a particularly damaging change, as the affiliate unions to which the carpenters and millwrights have been assigned, Sheet Metal Workers and Machinists respectively, are the entities with which they had the most jurisdictional disputes.

The record contains examples of these disputes. Carpenters and sheet metal workers have had jurisdictional disputes in the past over the assembling of metal furniture and installation of metal items on walls, such as metal trim. In 1990 and 2012 the metal on walls issue progressed to arbitration. Petitioner argues the net effect of eliminating the ability to independently arbitrate jurisdictional disputes and removal from the Council Grievance Committee will result in a breakdown of craft jurisdiction lines.

Petitioner provided a few examples of such a breakdown in the record. Specifically, Petitioner maintains that following disaffiliation, it was removed from the welding pool, eliminating work from carpenters and millwrights. The record reveals that correspondence from HAMTC regarding disaffiliation does clearly state that references to Petitioner shall be removed from the welding pool documentation. However, multiple witnesses testified that the Employer no longer utilizes a welding pool. Further, no carpenter or millwright testified that they had ever performed work as part of the welding pool or that their work had changed as a result of disaffiliation.

Another example of the jurisdictional concerns raised by Petitioner is demonstrated by a jurisdictional grievance filed by millwrights in July of 2014, after disaffiliation. Both the primary steward for the millwrights, and the machinist staff assistant testified regarding the handling of the dispute. All parties agree that the primary steward for the millwrights filed a grievance over pipefitters assembling and disassembling A-frame gantry cranes. Prior to reaching the Grievance Council at step 2, the Machinist staff assistant met the Pipefitters to

attempt to resolve the dispute and did so, reaching a resolution that stated "...if there was a [sic] A-frame to be erected only [to] be used by the pipefitters with no mechanical devices trolleys etc. you would assemble and disassemble if for your craft or membership only." The Machinist staff assistant takes the position that this resolution concedes nothing to the Pipefitters, and that the Machinists fully protected the millwrights' jurisdiction. The primary steward for the millwrights asserts that this resolution conceded significant millwright work to the Pipefitters but neither the primary steward nor Petitioner provided details or documents establishing the nature and extent of millwright work purportedly conceded by the Machinists.

Petitioner also had a seat on HAMTC's executive board while a member union, that is no longer the case following the disaffiliation. The record does not establish the impact of this lost seat.

3. Separate Identity

The collective bargaining agreement between the Employer and HAMTC establishes almost all of the bargaining unit employees' terms and conditions of employment, outside of the limited issues addressed in each craft's respective Appendix A. As such, all bargaining unit employees share the same insurance and retirement benefits, vacation and holidays, working hours and shift schedules, and are subject to the same work rules. Seniority is calculated in the same manner for all employees, although each craft maintains its own seniority roster.

Transfers between crafts occur, but are not common. The Employer's labor relations manager estimated one employee per year, in the last decade, had permanently transferred between crafts, although three permanent transfers have taken place already in 2014.

There is no contention that the carpenters and millwrights have had a previous opportunity to obtain separate representation. The record reveals and I take administrative notice that a petition was filed with this Region in Case 19-RC-14231 to sever a craft from a HAMTC bargaining unit at the Hanford site in 2002. There, the Region issued a decision denying the severance. I note that Case 19-RC-14213 involved a different unit, employer, and petitioner but did involve HAMTC as the intervenor.

4. Degree of Integration of the Employer's Production Processes

The Employer's maintenance department's multi-craft teams operate together to accomplish tasks, but do so along jurisdictional lines. The record contains several examples of multiple crafts working together to accomplish a task, including door installation, fire inspections, and office relocations.

A door installation begins with a single work order. On site, a teamster delivers the door to the location where it will be installed. A carpenter will then un-box the door from its packaging, and based on the type of door a carpenter or other craft would perform the installation. A carpenter would then perform any finishing tasks such as installing a lock or weather-stripping.

When a fire inspection is required, a single work order is created. A carpenter first inspects fire doors and walls. The work order is then passed to a pipefitter, who inspects the sprinkler heads and then passes the work order to a sheet metal worker to inspect the fire dampers.

The Teamsters' chief steward described his work installing office furniture on the multi-craft "Grounds, Relocation, & Receiving" work team. He is one of three employees regularly assigned to perform this installation work, along with another teamster and a carpenter. The carpenter rotates to the Grounds, Relocation, & Receiving work team from another work team. However, the parties did not provide testimony or documents detailing the regularity or frequency of temporary transfers among the various teams in the existing unit. As described by the chief steward, he and another teamster transport the materials to the installation location where a carpenter assembles the furniture. Other crafts, such as electricians, are called from other work teams on an as needed basis to complete the installation.

The record also contains more general testimony regarding the frequency of multiple crafts performing tasks together. The IBEW chief steward described how it was frequently necessary for him to have a machine operator perform a lock-out/tag-out procedure before the chief steward works on power equipment. A carpenter acknowledged that he frequently worked on service orders that required him to work with the painters, teamsters, pipefitters, electricians and other crafts assigned to his work team. Two other chief stewards, a sheet metal worker, and a millwright, both testified they also work regularly, at times daily, with other crafts on their work teams to complete tasks.

Although the Employer explicitly recognizes jurisdictional lines in its collective bargaining agreement with HAMTC, the line is not absolute. The parties have negotiated a "Craft Alignment Program" that recognizes some basic efficiencies given the close proximity of employees in separate crafts working on multi-craft work teams. Under this program, an employee in one craft can provide some very limited assistance to another craft on a single task. The example described in the record is of a teamster delivering items to a carpenter who was building something. Under these circumstances, it is permissible for the teamster to brace something or to essentially assist the carpenter to assemble or make a connection without infringing on the carpenter's jurisdiction.

5. Qualifications of the Union Seeking Severance

It is not disputed that Petitioner is affiliated with the Pacific Northwest Regional Council of Carpenters and the United Brotherhood of Carpenters, labor organizations that have extensive experience representing carpenters and millwrights in maintenance units.

There is no dispute that throughout its existence, Petitioner has been an active labor organization, conducting regular meetings and electing officers. Prior to disaffiliation, employees' dues were deducted by the Employer and remitted to Petitioner, who in turn paid a per capita amount to HAMTC. Following disaffiliation, the carpenters and millwrights were required to pay dues or fees to other HAMTC member unions as a condition of employment. Consistent with this change, employees completed new dues deduction authorizations, and the Employer now remits their dues to the Sheet Metal Workers or Machinists, who in turn pay the per capita to HAMTC.

Petitioner does acknowledge that carpenters and millwrights represent distinctive and separate crafts, although Petitioner maintains the two crafts are "brother crafts" historically jointly represented by Petitioner.

6. Industry Pattern of Collective Bargaining

Intervenor asserts the proper industry for comparison is other Department of Energy laboratories. The record contains collective bargaining agreements between contractors and metal trades councils at Department of Energy laboratories in Oak Ridge, Tennessee, Amarillo, Texas, and Albuquerque, New Mexico. At each of these operations, multiple crafts are represented by a single multi-craft bargaining unit for all maintenance personnel.

In response, Petitioner asserts that the Department of Energy laboratories referenced above are more involved in national defense research as opposed to the research conducted at PNNL. However, Petitioner's assertion is not supported by the record as Petitioner did not submit documents or testimony detailing the full nature and extent of all operations performed by the Employer at PNNL or at the other comparator laboratories.

Petitioner also raises a number of differences in the substance of HAMTC's collective bargaining agreements with the Employer ("HAMTC agreements") and the collective bargaining agreements in the record covering other laboratories. Petitioner specifically points out that the agreements Intervenor placed in the record differ from the HAMTC agreements in regard to wages, job classifications, employer organization, bumping rights, steward assignment, and the process for establishing jurisdictional lines and resolving jurisdictional disputes.

Petitioner further asserts the proper industry for comparison is instead marine maintenance in the Pacific Northwest. Petitioner placed a number of labor agreements between affiliates of Petitioner and employers in the marine maintenance and shipbuilding industry, and specifically asserts the Washington State Ferries maintenance unit in particular is the best comparison, on the basis that the carpenters had been represented by a metal trades council, but have been represented in the two most recent bargaining cycles by an affiliate of Petitioner. However, I note that the Washington State Ferries' labor agreements, like the HAMTC proffered industry labor agreements, similarly contain significant substantive differences in terms and conditions of employment from those present in the HAMTC agreements.

III. ANALYSIS

A. CRAFT SEVERANCE STANDARD

In allowing craft severance, whereby a group of employees in a separate and distinct craft leave a larger, existing bargaining unit, the Board balances the interest of the larger group of employees in maintaining the stability of labor relations, and the benefits of an historical plant-wide bargaining unit, against the interest of a portion of that group in having the freedom of choice to break away from the historical unit. *Mallinckrodt Chemical Works*, 162 NLRB 387, 392 (1966). Although it balances these interests, the Board has not allowed severance lightly, as the party seeking severance clearly bears a "heavy burden." *Kaiser*

Foundation Hospitals, 312 NLRB 933, 935 fn. 15 (1993). In placing this heavy burden on a petitioner, the Board has explained it "is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio." *Id.* at 936.

The Board in *Mallinckrodt* outlined the factors to be considered when determining the issue of craft severance: 1) whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department; 2) the collective-bargaining history of the employees in the petitioned-for unit related to those employees, and whether the existing patterns of bargaining result in stable labor relations and whether that stability will be upset by the end of the existing patterns of representation; 3) the extent the petitioned-for unit has maintained a separate identity during its inclusion in the overall unit; 4) the degree of integration of the Employer's production processes; 5) the qualifications of the Union seeking severance; and 6) the pattern of collective bargaining in the industry. *Mallinckrodt* at 397.

The heavy burden applied to a party seeking craft severance by the Board is reflected in its decisions following *Mallinckrodt*. In *Kaiser Foundation Hospitals*, petitioner sought to sever a group of skilled maintenance employees from a unit of nonprofessional employees. *Id.* at 933. Applying the *Mallinckrodt* factors, the Board found the petitioned-for employees were skilled maintenance employees separately supervised from the other bargaining unit employees, yet had not maintained a separate identity, given that terms and conditions of employment, including hours of work, holidays, health and pension benefits, vacation, seniority, and leave were uniformly applied across the unit. *Kaiser Foundation Hospital*, at 935-936. The Board noted the long history of bargaining, 40 years, in the larger unit, with only two strikes occurring in that time, and further noted the "predominately stable" nature of this past representation. *Id.* The Board concluded craft severance was not appropriate and specifically noted that it traditionally declined to sever a group of maintenance employees from an existing production and maintenance unit in the face of substantial bargaining history on a plant-wide basis. *Id.* at 935.

The Board also addressed its craft severance principles in *Metropolitan Opera Ass'n.*, 327 NLRB 740 (1999). There, petitioner sought to sever one group of performers, choristers, from a historical unit consisting of several groups of performers, stage managers, stage directors, and choreographers. *Id.* at 740. In dismissing the petition, the Board specifically noted that while the incumbent union had historically represented the existing/larger unit, it had also allowed a chorus committee to negotiate issues specific to the choristers but only as an authorized arm of the incumbent union. *Id.* The Board ultimately held that admitted differences in functions, skills, and compensation did not "constitute a compelling argument to disturb a 30-year history of continuous bargaining and successful representation" in the broader unit. *Id.*

I now turn to an analysis of the instant record and the craft severance factors considered by the Board when making determinations in cases of this nature.

B. CRAFT SEVERANCE FACTORS

1. True Craft or Functionally Distinct Department

A true craft unit is one consisting of a distinct and homogenous group of skilled journeymen craftsmen, with skill acquired by a substantial period of apprenticeship or its equivalent, together with their apprentices and/or helpers. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In practice, this requires analyzing the existence of formal training and apprenticeship programs, functional integration, overlap of duties, whether assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment. *Id.*

Petitioner asserts the carpenters and millwrights constitute a true craft because they are a distinct and homogenous group of skilled journeymen craftsmen. However, there is no contention they are organized in a functionally distinct department. Functional integration and a common interest in wages and other terms and conditions of employment are addressed in detail below where the record reveals a lack for support for the instant petition. Thus, I turn to whether the remaining considerations regarding this factor, including the existence or lack of a formal training and apprenticeship program, and whether assignments are based on need or made along craft lines, are sufficient to establish the carpenters and millwrights as a true craft.

The Employer performs all hiring; there is no contention that a union hiring hall or some other mechanism gives Petitioner or Intervenor any control over applicants or the qualifications of these applicants. Minimal qualifications certainly exist, but the minimum requirements are of the Employer's creation. The Employer does not require carpenter or millwright applicants to have completed an apprenticeship for their craft, to have or maintain journeyman status, and the Employer does not provide an apprenticeship program. While employees receive limited craft specific training after hire, for example the scaffolding and locksmith training provided to carpenters, that training is not extensive enough to be considered an alternative to an apprenticeship. Moreover, the Employer does not employ any "apprentices" or "helpers" in the existing unit.

Petitioner's argument in favor of the petitioned-for unit's true craft status is based on the Employer's recognition of jurisdictional lines. While the Employer does not require formal training or an apprenticeship, it clearly recognizes craft jurisdiction in making work assignments. The record evidence as a whole, from witness testimony to the language of the most recent collective bargaining agreement, clearly reveals that jurisdiction is guarded by all of the HAMTC trades. This has a significant impact on existing unit employees' work, as the maintenance department manager testified 90 percent of an existing unit employee's day is devoted to the exclusive work of the employee's trade. That said, while work assignments are made with respect to craft lines, the Employer does not organize itself along craft lines. Rather, the record establishes that the Employer's maintenance department consists of work teams that are multi-craft, especially as it applies to multi-craft teams that include carpenters or millwrights.

I also agree with Intervenor that, in function, there is no basis for finding carpenters and millwrights are a “distinct and homogenous group” separate from the other trades. Petitioner’s arguments, which are focused on the exclusive work of each trade, highlight the differences between the two groups of employees it now seeks to represent in a separate unit. It is undisputed that the carpenters and millwrights have a history of joint representation. Yet in regard to their work, they are either two parts of a large functionally integrated department, or two distinct crafts Petitioner seeks to sever into one unit. Under this factor, there is no basis in the record for finding, and Petitioner does not contend, that carpenters and millwrights somehow constitute a single craft.

While the Employer certainly respects jurisdictional lines, this alone is not synonymous with belonging to a true craft unit. Here the Employer does not utilize a hiring hall, offers no apprenticeship program, does not utilize apprentices or helpers, and does not require completion of an apprenticeship or any sort of journeyman status as a condition of employment. Further, as discussed in the following sections, the Employer’s multi-craft teams are functionally integrated, and share many of the same terms and conditions of employment with the other trades.

In light of the above and the record as a whole, I find that the petitioned-for unit is neither a true craft unit, for the purposes of severance, nor a functionally distinct department. Accordingly, this factor weighs against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate.

2. History of Collective Bargaining of Employees Sought to be Represented

There is no evidence that HAMTC has been lacking in its representation of the bargaining unit as a whole, or the carpenters and millwrights specifically, during its lengthy 50-year tenure. The history of HAMTC and the Employer during this period, two strikes in 50 years, is analogous to the history in *Kaiser Foundation*, where two strikes occurred in 40 years of representation. In that decision, the Board described the relationship as “predominately stable,” and cited the long history of stable and productive labor relations as a primary reason not to disturb the existing bargaining relationship. *Kaiser Foundation*, 312 NLRB at 936. Similarly, in *Metropolitan Opera*, the Board accentuated the importance of the existing bargaining relationship as the critical aspect of the unit’s labor history. *Metropolitan Opera Ass’n.*, 327 NLRB at 740.

The role played by the chorus committee in *Metropolitan Opera* is analogous to the historic role Petitioner has played in Appendix A bargaining. There, as here, a representative of a part of a bargaining unit bargained with the employer on concerns specific to the choristers as a representative of the certified collective bargaining representative. Here, there is also little doubt that Petitioner historically has been provided an opportunity equal to that of any other affiliate union to represent the interests of its members.

This raises a factual consideration not present in *Kaiser Foundation* and *Metropolitan Opera*: disaffiliation. If the 50-year history of stable and productive labor relations between HAMTC and the Employer weighs heavily against Petitioner’s argument,

the question then is whether the changes since disaffiliation are sufficient to make reliance on this history misplaced.

Petitioner argues that following disaffiliation, carpenters and millwrights “lost” a chief steward, and accordingly a seat on the HAMTC bargaining committee, grievance committee, and executive board. However, this is not an accurate description of what has transpired, as carpenters and millwrights have not been left unrepresented, but are now represented by the Sheet Metal Workers and Machinists. As such, they still have a chief steward, but it is a chief steward that is shared with the existing employees in these affiliate unions. Prior to disaffiliation, Petitioner represented two separate crafts in a single affiliate union and carpenters and millwrights shared a chief steward. After disaffiliation, carpenters now share a chief steward with sheet metal workers while millwrights share a chief steward with machinists. In short, neither carpenters nor the millwrights appear to have actually lost much as far as the chief steward position is concerned.

Petitioner further argues that the carpenters and machinists do not trust their new trade representatives. Specifically, Petitioner speculates that the Sheet Metal Workers and Machinists, who have had jurisdictional disputes with Petitioner in the past, will take advantage of the new additions, but Petitioner has not presented any evidence to substantiate such speculation. Neither the welding pool nor the A-frame examples provided by Petitioner demonstrate any significant harm to the carpenters or millwrights.

In regard to the welding pool, as an initial matter, the record discloses that the welding pool no longer exists in practice, rendering changes in documents largely moot. Second, a distinction must be made between changes in Petitioner's role and the role of carpenters and millwrights. After disaffiliation, HAMTC clearly requested the Employer to remove references to Petitioner in a multitude of documents. However, it does not consequently follow that this removal led to any significant changes as far as the 21 carpenters' and millwrights' respective work is concerned. Indeed, the record reveals insufficient evidence to establish the nature and extent of changes argued by Petitioner in this regard.

Moreover, the A-frame grievance example is of minimal support to Petitioner's argument. Faced with the first jurisdictional grievance submitted by millwrights, the Machinists utilized HAMTC's internal process to resolve a dispute in what, by all appearances, was good faith. Representatives of the carpenters and millwrights testified that it was less than a total victory, but the evidence is mixed and does not support the conclusion that the Machinists somehow inappropriately traded away millwright work to another HAMTC craft.

I recognize that the jurisdictional concerns of the carpenters and millwrights are arguably reasonable, as the record does contain evidence of long running disputes, up to and including arbitration, on issues such as the assembling of metal furniture and installation of metal items on walls. However, carpenters and millwrights have these jurisdictional disputes with sheet metal workers and machinists because they are the trades with whom they respectively have much in common. Further, Petitioner faults HAMTC for its placement of carpenters and millwrights respectively with the Sheet Metal Workers and Machinists. However, conversely, it does not seem preferable to place carpenters and millwrights with trades with whom they rarely interact based on a fear of potential

jurisdictional disputes. Indeed, under the circumstances, it is equally reasonable to place carpenters with the Sheet Metal Workers and millwrights with the Machinists, as these two trades respectively understand carpenters and millwrights better than the other trades' understand the petitioned-for group.

The record reveals that the labor history of the petitioned-for carpenters and millwrights as part of the existing unit has been predominantly stable. Petitioner has raised only potential concerns and has not produced any evidence establishing anything near inappropriate or unfair representation at any time relevant herein. Indeed, 65 years of Intervenor serving as the umbrella organization for the various trades reveals all involved parties have created a relationship conducive to avoiding and resolving work jurisdictional disputes in a fairly effective manner largely without disrupting work performed at Hanford. Thus, it is reasonable to conclude here that permitting severance of the carpenters and millwrights from the existing unit would be destabilizing to the involved parties and their many decades of a predominantly stable bargaining relationship.

Based on the above and the record as a whole, I find the history of collective bargaining weighs against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate in the circumstances of this case.

3. Separate Identity

The facts in regard to separate identity in this case are similar to those present in *Kaiser Foundation*, 312 NLRB at 936, where the Board found that the unit had not maintained a separate identity given that terms and conditions of employment, including hours of work, holidays, health and pension benefits, vacation, seniority, and leave were uniformly applied across the unit.

As with previous factors, the strongest argument that carpenters and millwrights have in support of maintaining a separate identity is the preservation of their exclusive, albeit separate work jurisdictions. However, Petitioner again faces the problem that this argument equally demonstrates the separate identity the carpenters and millwrights have largely maintained from each other over the past 50 years at PNNL. With the exception of their history of joint and limited representation by Petitioner, including carpenters and millwrights paying dues to Petitioner, nothing binds the carpenters and millwrights together that does not also largely apply to the remaining portion of the existing unit.

Specifically, carpenters and millwrights have different wage rates and perform different work. Accordingly, when Petitioner asserts that carpenters and millwrights are properly placed together in the petitioned-for unit, it is presumably relying on commonalities such as shared insurance and retirement benefits, vacation and holidays, working hours and shift schedules, and being subject to the same work rules. However, these shared commonalities are equally shared by the remaining employees in the existing unit with the petitioned-for group.

As would perhaps be expected in a workplace where most work is performed within exclusive jurisdictions, transfers between crafts are not common, supporting Petitioner's position. However, I note that other factors, such as joint supervision on functionally integrated multi-craft teams weigh against the Petitioner's argument on this factor.

Indeed, the record reveals that the Employer's recognition of exclusive jurisdictions is the functional limit of the separate identities maintained by the trades at PNNL. In sum, the record reveals that this factor does not support the Petitioner's position.

4. Degree of Integration of the Employer's Production Processes

The Employer's multi-craft work teams present a significant opportunity for integrated work while still respecting jurisdictional lines. The examples in the record, from door installation to fire inspections reveal much of the maintenance department's work involves multi-step projects requiring multiple crafts. This is clearly reflected in the Employer's organization of the multi-craft work teams. Such an organizational structure is only efficient and effective apparently over all these years if the multi-craft teams are actually performing a large number of tasks that require more than one craft. Indeed, the record supports this conclusion. Multiple employees testified that they work in conjunction with other trades on a daily basis, and the Employer and HAMTC maintain the Craft Alignment Program. Further, the record reveals some un-quantified but regular temporary transfers of craft employees between the multi-craft teams based on work or need. Thus, the record establishes the work of existing unit employees is functionally integrated to a relatively high degree.

Based on the foregoing and the record as a whole, I find the employer's organization of integrated multi-craft work teams performing tasks requiring multiple crafts under shared supervision, does not support Petitioner's position that craft severance is appropriate.

5. Qualifications of the Union Seeking Severance

Petitioner has extensive experience with the employees in the petitioned-for unit as an affiliate union in HAMTC, and Petitioner's parent organizations have extensive experience representing maintenance units in general. Intervenor argues that this factor does not support Petitioner's argument because it has never represented the petitioned-for employees as an exclusive collective bargaining representative. I do not find Intervenor's argument persuasive. First, this cannot be the standard applied to qualification, for if Petitioner was the exclusive collective bargaining representative, it would not need to file the instant petition. Second, the experience Petitioner has in representing the carpenters and millwrights, conducting regular meetings, electing officers, managing dues, and representing its member crafts in jurisdictional disputes and Appendix A bargaining, are sufficient qualifications to represent the carpenters and millwrights at PNNL.

In view of the above and the record as a whole, I find this factor favors Petitioner's position.

6. The History and Pattern of Collective-bargaining in the Industry

The record reveals that the Employer is involved in a unique industry, and other Department of Energy laboratories provide the best comparisons. At these laboratory facilities, metal trade councils represent a single maintenance bargaining unit. Petitioner asserts, in attempting to distinguish these facilities, that PNNL performs less defense industry research than other Department of Energy facilities or laboratories. However, Petitioner did not submit evidence to support this assertion, as the record contains scant

evidence of the work performed at PNNL, and only a brief summary of the work performed at the other comparator laboratories.

As for Petitioner's attempt to distinguish the substance of these comparable laboratories' collective bargaining agreements, I do not find this convincing with regard to this factor. Clearly the collective bargaining agreements from other comparable laboratories differ in some ways from the HAMTC agreements. However, the question posed by *Mallinckrodt* is instead the pattern of collective bargaining in the industry, and Petitioner provides no case support for the proposition this factor turns on the precise terms and conditions set forth in other proffered labor agreements. Petitioner's argument is also inconsistent, as it faults Intervenor's labor agreement comparison on a substantive basis, but then offers a comparison, the Washington State Ferry system's labor agreement, which similarly includes many substantive differences in terms and conditions of employment from the HAMTC agreements.

Petitioner further argues the Washington State Ferry system is the proper industry for comparison, on the basis that carpenters in a production and maintenance unit at that facility, previously bargaining as part of a metal trades council, split from the council and have now bargained two contract cycles independently. Petitioner asserts the comparison is apt because a public ferry system has a vested interest in labor peace and because the unit performs maintenance work at multiple locations. I do not find these arguments persuasive relative to the evidence and arguments offered by HAMTC.

On the basis of the foregoing and the record as a whole, I find that this factor does not favor Petitioner's position in this case.

C. CONCLUSION REGARDING CRAFT SEVERANCE

Having examined the six *Mallinckrodt* factors in turn, I find that all but one weigh against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate in the circumstances of this case. Consistent with *Mallinckrodt*, *Kaiser Foundation*, and *Metropolitan Opera*, I further find that Petitioner has failed to demonstrate compelling circumstances that would necessitate disturbing a bargaining unit where there has been a 50-year history of continuous, stable, and productive bargaining.

I recognize that I am reaching a different conclusion here than that reached by the Regional Director in *Electric Boat Corp.*, 01-RC-124746, addressed by both Petitioner and Intervenor. In that case, the Regional Director granted severance to carpenters and millwrights from a larger production and maintenance unit in a shipyard setting. Here, the facts presented are significantly different, including, critically, that in *Electric Boat* the two crafts in question were in a separate department and were separately supervised. Further, the stable, long, and productive bargaining history here is different from the history present in *Electrical Boat Corp.* In sum, the decision in Case 01-RC-124746 is not binding on me in the instant case. Moreover, Case 01-RC-124746 is before the Board and, therefore, has no precedential value. See *Boeing Co.*, 337 NLRB 152, 153, fn. 4 (2001).

IV. DECISION

In the sections above, I have set forth the record evidence and an analysis of that evidence relative to the Board's *Mallinckrodt* standard that is applicable in cases of this nature. After analyzing the six factors constituting the *Mallinckrodt* standard, I find that the unit sought by Petitioner cannot be severed out of the existing unit as a separate craft unit, because only one of six factors supports Petitioner. Accordingly, I find that the existing Employer-wide maintenance unit is the unit appropriate for bargaining. However, Petitioner has declined to go forward to an election in any unit other than the petitioned-for unit. Thus, I shall order dismissal of the instant petition.

V. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of § 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 NW, Washington, DC 20570. This request must be received by the Board in Washington by **October 30, 2014**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>

DATED at Seattle, Washington on the 16th day of October, 2014.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

PACIFIC NORTHWEST REGIONAL
COUNCIL OF CARPENTERS LOCAL 2403,

Petitioner,

and

BATTELLE MEMORIAL INSTITUTE,

Respondent,

and

HANFORD ATOMIC METAL TRADES
COUNCIL,

Intervenor.

CASE 19-RC-135888

INTERVENOR'S POST-HEARING BRIEF

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INTRODUCTION

The maintenance employees at the Pacific Northwest National Laboratories (“PNNL” or “Battelle”) have been part of a multi-craft, single bargaining unit for over fifty years.¹ Tr. 120-21. The Intervenor, the Hanford Atomic Metal Trades Council (“HAMTC”), is the exclusive bargaining agent for the single unit of all maintenance employees working at Battelle, regardless of their union affiliation or trade. Jt. 1; Tr. 524. HAMTC has been the exclusive bargaining representative of the single bargaining unit at Battelle for fifty years. Tr. 366-67, 525; I-10.

The single bargaining unit is a multi-craft, wall-to-wall grouping of all maintenance personnel at Battelle. HAMTC has functioned as the bargaining agent for this group, with PNNL, in an exceedingly effective manner. All of the classifications in the bargaining unit personnel have worked cooperatively and effectively in both negotiating and administering the collective bargaining agreement under the direct leadership of HAMTC. Labor relations have been peaceful and productive with only two strikes in the parties’ history, the last being in 1976. Tr. 222.

The Pacific Northwest Regional Council of Carpenters for, and on behalf of, its affiliate Local Union 2403 (“PNRCC”) seeks to sever eight (8) job classifications from a bargaining unit comprised of approximately sixty-two (62) job classifications; specifically (Board Exhibit 1(a)):

All regular and full-time Carpenter Journeyman, Carpenter Trainee(s), Carpenter Apprentice(s), Millwright Journeymen, Millwright Trainee(s), Millwright Apprentice(s), Millwright Welder Journeymen, and Millwright Welder Trainee(s)....

The job classifications which the Petitioner seeks to sever from the unit are from two distinct, separate crafts with virtually nothing in common; carpenters and millwrights. Put differently, not only does the Petitioner seek to sever a handful of classifications from the overall, fully

¹ References to the record will be cited as “Tr. p.#”, denoting transcript and page number, and “I-#,” “E-#,” “P-#,” and “Jt.-#,” for Intervenor, Employer, Petitioner, and Joint exhibits, respectively.

integrated, multi-craft bargaining unit, it seeks to sever two complements of classifications that share no specific commonality vis-à-vis one another.

As shown below, where a union seeks to sever and establish a separate bargaining unit of employees who are currently represented in a larger group, the petitioner has an extremely high burden to show that there are compelling circumstances justifying the severance. The evidence shows unequivocally and overwhelmingly that such a severance is not appropriate, that the petitioned-for unit is not an appropriate bargaining unit, and that the Petition must be dismissed.²

STATEMENT OF FACTS

Located in Richland, Washington, PNNL is one of a number of laboratories run by the U.S. Department of Energy (“DOE”). Tr. 118. PNNL researchers and scientists perform a wide variety of research and development, including animal and magnetic research.³ Tr. 20-21. The PNNL location, often referred to as “the campus” (Tr. 22-23), is comprised of dozens of buildings spread across a large geographic area. See E-1. The bargaining unit at issue is comprised of over two-hundred (200+) employees scattered out amongst the PNNL’s facilities in a variety of locations and charged, predominantly, with the maintenance of the PNNL structures and facilities and customer fabrication related directly to PNNL’s mission(s).⁴ Tr. 20-21; E-2. The bargaining unit does not engage in new construction activities. Tr. 61.

² As will be demonstrated below, the United Brotherhood of Carpenters (“UBC”) motivation for the instant petition is grounded squarely in internal union issues. A state of “schism” of sorts from years earlier is motivating the UBC in this case and is not an appropriate consideration of the Region in reaching its determination in this matter.

³ The breadth of the work and research performed at PNNL was not fully explored for purposes of the instant hearing because the employees at issue primarily perform maintenance work. Tr. 21. However, a number of witnesses testified that they have seen missiles on site. Tr. 760, 763, 778.

⁴ There are some represented employees in the unit that do not appear on E-2; the Radiological Protection Control (“RCT”) group resides in a different PNNL department. Tr. 49, 257. The complement of Maintenance and Fabrication Services employees listed on Employer Exhibit #2 is 206.

PNNL's Maintenance Department

PNNL has organized its maintenance functions under one central department; Maintenance and Fabrication Services (hereafter "MFS"). E-2; Tr. 20. This organizational structure has remained virtually unchanged for years. Tr. 48. James Berger is the MFS Manager.⁵ E-2. Under Berger there are five work groups, each headed by a Group Lead. E-2. Each Group Lead is responsible for a number of Work Teams headed by a Team Leader. Id.

The MFS department is charged with maintaining all of the physical structures on the PNNL campus and performing fabrication of "widgets" for PNNL researchers. Tr. 20-21. To accomplish this task, the MFS is divided into approximately twelve (12) mixed-classification teams located in different locations. E-2. A legend on Employer's Exhibit 2 indicates which classifications are associated with which "craft." Id. Each "craft" is associated with attendant job classifications as described in the parties' CBA. See Jt. 1, pp. 172-75.

All bargaining unit positions in the MFS are filled directly by PNNL rather than through the affiliates' hiring halls. Tr. 86-87. The parties' CBA refers to "classifications" not "crafts." Jt. 1, pp. 172-75. All MFS employees receive the same general "core" training at the time of hire. E-4; Tr. 63-64. This training is not specific to the distinct classifications of MFS classification but rather to the core teams. Id. After core training, formal classification-specific training is relatively uncommon.⁶ Rather, MFS personnel generally receive core and/or "on-the-job" training. Tr. 63-64, 107. There is no requirement that any classification go through an apprenticeship program and Battelle does not have any craft apprenticeship programs. Tr. 87-88. The average seniority for craft classifications in PNNL's MFS department is approximately 15

⁵ The Employer called only two witnesses, Mr. Berger and Ken Renteria. Renteria is the PNNL labor relations manager. Tr. 117. "Labor relations" is a separate department from MFS that does not appear on the Employer's organizational chart.

⁶ The record shows that carpenters receive scaffolding and locksmith training while the millwrights receive laser alignment and manipulator training. Tr. 65.

years. Tr. 619. The record is silent as to the number, if any, of classification “trainees.” There is currently no “welder pool” in the MFS department and has not been one for years. Tr. 169. There are currently no carpenter or millwright welders. Tr. 167-68, 235.

All work rules, seniority, holidays, vacations, retirement benefits, working hours/shifts, overtime, sick leave, insurance, and discipline are applicable to all bargaining unit employees regardless of job classification, seniority group, or craft affiliation. Tr. 221-22; Jt. 1. All MFS overtime and seniority lists are by classification and have been maintained without revisions or changes. Tr. 611-14; I-15, P-24.

Each morning MFS management conducts a “plan of the day” meeting with MFS managers, Group Leads, and Team Leads (front-line supervisors) to discuss MFS work assignments for the day. Tr. 88-89. MFS bargaining unit personnel work 7:30-4:00 Monday through Friday. Tr. 233. MFS employees generally report to a specific geographic location, or shop, with their other team members. Tr. 25-26. Subsequent to the Plan-of-the-Day meeting, each team lead holds a team meeting with all of the MFS classifications on their respective teams. Tr. 89. At this meeting the team lead assigns Service Requests, Preventative Maintenance, and/or fabrication of widgets to the bargaining unit personnel. Id. There are no “craft” specific meetings at PNNL involving only employees affiliated with a particular trade union or specific job classification. Tr. 219.

Assignments are generally made by classifications and the team leader may make a “lead craft” designation for any given assignment based on which craft has the most responsibility for completing the assignment. Tr. 51-52; E-3. Other classifications needed to complete a specific service request may or may not show up on the service request paperwork. Id.; E-3. Generally, one service request encompasses all job classification work involved in completing it start to

finish. Tr. 688-89. All front line supervision is designated by team, *never* by craft. E-2; Tr. 397. There is no record evidence of any changes in how the MFS department assigns or completes its work after June 2, 2014.

The work of the MFS teams and job classifications within MFS

MFS bargaining unit personnel are responsible for three primary duties; routine maintenance, scheduled maintenance (“Preventative Maintenance” or “PM”), and fabrication (“keep the lights on, doors open, air going the right way. And we build a lot of widgets for the researchers”). Tr. 21; E-3. The complement of teams in the MFS all work toward a dual-purpose: maintain the Employer’s facilities and assist with the fabrication of “widgets” day-to-day for the Employer’s research personnel. All job classifications on each respective team are an integral part of a larger complement of craft employees who work side-by-side to complete the assigned tasks, and each job classification is essential to the Employer’s overall processes.

Most work assigned in the MFS department comes in the form of a “Service Request.” Tr. 50; E-3. As described above, non-bargaining unit first line supervisors assign Service Requests to their respective multi-classification teams. *Id.* All work is assigned by a Team Leader. Tr. 88. The Team leader assigns it to the appropriate classification(s). *Id.* The service request is a singular task that generally involves a collaboration of job classifications to fully complete the assignment. Tr. 51, 91, 684.

The MFS work teams are assigned a wide variety of general maintenance tasks. Tr. 21. The teams also perform the scheduled, i.e., preventative, maintenance on the Employer’s campus. Tr. 50. The teams also fabricate “widgets” at the request of PNNL researchers. Tr. 21, 45, 58, 760. A “widget” could be virtually anything that a PNNL researcher can conjure up. Tr. 760. It can take anywhere from a day or two to weeks to fabricate a widget. Tr. 697.

MFS personnel use a mix of vehicles, some assigned to specific job classifications and some not. Tr. 674-75. Because PNNL is replacing its fleet with “green” vehicles, the trend in MFS is a move towards a common motor pool. Tr. 675. Local 2403 Business Manager and MFS carpenter Flannery testified that “craft men” at Battelle share vans, mini vans, and electric vehicles; a “common motor pool.” Tr. 372, 374. The main craft “shop” is located in the “350” building and is used primarily for fabrication. Tr. 25. There are a number of “satellite” shops spread throughout the PNNL campus which are used by “core teams” of mixed job classifications. Tr. 25-26. The complement of carpenter and millwright job classification personnel do not work out of any particular shop. Tr. 26.

Naturally, the personnel in the various MFS job classifications use tools to perform their assigned tasks. PNNL introduced an exhibit purporting to be a list of tools used “exclusively” by carpenters and millwrights. E-5. Carpenter witness Flannery admitted, however, that the tools were “exclusive” only in the sense that specific tools in one of the MFS shops are generally not used by other classifications.⁷ Tr. 310. He further admitted that some of the tools on E-5 were “universal tools” (like a band saw) and that a craft cannot “claim” any particular tool in the MFS. Tr. 309-10.

Integration/common cause/normal operations dependent on the performance of the assigned functions

The day-to-day functions of the MFS department require collaboration and cooperation of all job classifications. Any given job assignment requires the contribution of various job classifications to complete the singular task.

⁷ Flannery described a high-pressure water cutting system, “water jet,” and acknowledged that other job classifications used that tool. Tr. 338.

Testimony by job classification

Kurk Watts has worked at PNNL in the sheet metal job classification for twenty five (25) years. Tr. 666. Watts is assigned to the "Fabrication Work Team" along with a number of personnel from other job classifications and works primarily in the "350 fabrication shop" which houses a multi-craft team of MFS personnel. E-2; Tr. 25, 36, 38, 248, 277, 284, 667, 680, 725. Watts is a Chief Steward for the sheet metal job classifications. Tr. 668. Watts and his team perform PMs, Service Requests, and fabrication (widget making) duties. Tr. 669-71. Watts works collaboratively with other job classifications. For example, his classification works with metal up to ten gauge and machinists work with metal over ten gauges. Tr. 672. When other craft work is assigned to sheet metal on a particular project he communicates with the proper classification to maintain jurisdictional lines. Tr. 672. He routinely works "cohesively" with other classifications to complete single service requests, both on his team and with other MFS teams. Tr. 673. For example, he works routinely with millwrights; including millwright steward Scott Gordon, performing shared tasks on the same material on the same work assignment. Tr. 680-81. When material needs to be uncrated (like a door), a teamster delivers it and a carpenter is sent to perform the uncrating. Tr. 683-84.

MFS employee Mark Shear has worked at Battelle for twenty-five years. Tr. 719. Shear spent about twenty years in a teamster job classification. Tr. 722. For the last four years Shear has worked in a millwright job classification. Id. For his entire career with PNNL, Shear has worked in the MFS department. Id. Shear's transfer from a teamster classification to a millwright classification was permanent. Tr. 723. When Shear was permanently transferred he was not given any formal millwright training by PNNL and Shear has never been through a Millwright apprenticeship program. Tr. 723-24. The last three individuals hired into MFS

millwright job classifications have not attended a millwright apprenticeship program. Tr. 739. There are no “licensing” requirements to be a millwright at PNNL.⁸ Tr. 753. Shear works with other job classifications, such as sheet metal and machinists, on a “daily basis” to complete his job assignments. Tr. 728-31. Shear refers to working with multiple crafts as working on a “composite crew.” Tr. 730.

MFS employee Jeff Bumgarner works in the “transportation” job classification on the “Grounds, Relocation & Receiving Work Team.” E-2. Bumgarner has worked for PNNL for over twenty-one (21) years. Tr. 765. He is a steward. Tr. 776. Bumgarner is part of the MFS “move crew” that is charged with moving furniture and equipment in and out of workspaces on the Employer’s premises. Tr. 767-72. He has worked on the team for fourteen (14) years. Tr. 767. The move crew consists of three employees, two in a “transportation” job classification and one in a “carpenter” job classification. Tr. 767, 773. The move crew is assisted on an as-needed basis by an electrician who connects and disconnects electronics. Tr. 768. The move team works closely and collaboratively day-in and day-out. Tr. 774. While the transportation employee’s primary duty on the move crew is moving furniture and other office equipment, the teamsters routinely assist the carpenter with shoulder-to-shoulder, hands-on assembly of furniture. Tr. 773-74. Such activities include assisting with the installation of computer keyboard trays on desks and assembling/disassembling furniture. Id. The carpenter also assists the transportation workers with their job duties. Tr. 774-75. Finally, transportation personnel (teamsters) do not just move furniture on the move crew; all material needed by the other job classifications for their work assignments is delivered by transportation personnel. Tr. 682-83.

⁸ The Petitioner put on no evidence of any “licensing” requirement for carpenter or millwright job classifications at PNNL. Nor was any evidence presented related to the necessity of such job classifications completing apprenticeship programs.

John Drewrey has worked at PNNL for forty (40) years. Tr. 691. Drewrey works in MFS in the electrician job classification. Id. Drewrey is also the chief steward for the electricians and the chair of the HAMTC grievance committee. Tr. 692. Drewrey works closely with power operators to complete portions of the service requests. Tr. 695. He performs “lock out tag out” procedures for other MFS job classifications that work on PNNL equipment. Id. Similarly, with regard to the pipefitters personnel on air conditioning and refrigeration equipment, the electricians “do the electrical work, and [the pipefitters] do the mechanical work.” Id. The electrical personnel also work with other classifications to fabricate “widgets” for the PNNL researchers. Tr. 696. Widgets range in size from “fit in your hand” to “very large.” Id. An example is a “portal monitor” used at United States border crossings. Id. Electricians, pipefitters, millwrights, and carpenters are all involved in the fabrication of the monitor. Tr. 696-97. A widget could take a short period of time to fabricate or weeks. Tr. 697.

MFS carpenter Scott Flannery has worked for PNNL for eighteen (18) years. Tr. 247. Flannery works in the 350 building assigned to the “Physical Sciences Facilities 2 Work Team” with co-workers in painter, transportation (teamsters), pipefitter, electrician, and refrigeration job classifications. E-2; Tr. 248. Flannery was asked if he has worked on service requests where a carpenter would do part of the work order and another craft would do another part of the same work order. Tr. 314. Flannery answered, “Yeah. They’re—we get that all the time.” Id. He further testified that he works “side-by-side” with other crafts to perform service requests, PMs, and build widgets. Tr. 379.

Flannery testified that it was common that he would get one work order, do his “portion,” and then pass the work order to another job classification. Tr. 326. An example was provided by sheet metal witness Kurk Watts. Watts was assigned to work on a door that was “crated.” Tr.

683. Flannery and a second carpenter were called to the location of the crated door to “uncrate” it. Id. Flannery provided the example of a “fire barrier PM” on the PNNL campus. Tr. 314. To complete the task, a carpenter inspects the fire doors/walls, a pipefitter inspects the sprinkler heads, and a sheet metal worker inspects the fire dampers; the carpenter only does a portion of the PM. Tr. 314, 403-04. Flannery agreed that teamsters “haul stuff for us.” Tr. 274. Flannery agreed that carpenters have “rotated through the move crew” and that teamsters help carpenters with their move crew work. Tr. 282. Finally, Flannery acknowledged that if no teamsters were available to move something a carpenter needed, then every other job classification waits or the “job gets cancelled.” Tr. 368-69.

There have been a consistent number of permanent transfers between job classifications in the MFS. A bargaining unit employee has transferred from one job classification to another approximately once per year over the last nine (9) years. Tr. 619.⁹ There have been three (3) permanent transfers between group classifications in 2014 alone. See I-16.

While each job classification has established “jurisdictional” boundaries, the parties anticipated the inevitable overlap between job classifications that must occur for the efficient performance of the MFS mission. Accordingly, the parties negotiated a Craft Alignment Program which allows for personnel in one job classification and group to cross over and perform some of the less involved job functions of another job classification and group. Tr. 370; Jt. 1, p. 20.

Parties’ history of collective bargaining

Battelle assumed control of the PNNL from General Electric in 1965. Tr. 120-21. HAMTC was the exclusive bargaining agent of the maintenance personnel at PNNL with

⁹ Flannery provided yet another example where a carpenter would remove a corkboard and a painter would then patch the holes in the wall and paint; same project, same charge code. Tr. 316-17. Flannery described teamsters going to “town” and picking up doors for carpenters to work with. Tr. 325.

General Electric, and has remained the exclusive bargaining agent since 1965. Id. From 1965 to present, HAMTC has entered into collective bargaining agreements and been the exclusive representative of a single unit of all classifications of maintenance employees of PNNL. Id.; Jt-1; I-10, I-11, I-13. The parties have a long-standing and peaceful labor relationship with only two strikes in their history; the last in 1976. Tr. 222.

The most recent contract is in effect and the parties are actively engaged in negotiating a successor agreement. Tr. 527; Jt. 1. The CBA is supplemented by Appendix As, which are craft specific and fully incorporated into the parties' CBA. Tr. 528-29. While craft "affiliates" participate in the negotiation of the Appendix As, those negotiations never take place without a HAMTC representative. Tr. 122-23. HAMTC must approve all changes to Appendix As. Tr. 528-30. Moreover, Appendix A does not become effective until HAMTC authorizes any changes and the CBA is ratified and executed. Tr. 547. All HAMTC CBAs are subject to both member ratification and HAMTC approval. Id. at 530.

The fifty-year old bargaining unit is a traditional maintenance unit consisting of approximately sixty-two (62) job classifications amongst twenty-four (24) seniority groups. Jt. 1, pp. 172-75. Collective bargaining is accomplished by a committee comprised of local union affiliates. Tr. 527-28. However, the individual affiliates do not have authority to enter into binding agreements with PNNL; the CBA and all Appendix As, MOUS, etc. must be signed off by HAMTC. Tr. 530. The current bargaining committee remains unchanged since the June 2, 2014, revocation of the carpenter Solidarity Agreement. Tr. 531-32; I-2. The carpenter representative, Local 2403 Business Manager Scott Flannery, has participated on the HAMTC bargaining committee in the past (I-10) and is currently on the committee. I-2; Tr. 364.

The wages and benefits negotiated by HAMTC apply to all employees in the multi-classification bargaining unit, regardless of job classification, seniority group, or union affiliation. Jt.-1; E-17. The wage rates for employees in the carpenter and millwright job classifications are consistent with or better than all other contractual classifications. E-17. All work rules, seniority, holidays, vacations, retirement benefits, working hours/shifts, overtime, sick leave, insurance, and discipline are applicable to all bargaining unit employees regardless of job classification, seniority group, or craft affiliation. Tr. 221-22; Jt. 1. There have been no proposals or agreement during the current contract cycle (no record evidence of such) with respect to any substantive changes to the existing job classifications or functions. Tr. 531. The bargaining unit for which HAMTC is the exclusive bargaining representative is an experienced, long-tenured group with an average PNNL seniority of fifteen (15) years. Tr. 619. This group has known only one exclusive bargaining representative; HAMTC. Tr. 533-34; I-10, I-11, I-12, I-13.

All job classifications are represented by shop stewards and chief shop stewards. Tr. 679; Jt. 1, p. 97. HAMTC is responsible for all steward selection. Jt. 1, p. 97. All stewards who performed steward duties for the carpenter and millwright job classifications prior to June 2, 2014, have remained in those positions and hold identical responsibilities as before. Tr. 679-80. The Petitioner's carpenter witness, Local 2403 Business Manager Scott Flannery, confirmed that he and Scott Gordon continue to serve as the stewards for carpenter and millwright job classification personnel with no change or interference from the Sheet Metal or Machinist unions to whom they report. Tr. 384-85. They are not asked to represent machinists or sheet metal workers. Tr. 384. The only change is those stewards now pay dues to different HAMTC affiliates (Sheet Metal Local 55 and the IAM). Tr. 271.

The parties' grievance and arbitration procedure applies to all job classifications. Jt. 1, pp. 97-102. HAMTC has an internal process for resolving jurisdictional disputes between classifications. Tr. 333. All disputes related to the assignment of work are either resolved through the CBA procedure or jurisdictional dispute procedure. Jt. 1, pp. 20-22, 97-104; I-6. HAMTC maintains records of all jurisdictional disputes and resolutions, going back decades. Tr. 717-18, 376-77. The Petitioner does not maintain these records. Tr. 376-77.

Many grievances are resolved on the shop floor by shop stewards and front line supervision (a.k.a. non-bargaining unit Team Leaders) at Step 1. Tr. 155; Jt. 1, pp. 99-100. If a grievance is not resolved, it is reduced to writing and exalted to Step 2.¹⁰ Id. All Step 2 grievances are scheduled for a meeting before the HAMTC grievance committee. Tr. 697-98; Jt. 1, p. 100. The HAMTC grievance committee is chaired by John Drewrey. Tr. 692. The chief steward who sat on the grievance committee on behalf of the carpenter and millwright job classifications prior to June 2, 2014, (Scott Flannery), has remained in that position subsequent to June 2, 2014. Tr. 257, 364, 393-94. Grievances involving carpenter and millwright job classifications are "appended" on the HAMTC grievance documentation to indicate that the grievance involves carpenter or millwright interests rather than Sheet Metal or Machinist interests. Tr. 704-05; I-18. The Committee can move grievances to arbitration only with HAMTC approval. Tr. 378.

Interests related to the carpenter and millwright job classifications have been advanced by HAMTC as they historically have. E-13; I-18. There have been no adverse changes to the job classification or jurisdiction of either work/job classification subsequent to the UBC's 2011 disaffiliation from HAMTC. Tr. 566. Representatives from both millwright and carpenter job

¹⁰ Subsequent to June 1, 2014, carpenter steward Flannery can still move grievances to Step 2 on behalf of carpenter interests. Tr. 292.

classifications continue to serve as stewards and advance grievances on behalf of those classifications subsequent to June 2, 2014. See Scott Flannery (Local 2403 Business Manager) and Mark Shear (millwright classification) at E-13 and I-18. Moreover, the machinist affiliate recently negotiated a positive resolution to a grievance related to the millwright job classification. I-17, I-18.

History and pattern of collective bargaining in the DOE laboratory industry

The historical pattern of collective bargaining at PNNL mirrors that of the industry at other laboratories run by the Department of Energy across the United States. Battelle is a private, not-for-profit, 501(3)(c) corporation. Tr. 118. The pattern of bargaining at DOE laboratories, as evidenced by the CBAs introduced by the Intervenor (I-7, I-8, I-9, I-14) is a single, multi-craft bargaining unit for all maintenance personnel.

Metal Trades Department (“MTD”) general representative Tom Schaeffer has negotiated many of the MTD contracts with DOE across the United States, including the CBA at issue, Jt. 1, and two others in Oakridge, Tennessee, I-7, I-9, and one in Amarillo, Texas. I-8. Schaeffer has been to those locations physically. Tr. 583, 592. Intervenor also introduced a MTD contract from a DOE laboratory in Albuquerque, New Mexico. I-14.

The Petitioner introduced a number of contracts into the hearing record that do not involve the industry at issue in any way. In fact, all of the Petitioner’s exhibits involve “marine carpenter” job classifications at marine locations in Western Washington. See P-14 through P-22. PNNL is a laboratory, not a marina or shipbuilder. PNNL does not employ any personnel in marine classifications. Jt. 1.

Petitioner's qualifications

The Petition was filed by the "Pacific Northwest Regional Council of Carpenters for and on behalf of its affiliated Local Union 2403." Board Ex. 1(a). Neither PNRCC nor Local 2403 has ever represented a bargaining unit at Battelle/PNNL. Tr. 466. Local 2403 has never been the recognized or certified exclusive bargaining representative of any unit of employees anywhere in its history. Id. The Petitioner put on no evidence that it has ever been the exclusive bargaining representative at any DOE laboratory at any time. Rather, the Petitioner introduced contracts from the marine industry. P-15 to P-22.

The carpenter and millwright job classifications perform entirely different functions within PNNL's MFS department

Mark Shear, a MFS employee in a PNNL millwright job classification testified that his day-to-day job duties are more akin to the "machinist" job classification than a carpenter job classification. Tr. 727. An MFS millwright at PNNL aligns shafts from pumps to motors, sets equipment and bolts it to the floor, repairs pumps, couplers, belts, shoes and assembles carts. Tr. 726. A millwright also works on lawn equipment and changes HEPA filters. Tr. 287. In contrast, the carpenter job classification builds greenhouses, pallets, and shipping crates, works on doors, fabricates something for a researcher, uncrates equipment/material, builds scaffold, and hangs window blinds, removes corkboards, and repairs walls. Tr. 273, 316, 727.

Local 2403 Business Manager/President Scott Flannery has worked for Battelle/PNNL for eighteen (18) years. Tr. 247, 268-69. Flannery testified that the carpenter and millwright job classifications involve entirely separate crafts, with distinct apprenticeship programs and "totally different job skills." Tr. 350. Flannery further agreed that carpenters' and millwrights' skill sets are completely distinct with no similarities other than affiliation with the UBC. Tr. 351.

History between the Metal Trades and the United Brotherhood of Carpenters

The Metal Trades Department, AFL-CIO (“MTD”), was established for the purpose of encouraging “the formation of local Metal Trades Councils...[to] advance the interests and welfare of the metal trades industry...[and to] establish more harmonious relations between employer and employee....” I-5, p. 2. Membership in the MTD is limited to labor organizations that are “chartered by and affiliated with” the AFL-CIO. HAMTC has been duly chartered by the MTD for decades. I-6; Tr. 120-21.

To be affiliated with HAMTC, a local union must be part of a national or international union that is affiliated with the MTD. I-5, pp. 1, 6. In April 2001, the UBC disaffiliated from the AFL-CIO. E-7, p. 7. From 2006 to 2011, the MTD and the UBC were parties to a Solidarity Agreement. *Id.* The Solidarity Agreement was terminated by the MTD on June 1, 2011. Notwithstanding the termination, HAMTC took no action on the subject until June 1, 2014. E-7. On that date, HAMTC ceased to recognize Local 2403 as an affiliate.

By letter dated May 6, 2014, HAMTC provided notice to PNNL, Local 2403 and all PNNL employees in carpenter and millwright job classifications of its intended course of action with regard to the impending transition. E-7; I-4. The correspondence was similar in content to a letter HAMTC had sent to Local 2403 on October 25, 2011. I-3.

HAMTC’s role in the disaffiliation transition

HAMTC president Dave Molnaa was directed to take specific action with regard to the UBC affiliate Local 2403 in 2011. Tr. 551. On October 25, 2011, Molnaa sent Local 2403 a letter outlining the imminent changes. I-3. That letter was not acted upon by HAMTC until June 14, 2014. Tr. 543, 551, 717-18. Molnaa took “baby steps” over a couple of years to implement the MTD directive. *Id.* Despite receiving the letter in October 2011, I-3, the Petitioner did not

present any evidence that it came to HAMTC and expressed dissatisfaction with the content of Molnaa's letter.

After sending the letter to Local 2403, Molnaa communicated with all of the affected personnel in millwright and carpenter job classifications and with PNNL. E-7; I-4. Molnaa then held a meeting to explain HAMTC's transition plan. Local 2403 Business Manager Scott Flannery attended that meeting, on May 19, and thanked Molnaa for looking out for his interests. Tr. 358-59. Flannery appreciated that Molnaa had not acted sooner on the 2011 directive by the MTD. Tr. 359. Flannery testified that Molnaa did all he could to protect the carpenter and millwright interests during the transition. Tr. 404. Flannery further testified that the petition was filed not because he was concerned HAMTC would "turn its back" on the carpenters and millwrights, but rather so those groups can have a "voice." Tr. 405

Molnaa then negotiated protections, in the form of two MOUs, for the interests of those personnel in millwright and carpenter job classifications directly with PNNL. E-9, E-10. Molnaa did this on his own initiative. Tr. 541. The proposals had been shared previously with all affected carpenter and millwright employees at PNNL. I-3 and I-4.

MFS employees in carpenter and millwright job classifications had previously paid working dues to Local 2403 as a term and condition of employment. After June 1, 2014, those employees instead are required to pay dues to the Sheet Metal and Machinist affiliates. In Flannery's case, his dues went from \$179 per month with Local 2403 to \$39 with Sheet Metal Local 55. Tr. 362.

Prior to the transition, Molnaa had conversations with representatives from both Sheet Metal and Machinist unions. Tr. 543-44. Molnaa got the assurance from both that representation of the affected job classifications would continue uninterrupted and that all

classifications would retain their respective stewards. Tr. 538, 543-45. He also warned the unions against taking any action to make new jurisdictional demands on carpenter and millwright work. Tr. 545. Molnaa kept Scott Flannery on the HAMTC bargaining committee where he remains today. Tr. 528, 531-32.

Ken Howard, the representative for IAM District Lodge 751, assured Molnaa during the transition that the Machinist union would stand up and fight for the millwright's and their work jurisdiction. Tr. 635. Howard assured Molnaa that the complement of millwright stewards would remain intact. Tr. 636. Howard has adjusted grievances in favor of the millwright since June 1, 2014.¹¹ I-17, I-18; Tr. 639.

Sheet Metal "bull steward" Ian Hunsaker ensures that Flannery attends Step 2 meetings to "cover the carpenters." Tr. 394. Hunsaker allows Flannery to perform all of his steward duties representing the interests of MFS carpenters. Tr. 384. Flannery believes that if he had an issue related to his job classification Hunsaker would assist him. Tr. 390-91.

The Petition

The Petition was filed by the PNRCC without a formal vote by affected Local 2403 millwright and carpenter members. Tr. 350, 737. The Local did not give members formal notice of a special meeting to discuss the filing of a petition. Tr. 349, 735. Local 2403 did not explain to its members the context or the significance of the petition. Tr. 737-38.

ARGUMENT

In Mallinckrodt Chemical Works, the Board set forth its factors for deciding whether a group of craft employees integrated into an existing bargaining unit could sever from the existing

¹¹ The Petitioner will argue that Howard gave up millwright work in the settlement. This claim is patently false. The "A-frame" exception noted in the grievance involves equipment that has never been on the PNNL campus. Tr. 663-64. Moreover, the millwright who wrote the grievance, Mark Shear, was at the hearing and was not called by the Petitioner to support its false claims.

unit and form their own, separate bargaining unit. 162 NLRB 387 (1966). The Mallinckrodt factors used by the Board to evaluate a craft severance petition are as follows (id. at 397):

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists;
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation;
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation;
4. The history and pattern of collective bargaining in the industry involved;
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit; and
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

As will be discussed below, the application of the Mallinckrodt factors to the PNNL-HAMTC bargaining unit overwhelmingly demonstrates that craft severance of the carpenter and millwright classifications from the rest of the existing bargaining unit would not be appropriate.

The law governing petitions to sever craft employees from an existing bargaining unit is *fundamentally different* than the law governing the initial establishment of an appropriate craft unit. When faced with no bargaining history and no more comprehensive unit, the Board gives greater weight to separate identity, true craft status, separate supervision, separate skills, and the

like. See E.I. du Pont & Co., 162 NLRB 413 (1966). However, when considering a petition seeking severance from a more comprehensive, existing unit, the Board, in applying the Mallinckrodt factors, gives great weight to bargaining history and requires “compelling circumstances” to justify disturbance of the existing unit. Kaiser Foundation Hospitals, 312 NLRB 933, 936 (1993). The party seeking severance has the “heavy burden” of establishing that severance is appropriate under the circumstances. Metro. Opera Ass’n, 327 NLRB 740, 752 (1999). In a vast majority of cases the Board concludes that “the interests to be served by maintaining the established bargaining unit far outweigh any interests that may be served by affording the craftsmen herein an opportunity to change their mode of representation.” Dow Chemical Co., 202 NLRB 17, 20 (1973); see La-Z-Boy Chair Co., 235 NLRB 77, 79 (1978); Bendix Co., 227 NLRB 1534, 1538 (1977); Goodyear Tire & Rubber Co., 165 NLRB 188, 190 (1967).

A like result—denying severance—is warranted here. The Petitioner seeks to sever two distinct groups of employees, carpenters and millwrights, who have virtually nothing in common other than the commonalities they share with the rest of the existing bargaining unit, and the fact that they used to pay dues to the same union. But it is HAMTC that has been the exclusive bargaining representative of the maintenance personnel at PNNL since its inception, and has developed a tremendously stable collective bargaining relationship with PNNL in which carpenters and millwrights are well-represented. There has been no indication that employees in the petitioned for unit will not continue to be well-represented by HAMTC. The evidence proves that HAMTC harbors no animosity towards employees in the carpenter and millwright classifications, and both the employees in the petitioned-for unit and PNNL will be made worse off by severing the carpenter and millwright classifications from the rest of the maintenance unit.

The Mallinckrodt factors clearly, obviously, and strongly favor the continuance of this plantwide maintenance bargaining unit. The petition for severance should be denied.

I. THE MALLINCKRODT FACTORS PLAINLY FAVOR MAINTENANCE OF THE EXISTING BARGAINING UNIT, NOT SEVERANCE.

A. The History Of Collective Bargaining With PNNL Shows That HAMTC's Representation Has Produced Great Stability In The Collective Bargaining Relationship, Which Will Likely Be Disrupted By Dismantling The Existing Bargaining Unit.

Upon review of Board cases applying Mallinckrodt in the existing unit context, it is clear that collective bargaining history is given paramount weight. As the Board explained in Firestone Tire Co., 223 NLRB 904, 905 (1976):

While the Board has permitted separate representation of maintenance employees in the absence of a prior collective-bargaining history, it has been the established policy well before Mallinckrodt Chemical Works, as well as after that decision, to decline to sever a group of maintenance employees from an existing production and maintenance unit in the face of a substantial bargaining history on a plant-wide or multi-plant basis.

The Petitioner seeking severance from an existing production and maintenance unit must show that there are "compelling circumstances" for severance based on the Mallinckrodt factors:

The Board is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue *ab initio*.

Kaiser Foundation Hospitals, 312 NLRB at 936. Particularly where an extensive collective bargaining history is accompanied by "no evidence that the incumbent Union has failed to adequately represent the employees," this factor supports denying severance. Metro. Opera Ass'n, 327 NLRB at 753.

Here, collective bargaining history plainly favors denying the petition for severance. HAMTC is the exclusive bargaining agent for a unit of all maintenance employees at PNNL, and

has been representing this distinct group of employees for 60 years. Tr. 366-67, 524-25; Jt. 1, I-10. Indeed, in 2002 Region 19 rejected a similar severance petition at PNNL, observing (Case No. 19-RC-14213, *10 (Mar. 25, 2002)):

the existing pattern of bargaining with HAMTC representing overall units of mixed employees has produced stable labor relations. Record testimony established that during the past 50 years of bargaining between HAMTC and the various contractors, there was one strike during the 1970's and possibly one or two others during the 1950's and 1960's. The parties system has "worked."

Since that decision, HAMTC has successfully continued its long, peaceful labor relationship with PNNL, as it did with PNNL's predecessor, representing the interests of maintenance personnel campus-wide. Tr. 120-21, 222; Jt. 1, I-10, I-11, I-13. Currently, HAMTC is in the midst of negotiating a successor agreement. Tr. 527; Jt. 1.

As bargaining representative, HAMTC negotiates wages, work rules, seniority, holidays, vacations, retirement benefits, work hours, sick leave, insurance, and discipline of all bargaining unit members, including those in the petitioned-for unit. Tr. 221-22, 527-28; Jt. 1, E-17. Though HAMTC appropriately gives particular affiliates leeway to craft proposals specific to their members' interests, none of the affiliate unions have the authority to enter independent agreements with PNNL. Tr. 530. Any classification-specific changes are bargained with a HAMTC representative present, require HAMTC approval, and must then be voted on by all HAMTC members. Tr. 122-23, 528-30, 547. HAMTC has an internal grievance committee to adjust any grievances that arise, and an internal jurisdictional dispute resolution process. Tr. 333, 376-77, 717-18; Jt. 1, pp. 20-22, 97-104; I-6. HAMTC maintains all records of jurisdictional disputes and their resolutions. HAMTC is also responsible for selecting all stewards assigned to the maintenance and production classifications. Jt. 1, p. 97. HAMTC's stewards are assigned by classification, with machinist stewards possessing machinist work experience, and carpenter

stewards possessing carpenter experience. HAMTC's organizational and representational methods have produced a stable bargaining relationship that outlasted PNNL's predecessor, predates the relevant Board law, and should not be disturbed.

To adjust for the dissolution of the Solidarity Agreement between UBC and the Metal Trades Department in 2011, HAMTC retained the current carpenter and millwright stewards (with their respective jurisdictions), retained carpenter and millwright negotiating committee representation, and absorbed former-Local 2403 members into Sheet Metal Local 55 and the International Association of Machinists. Tr. 364, 531-32; I-2. No issues of inadequate representation of carpenter or millwright members, before or after 2011, have been raised.¹² Finally, the transition has not produced strife with PNNL, nor is it expected to do so.

The results of splitting the bargaining unit were well-addressed by the Regional Director in the 2002 decision. Granting severance "has the serious potential to raise future issues of jurisdictional disputes and whip-sawing," as well as issues with "standing arrangements, understandings and protocols that would undoubtedly exist in these relationships after decades of successful combined representation." Case No. 19-RC-14213, *10 (Mar. 25, 2002). In addition, "[t]he stability provided by employers-wide agreements" would be lost. *Id.* There would be nothing to preclude other affiliates from seeking severance, rather than resolving internal disputes internally. A displeased affiliate could obtain severance on the same basis as PNRCC, whittling away at the long-standing, successful HAMTC bargaining unit. Moreover, severance

¹² Local 2403 Business Manager Scott Flannery testified as follows regarding whether or not carpenters and millwrights face inadequate representation if the petition is denied (Tr. 404):

Q: Did – do you believe as you sit here that Mr. Molnaa [HAMTC's President] did all he could to stave off this process for as long as he could?

A: Yes, sir.

Q: And what makes you believe that he's going to turn his back on you tomorrow?

A: This isn't about Dave Molnaa turning his back on me. It's about the carpenters and millwrights having their own voice.

here would have a destabilizing effect on bargaining units at other DOE research facilities, no doubt a critical industry, nationwide. See Firestone Tire, 223 NLRB at 907 (finding that severance “would have a disruptive effect on the rubber industry.”)

Simply put, the benefits of dissecting the bargaining unit into many smaller units does not outweigh the risk of destabilizing this long-standing collective bargaining relationship, much less the risk of destabilization and proliferation among units at other DOE facilities. See La-Z-Boy Chair, 235 NLRB at 77-78 (“such considerations are outweighed on this record by interests in favor of maintaining industrial stability”). The bargaining history between PNNL and HAMTC, dating back to 1965, together with the absence of representational defects thus far, clearly favors denying the instant petition. The same conclusion reached by the Regional Director in 2002, regarding an earlier craft severance petition in the HAMTC-PNNL unit, applies here:

Petitioner cannot obtain an election based on bargaining history in a “PACE Unit” because neither PACE nor OCAW is, or ever has been, the employees’ collective-bargaining representative. HAMTC is, and “always” has been.

Case No. 19-RC-14213, *8 (Mar. 25, 2002).

B. The History And Pattern Of Collective Bargaining In The Department Of Energy Laboratory Industry Across The United States Exclusively Favors Maintenance Of The Existing Unit.

PNNL is one of a numerous laboratories run by the U.S. Department of Energy to conduct high-level research and development. Tr. 20-21, 118. The Petitioner put on no evidence to suggest that carpenters and millwrights ordinarily form a distinct bargaining unit from other maintenance and production employees at other U.S. Department of Energy Laboratories. The Petitioner exclusively relied on collective bargaining agreements governing “marine carpenter” job classifications at marine job sites in Western Washington, i.e., CBAs for non-DOE facilities involved in marine work. See P-14 to P-22.

In fact, there *are* other DOE laboratory facilities with maintenance units that have carpenter and millwright classifications. I-7, I-8, I-9, I-14. The history and pattern of collective bargaining in these *same-industry* facilities shows that all maintenance personnel, including millwrights and carpenters, are part of a single, multi-craft bargaining unit at each and every DOE laboratory facility on the record. See I-7, I-8, I-9, I-14. MTD General Representative Tom Schaeffer testified that he personally negotiated the CBA at the DOE laboratory facility in Amarillo, Texas, two CBAs in the Oakridge, Tennessee DOE laboratory facilities, and the CBA for HAMTC at the PNNL facility. Tr. 583, 592. These CBAs, as well as an additional CBA from a DOE laboratory in Albuquerque, New Mexico, all have a single bargaining unit for all mixed-craft maintenance employees, not separate representation of carpenter and millwright classifications. Jt. 1; I-7, I-8, I-9, I-14.

There can be no mistake based on the record: the history and pattern of collective bargaining in the same industry demonstrates, uniformly, that maintenance craft employees are combined in a single bargaining unit. This factor plainly favors denial of the severance petition.

C. The Petitioned-For Employees Are Integral To PNNL's Maintenance Processes And Highly Integrated With The Work Of Other Classifications In The Existing Unit.

PNNL's MFS department has long been organized into five Work Groups with a number of Work Teams organized thereunder, all of which are mixed-classification teams located in different areas of the PNNL campus. Tr. 20, 48; E-1, E-2. Together, the teams are responsible for maintaining all structures and facilities at the PNNL campus and fabricating "widgets" for researchers on an as-needed basis. Tr. 20-21. Team leads attend a single, daily meeting at which they are assigned the work for their team and all MFS classifications therein. Tr. 88-89. Team

Leads then hold a morning meeting to assign the work to the team. Tr. 89. There are no craft or classification-specific meetings at PNNL. Tr. 219.

All team members attend the same team meetings, generally work the same hours, report to the same geographic locations, share the same vehicles, use the same tools, and work on the same Service Requests, Preventative Maintenance assignments, and fabrication of widgets. Tr. 21, 25-26, 45, 50, 58, 89, 233, 372, 374, 688-89, 760.¹³ These tasks are assigned to the “lead” craft, the classification performing the largest share of the work, but other classifications/teams are generally needed to deliver the materials, hold materials, and complete a particular task. Tr. 51, 91, 684. The classifications routinely work together to complete shared tasks on the same work assignments; as Petitioner’s own, un rebutted rank-and-file witness explained, they work “side-by-side” with other classifications “all the time.” Tr. 314, 326, 379, 403-04, 673, 680-83, 683-84, 695-97, 773-75.

Together, the MFS classifications are responsible for “keep[ing] the lights on, doors open, air going the right way” and building widgets for researchers. Tr. 21; E-3. This shared responsibility is no doubt integral to the continuation of the employer’s mission at PNNL. Researchers at the facility cannot continue to perform groundbreaking research, including radiological, hazardous work, without a functioning facility and the work done carpenters and millwrights to assemble furniture, fix doors and roofs, and keep the facility functioning.

The integral nature of carpenter and millwright work to the employer’s production process and the level of integration with the work of other maintenance crafts are both apparent from the record. By ignoring the work of other crafts on the same assignments, ordinarily shoulder-to-shoulder with carpenters and millwrights, the Petitioner will argue to the contrary.

¹³ E-5 purports to list tools used “exclusively” by carpenters and millwrights, but testimony revealed that these tools are used by other classifications. Tr. 309-10.

But the same argument could be put forth for practically any bargaining unit with a degree of specialization among classifications. The facts on the record here are present in practically every mixed-craft maintenance unit in the country. Where the petitioned-for employees “are frequently assisted by [other bargaining unit] employees in the completion of their job assignments,” this Mallinckrodt factor favors denying the petition for severance. Firestone Tire Co., 223 NLRB at 906.

D. Employees In The Petitioned-For Unit Have Not Maintained A Separate Identity At HAMTC And Historically Are Full Participants In The Existing Pattern Of Representation.

In Memphis Furniture Mfg. Co. the Board applied the Mallinckrodt factors to grant severance to a group of over-the-road truck drivers who spent 95 percent of their time away from the plant, had no contact with the production and maintenance employees, and had separate supervision. 259 NLRB 401, 401-02 (1981). The petitioned-for unit in this case is not like that in Memphis Furniture Mfg. Co. Instead, the petitioned-for unit shares a workplace, tasks, supervision, organization, tools, and a vast majority of terms and conditions of employment, with the existing unit. Where “terms and conditions of employment are uniformly determined across the existing bargaining unit” and the petitioned-for employees are “actively involved in representation matters,” the Board has found that maintenance employees have not maintained a separate identity under Mallinckrodt. Kaiser Foundation Hospitals, 312 NLRB at 935-36 (considering common terms and conditions of employment as a factor against severance); Firestone Tire, 223 NLRB at 905-06 (same).

The petitioned-for employees are not organized into a separate work unit, they do not have routine classification-specific meetings, and they share supervision at every level with all other members of the bargaining unit. Tr. 219, 397; E-2. Based on demand, members of the

petitioned-for unit may, and do, cross over to classifications not in the petitioned-for unit. Tr. 619, 723; I-16. There have been three permanent transfers between group classifications in 2014 alone. I-16. Where employees have common supervision, regular contact, and temporary or permanent interchange with employees in the existing unit, this Mallinckrodt factor favors denial of the severance petition. See Paris Mfg., 163 NLRB 964, 964 (1967) (denying severance where the craft shared supervision with other production employees); Mobil Oil Corp., 169 NLRB 259, 261 (1968) (finding no separate identity where the employees had common supervision and temporary interchange with other members of the existing unit); Animated Film Producers Ass'n, 200 NLRB 473, 474 (1972) (finding interchange “during slack periods ... suggests a certain community of interest ... [and] portends some unnecessary inconvenience for the parties” if a separate bargaining unit is established). Naturally, these facts, together with the participation of carpenter and millwright stewards in HAMTC negotiations, grievance resolution, internal jurisdictional dispute resolution, and shared daily crew meetings, has produced a workplace in which no truly separate identity for carpenters and millwrights remains after more than 50 years of jointly orchestrated representation and work. Tr. 89, 333, 364, 697-98; Jt-1, pp. 97-102, I-2.

E. The Petitioned-For Unit Is Not A Distinct And Homogeneous Group Of Skilled Journeymen Craftsmen Or A Functionally Distinct Department.

The definition of a “true craft unit,” set forth in American Potash, approved in Mallinckrodt, and relied upon thereafter, is (Metro. Opera Ass'n, 327 NLRB 740, 754 (1999)):

a distinct and homogenous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers. To be a “journeymen craftsmen” an individual must have a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training.

The Board recognizes the following factors for identifying a true craft unit:

formal training or apprenticeship programs, functional integration, overlap of duties, whether work assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment

Schaus Roofing, 323 NLRB 781, 781 (1997) (citing Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994)).

The record is clear on a numbers of these factors. First, PNNL does not require carpenters and millwrights to have formal training or attend an apprenticeship program. Tr. 87-88, 723-24. Indeed, the last three individuals hired into MFS millwright job classifications had never attended a millwright apprenticeship program. Tr. 739. PNNL directly hires employees for all classifications, does not utilize a hiring hall, and gives the same “core” training to all classifications in a given mixed-class core team. Tr. 63-64, 86-87; E-4. Though some classification and assignment specific training may be given, it is conducted by PNNL or else learned through “on-the-job” experience. Tr. 63-65, 107.

Second, as explained in Section C, carpenters and millwrights are functionally integrated with the other classifications in the existing unit. They not only work side-by-side with other classifications on a daily basis, but also attend the same meetings, use many of the same tools, have permanent interchange between classifications, and are geographically located on the PNNL campus based on team assignment rather than craft. Tr. 25-26, 89, 310, 379.

Third, even though tasks are delegated to a member of a “lead” classification, the assignments are not generally classification specific. Job assignments regularly cross craft lines and require coordination and collaboration between multiple crafts to complete a given assignment. Carpenters, for example, “uncrate” objects that must first be delivered by teamsters and then may be handed over to a third classification for installation or modification, such as an

electrician or sheet metal classification. Tr. 683-84, 768, 773-74. Similarly, while a carpenter installs computer keyboard trays and assembles and disassembles furniture, those objects are delivered by a teamster and often held in place during the installation by a member of the “move” crew, who may be either a carpenter or a teamster. Tr. 773-74. Carpenters and millwrights “frequently work alongside classifications that Petitioner does not seek, including pipe fitters, electricians” Case No. 19-RC-14213, *10 (Mar. 25, 2002). This fact does not suggest that carpenters and millwrights are a “distinct” and “homogeneous” group, but rather highly-integrated members of mixed-skill teams working on discrete, mixed-classification tasks.

Fourth, terms and conditions of employment are jointly negotiated by HAMTC and apply to all classifications in the unit, regardless of classification. Carpenters and millwrights have a common interest with the rest of the existing unit due to their integration with the rest of the maintenance unit and similarity of terms and conditions, including work rules, holidays, vacations, seniority, retirement benefits, working hours, overtime, sick leave, insurance, and discipline, which have all been bargained jointly with the rest of the existing unit. Jt-1; E-17.

Finally, there is simply no rational basis for identifying carpenters and millwrights, two distinct classifications, as “homogeneous” without finding the same homogeneity between carpenters, millwrights, and every other classification in the MFS department. The Petitioner has shown no more homogeneity between carpenters and millwrights than it has between carpenters and teamsters, or millwrights and electricians. Nothing functionally distinguishes carpenters *and* millwrights, vis-à-vis one another, from the other classifications in the HAMTC bargaining unit, that does not *also* distinguish carpenters and millwrights from one another. To the same extent that carpenters receive a degree of training distinct from other classifications, they also receive training distinct from one another. To the same extent that carpenters perform different specific

tasks on a given assignment than do other classifications, carpenter and millwright suffer from the same lack of homogeneity. In short, there is no rational basis for splitting *these* two classifications from the rest of the bargaining unit on the basis of craft that does not similarly apply on carpenters and millwrights with relation to one another; the lines drawn by the petition are wholly arbitrary in the context of craft severance.

As in Firestone Tire, “the word ‘homogeneous,’ no matter how its meaning is distorted, cannot be used to describe the unit sought.” 223 NLRB at 905. The same conclusion reached in Firestone Tire applies here (Id.):

[the Petitioner] is seeking to sever a heterogeneous grouping of maintenance employees engaged in various semi-skilled, skilled, and unskilled occupations from an existing production and maintenance unit that is the product of 28 years of stable bargaining. The Board has consistently held that a group of employees of this sort may not be severed in this situation.

Indeed, the Regional Director reached this conclusion the last time a similar severance petition was filed at this location: “Rather than being a homogeneous group of individuals with common skills, training, classifications, and work, the PACE group is a mixture of various, varying classifications.” Here, faced with another petition for a similar, heterogeneous unit, the same conclusion is warranted. Case No. 19-RC-14213, *9 (Mar. 25, 2002).

F. Local 2403 Has Never Before Been Recognized As A Certified Exclusive Bargaining Representative Of Any Unit Of Employees And Is Less Qualified To Represent The Petitioned-For Unit Than HAMTC.

Neither Local 2403, nor the party that filed the instant petition on its “behalf,” PNRCC, has any history of exclusive representation of employees at PNNL. Tr. 466. In fact, Local 2403’s Business Manager testified that Local 2403 had never before in its history been recognized or certified as the bargaining representative of any bargaining unit, anywhere. Id. Nor has the Petitioner put on any evidence that it had ever been the exclusive bargaining

representative at any other DOE laboratory. The Petitioner's qualifications are limited to representing other carpenters and millwrights in the marine industry, P-15 to P-22, and its role as an intermediary in the HAMTC bargaining unit.

By comparison, HAMTC has been the only bargaining representative carpenters or millwrights have ever had in the MFS department. Under HAMTC's tenure, carpenters and millwrights have achieved wages equal to or greater than that of any other craft in the MFS department. E-17. HAMTC has successfully navigated the International-level dispute between the Carpenters and Metal Trades by delaying the implementation of any changes to the bargaining unit as long as possible, then signing MOUs with PNNL to preserve both the carpenters' and millwrights' work jurisdiction, stewards, seniority lists, and all other terms and conditions of employment. Tr. 543, 551, 717-18; I-3; E-9, 10. HAMTC held a meeting to explain the required changes involving carpenters and millwrights before implementation, and was thanked by Local 2403's Business Manager for protecting carpenter and millwright interests at PNNL during the transition. Tr. 358-59, 404. It is clear from the record that the instant petition was filed not due to *localized* fears of inadequate representation going forward, but to give carpenters and millwrights at PNNL a separate "voice" due to a high level dispute occurring far and away from the jobsite. Tr. 405.

Carpenter and millwright employees at PNNL have seen a substantial drop in their monthly dues expenses as a result of switching to the Sheet Metal and Machinist unions. Tr. 362. HAMTC has also taken significant steps to preserve carpenters' and millwrights' work and internal representation, continuing the stewardships of Scott Flannery, Scott Gordon, and others. Tr. 538, 543-45. The Petitioner presented no evidence to show that HAMTC has thus far sought to undercut carpenter or millwright interests, nor has the Petitioner presented any evidence that

HAMTC has any intention of doing so in the future. The long and stable bargaining relationship between HAMTC and PNNL supports finding that carpenter and millwright interests will be better protected by continuing that relationship in its existing form, rather than by infusing uncertainty into a relationship that already “works.”

II. THE *ELECTRIC BOAT* DECISION DOES NOT PROVIDE A SOUND BASIS FOR DECIDING THIS CASE. *ELECTRIC BOAT* APPLIED BOARD LAW FOR NON-SEVERANCE CASES. THE CASE IS ALSO READILY DISTINGUISHABLE ON ITS FACTS.

In Region 7’s recent Electric Boat decision, Case 01-RC-124746, the Regional Director granted severance to carpenters and millwrights from the larger marine production and maintenance unit.¹⁴ In doing so, the Region applied a different area of Board law to reach its decision and it relied on a number of facts not present in the instant case. Each of these distinctions will be addressed in turn.

Mallinckrodt sets forth six specific factors for the Board to consider in granting or denying a craft severance petition. 162 NLRB at 397. As argued above, these factors strongly favor dismissing the petition. However, in Electric Boat, Region 7 applied the test articulated in Burns & Roe, a non-severance craft unit case, rather than the test set forth in Mallinckrodt. Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994) (“as there is *no labor organization seeking to represent the petitioned-for employees on a broader basis* ... we conclude that the petitioned-for unit is an appropriate craft unit for purposes of collective bargaining”) (emphasis supplied); Electric Boat Corp., at *4 (relying on the factors set forth in Burns & Roe). Region 7 diverged from Mallinckrodt by appearing to give no weight to certain factors, i.e., existing unit bargaining history, “separate identity,” and “[t]he degree of integration of the employer’s production

¹⁴ The decision was written by Region 7 following transfer from Region 1 pursuant to the interregional assistance program.

processes,” while replacing them with factors that only go towards whether the petitioned-for unit constitutes a “true craft,” which is a single factor in Mallinckrodt. 162 NLRB at 396-97; Electric Boat Corp., at *4, 10.¹⁵ In doing so, the Region transformed one Mallinckrodt factor into a number of factors, skewing its analysis in the petitioner’s favor. See id. Region 7’s reference to numerous non-existing unit cases reflects this departure. See id. at *9-11, 14-15, 19-20, 24-27. The test applied by Region 7 is used by the Board for identifying *an* appropriate craft bargaining unit in the absence of a broader existing unit with a substantial collective bargaining history.¹⁶ That legal standard is not appropriate in severance cases.

There are also significant factual differences between the two cases. In Electric Boat the Metal Trades Council took clear actions to remove carpenter and millwright stewards from representative positions in the bargaining unit. The Chief Steward for carpenters was barred from participating in negotiations, not given information about ongoing negotiations, received no reassurances that the carpenters and millwrights would retain their jurisdiction, and was eventually asked to leave. Id. at *8. Localized fears of neglect were voiced and unaddressed in that case. Id. Carpenters and millwrights were stripped of representation in negotiations and rank-and-file carpenter employees were barred from voting in union matters. Id. at *8-9.

Critically, in Electric Boat the carpenters’ and millwrights’ representatives were also removed from the grievance resolution committee and there was no evidence that they had any jurisdictional protection.¹⁷ Neither of these facts are present here. Carpenter steward Flannery attends negotiations for carpenters and millwrights, can advance grievances to Step 2 on his own initiative, and to arbitration with HAMTC approval. Tr. 292, 378. HAMTC’s jurisdictional

¹⁵ In Electric Boat, Region 7 also appears to attribute little weight to the pattern of bargaining in the industry, as it found that neither side presented persuasive evidence on the subject. Id. at *29.

¹⁶ The NLRB granted the Electric Boat Intervenor’s Request for Review on August 14, 2014.

¹⁷ “[T]he carpenters’ interests have been neglected because they are left without their own representatives on the shop floor and at the collective bargaining table.” Id. at *10.

dispute resolution process also provides for arbitration to resolve any jurisdictional disputes that cannot be resolved between the parties involved. I-6, pp. 19-20. HAMTC maintains a record of all jurisdictional agreements, disputes, and resolutions, for use in arbitration. Tr. 717-18, 376-77. Nothing suggests that HAMTC's current jurisdictional resolution process will not continue to work as it has for carpenters and millwrights. Flannery testified that the Sheet Metal representatives make sure he can perform all of his steward duties, represent the carpenters, attend step 2 meetings, and he testified that they would assist carpenters in the future. Tr. 384, 390-91, 394.¹⁸ Unlike in Electric Boat, here there is no substantive evidence that the petitioned-for employees are neglected or disenfranchised in HAMTC.

Furthermore, in Electric Boat the petitioned-for unit was clearly organized into different departments than the other crafts and was not functionally integrated with the rest of the Metal Trades. Id. at *19. The Regional Director found that carpenters "have their own department" and were "separately supervised the majority of the time." Id. Here, however, Battelle has a single department for all MFS classifications, has long utilized mixed-craft teams, and classifications share both front line and departmental supervision.

In the absence of demonstrable neglect, separate supervision, and functionally distinct departments, all of which were found in Electric Boat, the factual landscape of this case is fundamentally different. By also applying the appropriate legal framework for severance from an existing unit, i.e., Mallinckrodt, which gives great weight to bargaining history, it is clear that the resolution of this case should not mirror that reached by Region 7 in Electric Boat.

¹⁸ Millwright steward Scott Gordon was present throughout the hearing and was not called after Flannery's testimony to rebut or testify that the Machinists had treated the millwrights any differently.

III. SCHISM IS A DISTINCT LEGAL STANDARD FROM *MALLINCKRODT* AND WAS NOT ARGUED OR PROVEN BY THE PETITIONER IN THIS CASE.

The Petitioner presented evidence that a Solidarity Agreement between the MTD and UBC was terminated by the MTD on June 1, 2011. The Solidarity Agreement was necessary to continue organizational ties between these entities after the UBC disaffiliated from the AFL-CIO in April, 2001. E-7, p. 7; I-5, p. 1-2, 6, I-6; Tr. 120-21. HAMTC president Dave Molnaa was directed to take specific action with regard to Local 2403 in 2011, but did not act until June 14, 2014. Tr. 543, 551, 717-18. HAMTC provided notice to PNNL, Local 2403, and all PNNL employees in the carpenter and millwright classifications of its intended course of action with regard to implementing instructions from the MTD. E-7; I-4. Molnaa held a meeting to explain the changes and was thanked by the Carpenter and Millwright Chief Steward, Scott Flannery, for looking out for their interests. Tr. 358-59. Flannery testified that Molnaa did all he could to protect the carpenter and millwright interests during the transition, and that he was not concerned that HAMTC would turn its back on the carpenters and millwrights. Tr. 404-05. Molnaa has since negotiated two MOUs specifically protecting the interests and jurisdictions of the carpenter and millwright classifications at PNNL. E-9, E-10; Tr. 541; I-3, I-4.

With regard to the law, International-level policy disputes have no place in the Mallinckrodt analysis for good reason. The Board has established law for dividing bargaining units when a union split or disaffiliation occurs, if certain requirements are met. See Hershey Chocolate Corp., 121 NLRB 901, 908-09 (1958). As is evident from the factors applied by the Board, its legal framework is designed to protect the *democratic* interests of the petitioned-for unit, not the jurisdiction of international unions.

The three conditions for finding a “schism” were laid out in Hershey Chocolate Corp., 121 NLRB 901, 908-09 (1958). For the Board to find that a schism warrants an election, there

must be three factors present: (1) an intraunion conflict that results in a disruption of existing relationships, combined with a transfer of affiliation of some officials to an existing rival or new union; (2) the unit employees must have an opportunity to weigh the controversy and exercise their judgment on the merits of the dispute at an open meeting, called with due notice to members of the union; and (3) the employees' action must take place within a reasonable time of the basic intraunion conflict. See id. These requirements have not been met on the record, nor has the Petitioner thus far asserted a schism basis for the petition. Tr. 349-50, 735, 737-38.¹⁹

There is no need to transform Mallinckrodt to take into account of issues for which the Board already has established law and clearly stated democratic protections, which the Petitioner failed to observe here. A union cannot circumvent the "schism" legal standard, and all it protects, by couching an intraunion conflict in "severance" garb.²⁰ A high-level dispute that has not altered relationships between crafts at the PNNL campus has no place dominating the Board's Mallinckrodt analysis.

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¹⁹ The petition was filed without a formal vote by Local 2403 millwright and carpenter members, without an explanation to the carpenters and millwrights of the context or significance of the petition, and without formal notice to the affected employees. Id.

²⁰ It should be noted that Petitioner not only bypassed the democratic protections required for a direction of election on the basis of schism, i.e., an open meeting with due notice for the affected members to exercise judgment on the merits of the International-level conflict, but the Petitioner now asks that the Board to consider the intraunion conflict under Mallinckrodt and assist it in bypassing satisfaction of these democratic requirements.

CONCLUSION

For the foregoing reasons, the Region should dismiss the petition.

DATED this 22nd day of September, 2014.

 for JB

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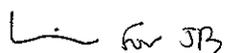
I hereby certify that on this 22nd day of September, 2014, I caused the original of the foregoing **INTERVENOR'S POST-HEARING BRIEF** to be filed with the National Labor Relations Board via e-filing to:

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Case Number: 19-RC-135888

Case Name: Battelle, Pacific Northwest National Laboratories

Role: Intervenor

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