

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**CRISTAL USA, INC.**

**Employer**

**and**

**Case 08-RC-184947**

**INTERNATIONAL CHEMICAL WORKERS  
UNION COUNCIL OF THE UNITED FOOD &  
COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, CLC**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

- Petitioner seeks to represent a unit of all full-time and regular part-time production employees employed by the Employer at its Plant 2 North facility. The petitioned-for unit is comprised of approximately 28 employees. The Employer maintains that the unit sought by the Petitioner is not appropriate and that the smallest appropriate unit must also include the maintenance employees employed at its Plant 2 North facility, and all production, maintenance, and warehouse employees employed by the Employer at its Plant 2 South facility. There are approximately 143 employees in the unit proposed by the Employer.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. 727 F. 3d 552 (6<sup>th</sup> Cir. 2013), I find that the petitioned-for unit limited to the Employer's production employees at its Plant 2 North facility is an appropriate unit.

**I. FACTS**

**A. The Employer's Operations**

The Employer is engaged in the manufacture of titanium dioxide products at its location in Ashtabula, Ohio. The Employer's Ashtabula operation is situated on approximately 140 acres. The Employer operates two plants: Plant 1 and Plant 2. Plant 1 consists of contiguous facilities whereas Plant 2 consists of two plants, Plant 2 North and Plant 2 South. Plant 2 North and 2 South are divided by a single public road. The North and South Plants have separate parking lots. There is an underground pipe rack that stretches about one half mile and ties Plant 2 North

and Plant 2 South together. In addition to Plant 1 and Plant 2 North and South, the complex includes several other buildings. The C Plant is the operation's water supply, the A Plant houses the effluent water for the complex, the Air Separation Plant provides nitrogen and oxygen for the entire complex, and the Cogeneration Plant provides steam and electricity.

Plant 1 and Plant 2 both produce purified titanium dioxide ( $\text{TiO}_2$ ) for sale to various markets. However, the grades produced at Plant 1 primarily go into the plastics and paper markets, whereas the grades at Plant 2 go into the paint coatings industry.

Plant 1 employs approximately 250 employees, including approximately 170 to 180 production and maintenance employees. The United Steelworkers Union, Local 7334 represents a unit of production and maintenance employees employed at Plant 1. Local 7334 has represented the employees at Plant 1 since the 1960s.

Both Plant 2 North and South employ production and maintenance employees. The warehouse employees work exclusively at Plant 2 South. At the Plant 2 North, there are twenty-eight (28) production employees. In addition, there are sixteen (16) maintenance mechanics and twelve (12) I&E technicians who work in the maintenance department. At Plant 2 South, there are fifty-one (51) production employees, twenty-one (21) maintenance mechanics, eight (8) I&E technicians and six (6) warehouse employees. There is also one (1) step-up maintenance mechanic who works at Plant 2 North and South. As will be addressed below, some of the I&E technicians also work at both the North and South plants.

At Plant 2, the process of manufacturing  $\text{TiO}_2$  begins at the North Plant. The process starts with ore, coke and chlorine being transferred to a chlorinator and combined with heat to create gaseous titanium tetrachloride ( $\text{TiCl}_4$ ). The raw materials used in the process are received and stored at the North Plant. The  $\text{TiCl}_4$  is then put through a purification process. The purification process involves putting the  $\text{TiCl}_4$  into a cyclone, which eliminates some of the impurities. The  $\text{TiCl}_4$  is then condensed into a liquid form and distilled. While a small percentage of the purified  $\text{TiCl}_4$  is shipped directly to customers, about 90 to 97 percent of the  $\text{TiCl}_4$  is ultimately transferred to Plant 2 South via the underground pipeline.

At Plant 2 South, the purified  $\text{TiCl}_4$  goes through an oxidation process in which oxygen and other components react with the  $\text{TiCl}_4$  to produce  $\text{TiO}_2$ . During this process, the chlorine is liberated from the purified  $\text{TiCl}_4$  and recycled to the chlorinator at Plant 2 North for use in the production process. The chlorine is transported to Plant 2 North from the South Plant through the underground pipe. The  $\text{TiO}_2$  produced in the oxidation process travels through a series of treatment tanks located in Plant 2 South. It then moves to the surface treatment process, where chemicals are applied to the pigment to give the  $\text{TiO}_2$  its characteristics. The surface treatments vary depending on the grade of product that is being produced.

From there, the treated  $\text{TiO}_2$  goes through a finishing process which consists of a series of filtration and drying steps, and then a micronization step where attached particles are removed. The finished  $\text{TiO}_2$  then goes to packaging. It is packaged in either dry or liquid form. If the  $\text{TiO}_2$  is in liquid form, it goes through a slurry process where water and a dispersant are added so that the  $\text{TiO}_2$  will be stable during transportation. The packaged  $\text{TiO}_2$  is then transported by

finished product operators to the warehouse, where the warehouse personnel stage the packaged TiO<sub>2</sub> for shipment.

## **B. The Production Employees Sought by Petitioner**

There are four, seven-person teams of production employees at Plant 2 North. The employees work twelve-hour rotating shifts with one seven-person team working at a time. Each team has its own Shift Supervisor. The four Plant 2 Shift Supervisors report to the Plant 2 North Manufacturing Superintendent. The Manufacturing Superintendent reports to Operations Manager, Neil Wessman. Wessman is over production at Plant 2 North and Plant 2 South. Wessman reports to Scott Strayer, who is the General Manager for the entire complex.

The Plant 2 North production employees are classified as process technicians (also referred to as chemical operators) and relief/step-up operators.<sup>1</sup> The relief/step-up operators receive extra compensation for performing additional duties on top of normal operator duties. There is one relief/step-up operator assigned to each team.

Each operator on the seven-person team has different responsibilities. One operator is assigned to run the area where the raw materials are unloaded. This operator is also responsible for various tasks at the A Plant. Additionally, this operator oversees the pumping equipment used to pump fresh water from the water supply at the C Plant into the pond and also inspects the pond's water levels. A second operator is responsible for running the chlorination process described above. A third operator oversees the purification process and loads TiCl<sub>4</sub> shipments for outside customers. There is a fourth operator who works in the wastewater treatment area, which houses wastewater from both the North and South plants. A fifth operator, the main control board operator, resides inside the control room and views the processes from multiple control screens. The control board operator, who is in contact with the other operators, is responsible for operating the processes which take place at the North Plant. A sixth operator serves as the relief/step-up operator and relieves employees for breaks and also substitutes for employees who are on vacation or off due to illness. Lastly, the seventh operator assists with the loading of TiCl<sub>4</sub> for shipments.

According to the job description, operators are responsible for the safe and proper operation of equipment in his or her area. Specifically, the job description reflects that operators are responsible for adjusting the levels, flows, temperatures, and pressures through the manipulation of valves, pumps, and control instruments. The record reflects that operators make adjustments to valves using valve wrenches. The operators also carry radios so that they can communicate with the other operators.

The Employer attempts to get the Plant 2 North operators qualified in two or three of the major areas. The qualification process is done through on-the-job training. There are different tests that the operators have to pass before they are deemed qualified. It can take anywhere between two to nine months to qualify in each area. It is not unusual for the production

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<sup>1</sup> The job descriptions list the chemical operators as process technicians. However, the terms are used interchangeably in the record.

employees at the North Plant to be rotating through a number of different jobs. There is an individual in the North Plant who coordinates and tracks the training.

### **C. Other Employees**

#### Plant 2 South Production Employees

At Plant 2 South, there are four, 13 or 14-person teams of production employees. Like the production employees at Plant 2 North, the South Plant production employees work 12-hour rotating shifts, with one team working at a time. Each of four, 13 or 14 person production teams at Plant 2 South has its own Shift Supervisor and those four Shift Supervisors report to the Plant 2 South Manufacturing Superintendent, who in turn reports to Wessman.

The operators are assigned different tasks within each of the processes that occur at Plant 2 South, including oxidation, finishing and packaging. There are three operators classified as oxide operators assigned to the oxidation area. One of the three operators in the oxidation area acts as the control board operator and runs the distributed control system for the entire oxidation area. The second oxide operator operates the equipment in the oxidation area. The third oxide operator's responsibilities include: managing cooling systems and tanks where raw materials are stored; overseeing the waste water that is pumped to the North Plant as well as the onsite pond located in that area; managing the unloading of chlorine cars.

Each team also has four operators who work as "Wet after Treatment" (WAT) operators. These operators work in the finishing process. One operator acts as the control board operator. Another operator oversees the surface treatment process. A third operator is primarily responsible for the operation of the sand mills and the micronization process, which is where particles are removed from the TiO<sub>2</sub>.<sup>2</sup> A fourth operator is responsible for most of the filtration process and spray drying equipment.

Each team also includes five finished product operators who work in the packaging area. These five operators transfer the TiO<sub>2</sub> to either small bag pack machines, bulk packaging machines, or to the slurry process area. Once the packaging is complete, the operators then transport the packages to the warehouse for shipment. They use tow motors and forklifts to transport the product.

And finally, each team has an operator who serves as the step-up/relief operator. He or she is qualified in all areas and serves as a relief operator for both the WAT and oxidation areas.

Like the North Plant, the Employer trains operators in different areas in the South Plant and has a designated individual who coordinates and tracks the training.

#### Maintenance Employees

At Plant 2 North and South, most of the maintenance mechanics and I&E technicians work from 7:00 a.m. to 3:30 p.m. However, the remaining maintenance mechanics and I&E

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<sup>2</sup> The record contains no other details regarding the sand mills.

technicians are assigned to the 12-hour shifts worked by the production teams. The I&E technicians assigned to the 12-hour rotating shifts work at both the North and South plants.

Plant 2 North maintenance mechanics report directly to the Plant 2 North Maintenance Supervisor and Plant 2 South maintenance mechanics report directly to Plant 2 South Maintenance Supervisor. Both the North Plant and South Plant Maintenance Supervisors report to Maintenance Superintendent William Brenneman, who is over maintenance for both Plant 2 North and South. The I & E technicians from both Plant 2 North and South report to a single I & E supervisor, who in turn reports to Brenneman. Brenneman reports to Plant 2 Manager of Maintenance & Reliability Kevin Harriger, who is over all of maintenance and reliability in Plant 2 North and South. The chain of command in the Employer's organizational chart for the maintenance department does not merge with production until it reaches General Manager Strayer.

The maintenance mechanics and I&E technicians in Plant 2 North and South have the same tasks and responsibilities. They are responsible for maintaining, monitoring, troubleshooting, and repairing manufacturing equipment and processes. The maintenance mechanics and I&E technicians perform troubleshooting and maintenance repair in the plant and in the field. In addition, there is a scheduled maintenance shutdown every eight to ten weeks where equipment is inspected and, if necessary, repaired.

The North Plant maintenance mechanics are housed in the maintenance shop, which is located near the control room. Repair work, rebuilding work, and welding is done at the maintenance shop. In addition, the I&E technicians at the North Plant have a separate shop near the locker room where they perform repair work, instrumentation, and rebuilding work. The record does not reflect whether there is a maintenance or I&E shop at the South Plant.

#### Warehouse Employees

The warehouse department consists of five (5) warehouse persons and one (1) warehouse lead. The record is silent concerning the shift times of warehouse employees. The warehouse employees report directly to the Warehouse Superintendent, a position that is currently vacant. The warehouse department falls under a different chain of command in the Employer's organizational chart than the production and maintenance employees. Specifically, the warehouse superintendent's chain of command leads to the Employer's U.S. Distribution and Logistics Manager, Lisa Powers.

A warehouse employee, according to the job description, prepares customer orders according to customer requirements, loads product trailers and containers, transfers the finished product from the staging area to bins, and unloads raw materials for the shipping and production department.

#### **D. Interactions Between Classifications and Other Working Conditions**

All production, maintenance, and warehouse employees at Plant 2 North and South attend the same standard orientation process when first hired and later receive on-the-job training in

their respective roles. All the employees receive the same employee benefits, including group health insurance, retirement benefits, vacation and holidays. All employees use the same timesheets to record their hours of work, wear the same uniforms, and wear similar protective equipment.

All production, maintenance and warehouse employees are subjected to the same policies and procedures concerning appraisals, promotions, discipline, layoffs, and leave of absences. However, there are some differences concerning vacation, overtime and on-call policies. While all production, maintenance and warehouse employees are entitled to the same number of vacation days, local policies, which are in writing, dictate how the employees can schedule vacation. At the North Plant, operators can schedule vacation on an hourly basis, can take one vacation day at a time if 72 hours' notice is provided, and can take a total of 72 hours of partial-day vacations in a 12-month period. On the other hand, South Plant production employees must provide seven days' notice for "one day at a time" vacation requests and can take no more than 24 hours of partial-day vacations in a 12-month period. In addition, the North Plant employees can be called in for overtime work while on vacation if they don't specify on their vacation request form that they do not wish to be on call or work overtime while on vacation.

The written policy for the warehouse employees reflects that they must give three days' notice of requested vacation for one day, and seven days' notice for requested vacation of one week or more. In addition, typically only one warehouse person can be on vacation at a time.

In addition, the North and South Plant production areas have separate written policies regarding overtime. Although the Union argues that overtime is voluntary for North Plant production employees and mandatory for South Plant production employees, the North Plant overtime policy does provide for mandatory overtime in certain situations. There are differences between the written local policies concerning whether an employee can be mandated to work overtime while on vacation. For example, a North Plant production employee can exclude himself from overtime while on vacation, whereas a South plant production employee cannot.

Employees in Plant 2 North and South have the same human resources team. The human resources team is involved in personnel decisions regarding hiring, promotions, discipline, and evaluations. While a human resources representative is on the hiring panel, the Manufacturing Superintendents, Maintenance Superintendent, and warehouse management have final authority on hiring decisions. Regarding discipline, the record testimony disclosed that production and maintenance supervisors and superintendents consult with human resources regarding corrective actions. The supervisors and superintendents may, if they determine it is necessary, discuss their recommendations to discipline employees with Managers Wessman and Harriger. However, Wessman and Harriger are involved in the decisions to suspend or discharge an employee. Similarly, Powers is involved in decisions to suspend or discharge warehouse employees.

The North and South Plant operators require similar skills and educational requirements in order to be hired. There is one slight difference. According to the job descriptions, the Employer requires North Plant process technicians to have five years' experience in manufacturing, construction trades or military. On the other hand, the job description for the South Plant process technician states that three years' experience is necessary. The job

description for a finished product operator, which is considered an entry-level position, requires only a high school diploma and "some" college, military or trade/technical school training.

Maintenance mechanics are required to have five years of plant maintenance experience and I&E technicians are required to have five years of electrical and/or instrumentation experience. Regarding the mechanics, the job descriptions reflect that although a welding certificate and mechanical journeyman card are not required, they are preferred. Similarly, the Employer prefers, but does not require, the completion of electrical or instrumentation trade school for the I&E technician position. The record reflects that most of the maintenance mechanics and I&E technicians have the experience that is equivalent to that of a journeyman. Additionally, warehouse persons must have a forklift certificate prior to being hired.

For wage grade purposes, employees are classified as follows: (1) I&E/Maintenance Mechanic; (2) Chemical Operator; (3) Finished Product Operator; (4) Warehouse Person. Maintenance mechanics and I&E employees start at \$28.23 per hour and the top rate is \$32.67. The maintenance relief/step-up earns \$34.79 per hour. All chemical operators at Plant 2 North and Plant 2 South fall under the same wage progression. Chemical operators start at \$28.09 per hour and can progress to the top rate of \$32.52. The lead operators earn \$34.28 per hour and the relief/step-up operators earn \$34.79 per hour. The finished product operators start at \$26.17 per hour and progress to the rate of \$29.44 per hour. The lead finished product operator earns \$31.92 per hour and the relief/step up receives \$32.37 per hour. And finally, the warehouse employees start at \$24.35 per hour and the top rate is \$27.39 per hour. The lead warehouse employee earns \$29.92 per hour.

North and South plant operators can volunteer to work overtime in the warehouse. It is unclear from the record how often this occurs. It was estimated that it could happen once a week, once a month, or once every six months. Aside from overtime in the warehouse, there is no evidence that North Plant production employees perform the work of employees in any other area. In addition, there is no evidence that the employees that the Employer seeks to include perform the work of North Plant production employees.

The Employer's bidding policy applies to all production, maintenance and warehouse employees at Plant 2 North and South. Employees in the North Plant can bid on positions in the South Plant, and vice versa. The positions of chemical operator, finished product operator and warehouse are awarded strictly on the basis of seniority. The remaining positions require interviews and are not awarded strictly on the basis of seniority. Generally, employees start in the warehouse or as a finished product operator and move into other positions from there. Seven out of the fifty-one current South Plant employees permanently transferred from either the North Plant or Warehouse. In addition, twenty-three of the twenty-eight current North Plant production employees worked out of the South Plant before going to the North Plant. While the record reflects that a number of production and warehouse employees permanently transferred between the North and South Plant, the record does not reflect when those transfers occurred.

The record reflects that the North and South plant operators may contact each other if there are operational issues or a downtime event. It was estimated that Plant 2 averages about 12 to 15 downtime events each month. In addition, North plant operators may drop off samples at

the lab located in the South plant or go to the South plant to close valves during a lockout/tagout procedure.<sup>3</sup> However, there is insufficient evidence in the record to establish how often North Plant operators visit the South Plant to drop off samples or adjust valves. Nor is there any evidence that the North plant operators have contact with the South plant employees when dropping off samples or closing valves at the South plant.

The petitioned-for employees have occasional contact with maintenance employees when the maintenance employees are repairing the equipment. In addition, the operators and maintenance employees work together to ensure that the lockout/tagout procedures are handled correctly. The petitioned-for employees and the maintenance employees share a parking lot and locker room. However, the record testimony demonstrates that due to their different shift schedules, the Plant 2 North maintenance and production employees have little contact in the locker room.

All of the production, maintenance and warehouse employees have the opportunity to serve on various plant-wide committees or teams, including the behavioral safety team, confined space rescue team, site inspection team, and the ash 2 advisory committee. The record contains limited evidence regarding the frequency that these committees or teams meet. However, the record reflects that at least one committee (site inspection team) meets quarterly. The North and South hold separate safety meetings, but the agendas are the same. While the record reflects that Plant 2 North and South have joint town hall meetings and social gatherings, it is silent concerning how often the town hall meetings and social gatherings are held.

## **II. BOARD LAW**

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. *Specialty Healthcare*, supra, 938.

Thus, the first inquiry is whether the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. In this regard, the Board has made clear that it will not approve fractured units; that is combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 NLRB 1608 (2011), *Seaboard Marine*, 327 NLRB 556 (1999). Thus an important consideration is whether the employees sought are organized into a separate department or administrative grouping. Also important are whether the employees sought by a union have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with

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<sup>3</sup> A lockout/tagout procedure is a safety measure that ensures that energy will not flow through a piece of equipment while it is being worked on by maintenance employees.

other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002), see also *Specialty Healthcare*, supra, at 938-939. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare*, supra, 940-943, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017, fn. 8 (2011).

### **III. APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE**

#### **A. The Classifications Sought by Petitioner Share a Community of Interest**

In concluding that the employees in the petitioned-for unit are “readily identifiable as a group,” I note that they work in the same location, perform the same function, and hold the same classification. The petitioned-for employees are all chemical operators working in Plant 2 North and are responsible for the production of TiCl<sub>4</sub>. See *Neiman Marcus Group*, 361 NLRB No. 11, fn. 3 (2014) (noting that the Board in *Specialty Healthcare* made clear that a petitioned-for unit may be readily identifiable as a group “based on job classifications, departments, functions, work locations, skills, or similar factors.”)

Moreover, the petitioned-for employees share a community of interest under the Board’s traditional criteria. Here, not only do the Plant 2 North production employees all work in the same classification, in the same location, and perform the same function, they all work under common supervision. The Plant 2 North Manufacturing Superintendent oversees all production at Plant 2 North. In addition, all of the petitioned-for employees are paid the same wage rate, receive the same benefits, have similar skills and training requirements, and are subject to the same Employer policies. Their work has a shared purpose and is functionally integrated: Specifically, the production employees work together to produce TiCl<sub>4</sub>. This functional integration is exemplified by the fact that the production employees work together in teams and are trained to become qualified in the major areas of the process. Further, the petitioned-for employees are the only production employees who work at Plant 2 North in the production of TiCl<sub>4</sub>.

Accordingly, I conclude that the employees in the petitioned-for unit share a community of interest and the petitioned-for unit is appropriate for the purposes of collective bargaining.

## **B. The Petitioned-For Employees Do Not Share an Overwhelming Community of Interest With Other Employees**

Having determined above that the petitioned-for unit of all Plant 2 North production employees is an appropriate unit, then under *Specialty Healthcare*, the burden of proof shifts to the Employer to demonstrate that the maintenance employees, Plant 2 South production employees, and warehouse employees it seeks to add to the unit share such an overwhelming community of interest with the North Plant production employees that the community of interest factors overlap almost completely. I find that the Employer has failed to meet this burden.

First, there is no significant interchange between the petitioned-for employees and the employees that the Employer contends should be added. The Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401(1991), citing *Spring City Knitting Co. v. NLRB*, 647 F. 2d 1011, 1015 (9<sup>th</sup> Cir. 1081). There is no evidence that the employees that the Employer seeks to include perform the work of North Plant production employees. In comparison, the Plant 2 production employees work in teams and are trained to work in all areas of the Plant 2 production process. Aside from overtime in the warehouse, there is no evidence that North Plant production employees perform the work of any other employees that the Employer seeks to include. While the North Plant production employees occasionally work overtime in the warehouse, the record contains insufficient evidence concerning the frequency that this happens. Thus, I find that this contact is infrequent and incidental to the production employees' primary duties. See *DPI Secuprint, Inc.*, 362 NLRB No. 172 slip op. at 7 and *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (assistance of other departments does not "involve a significant portion of the petitioned-for employees time" and is "infrequent" and "limited," and thus does not establish an overwhelming community of interest).

I recognize that the record disclosed some evidence of permanent transfers among employees in the unit sought by the Employer. Specifically, some of the current South Plant employees permanently transferred from either the North Plant or Warehouse and a number of the North Plant employees worked out of the South Plant before going to the North Plant. However, the Board has found that "evidence of permanent interchange is a less significant indicator of whether a community of interest exists than is evidence of temporary interchange." *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10. Therefore, permanent transfers are given less weight by the Board. *Bashas, Inc.*, 337 NLRB 710, 711 fn. 7 (2002) Moreover, the record failed to disclose when the permanent transfers occurred. Thus, it is difficult to determine the frequency of the transfers. See, e.g., *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (nine permanent transfers out of 41 employees over two year period between petitioned-for and nonpetitioned-for employees does not establish significant interchange).

Second, the Plant 2 production employees are separately supervised on a day-to-day basis by their direct supervisor and the North Plant Manufacturing Superintendent. Although Wessman oversees the production at both the North and South Plants, the South Plant production employees are supervised on a daily basis by their direct supervisor and South Plant Manufacturing Superintendent. There is very little evidence in the record to establish what, if

any, day-to-day interactions Wessman has with the petitioned-for employees. Instead, the record demonstrates that the Manufacturing Superintendent is involved in the day-to-day supervision of the North Plant production employees. The Plant Superintendent is responsible for significant personnel matters, including discipline, and has final authority on all hiring decisions for external applicants. Moreover, the Plant 2 North Superintendent has discretion in establishing his own policies specific to the North Plant. For example, the petitioned-for employees have slightly different vacation, overtime and on call policies than the South Plant production and warehouse employees. While Wessman can review and change these policies if he deems it necessary, the record is unclear as to whether Wessman has ever done that. The fact that the plants have different immediate and intermediate levels of supervision is significant. For example, in *Neiman Marcus*, 361 NLRB No. 11 (2014), the Board found that the petitioned-for employees had separate supervision because common supervision could only be found at the highest level of management.

Similarly, the chain of command in the Employer's organizational chart for the maintenance department does not merge with production until it reaches General Manager Strayer. There is no evidence, at least from the record, that Strayer interacts at all with the production and maintenance employees. Moreover, it is undisputed that the warehouse employees fall under a totally different chain of command from the production and maintenance employees. See *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 slip op. at 6 (no overwhelming community of interest where employees report to separate managerial chains).

Third, except for the Plant 2 North maintenance employees, all of the other classifications the Employer contends must be added to the unit work in an entirely different building from the petitioned-for employees. The plants, which are connected by pipe, are about one half mile from each other. Thus, contact between the petitioned-for unit and the employees at Plant 2 South is almost non-existent. Aside from the control board operators contacting each other periodically regarding operational issues, there is no evidence that any of the Plant 2 North production employees have contact with the Plant 2 South production employees in connection with their day-to-day job duties. Moreover, while the North Plant production employees work overtime in the warehouse, the record contains insufficient evidence concerning the frequency that this happens. See *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (no overwhelming community of interest where the record contains no evidence as to the frequency of informal contact with other departments at issue). In comparison, the Plant 2 production employees have regular day-to-day contact with one another.

In addition, the record fails to establish sufficient contact between the petitioned-for employees and the Plant 2 South employees at meetings. While the employees from the North and South plant participate in committees, this does not support a finding of significant contact. First, it is not a regular part of the employees' functions. Second, the record contains very little evidence concerning the frequency of the committee meetings.

The record reflects that the maintenance and production employees work together to ensure that lockout/tagout procedures are done properly and talk with one another regarding the machine to be repaired. However, this limited contact between the North Plant production employees and the maintenance employees is insufficient to demonstrate that the North Plant

maintenance employees share an overwhelming community of interest with the petitioned-for employees. Not only do the production and maintenance employees have separate supervision and no significant contact or interchange with one another, the maintenance employees have distinct job duties and skills from the petitioned-for employees.

I acknowledge that the employees the Employer contends must be included in the unit share the same benefits, similar hourly wages, and work under essentially the same work policies. However, Board law is clear that the existence of such common terms and conditions of employment is not a determinative factor, absent evidence of more dispositive factors. See, e.g., *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 11 (“the fact that two groups share some community of interest factors does not, by itself, render a separate unit inappropriate”)

I also recognize that the employees the Employer contends must be included in the unit have some functional integration. In *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 (2013), the Board rejected the employer’s argument that all “dog-handling” employees had to be included in any unit because all of those classifications “work[ed] together to accomplish the growth, development, training, and care of guide dogs throughout the dogs’ lives.” *Id.*, slip op. at 6. In declining to find an overwhelming community of interest, the Board highlighted that “each classification has a separate role in the process” and “only limited interaction and interchange with other classifications.” *Id.*

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

The factors discussed above establish that, contrary to the Employer, the petitioned-for unit is not a “fractured” unit. A unit is “fractured” when it is an “arbitrary segment” of what would be an appropriate unit, or is a combination of employees for which there is “no rational basis.” *Specialty Healthcare*, supra, at 946. Here, like in *Macy's*, the petitioned-for unit is appropriate because it consists of all production employees on all shifts working in the North Plant and is “readily identifiable based on classifications and function,” and has common supervision. *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 8.

The case law cited by the Employer is distinguishable. In *The Neiman Marcus Group, Inc.*, 361 NLRB No. 11 (2014), the Board determined that the petitioned-for unit of women’s shoe sales associates in the store’s separate departments of salon shoes and contemporary shoes was not an appropriate unit because the two departments did not track any administrative or

operational boundaries, especially where contemporary shoes was part of the larger contemporary sportswear department. While the Board noted significant interchange between the salon shoes department and carved-out contemporary shoes group could support a finding of community of interest notwithstanding the division of the contemporary sportswear department, the Board found the unit inappropriate because there was no interchange, insufficient contact between the two groups, no common supervision and no shared specialized skills and training. Unlike *The Neiman Marcus Group*, Petitioner seeks to represent an entire classification of employees that work in Plant 2 tracked along the Employer's division for function and supervision. Moreover, unlike in *The Neiman Marcus Group*, there is interchange, common supervision, contact between the employees, and shared skills and training among the employees in the petitioned-for unit.

In conclusion, I find that the Employer has failed to meet its burden of showing that the maintenance employees, Plant 2 South production employees, and warehouse employees that the Employer seeks to add share an overwhelming community of interest with the petitioned-for North Plant production employees.<sup>4</sup>

#### **IV. CHALLENGE TO THE REPRESENTATION CASE RULES**

In its position statement, the Employer raised several specific objections to the National Labor Relations Board's Representation Case Procedures Final Rule, 74 Red. Reg. 74308 (Dec. 15, 2014) (hereinafter "Rule"). I reject all of the Employer's arguments for the reasons addressed below.

##### **A. Specific Objections Arguing that the Representation Case Rule Violates the National Labor Relations Act and/or the Administrative Procedure Act**

###### *Objection 1*

The Employer first objects to Section 102.63(a) of the new Rule arguing that the provision violates the National Labor Relations Act (hereinafter "Act") and/or the Administrative Procedure Act (hereinafter "APA") because it shortens the time between the filing of a representation petition and the first day of a hearing. The Employer did not move for a postponement of the pre-election hearing. Accordingly, because the Employer failed to exhaust its right to move for postponement of the pre-election hearing, I deem its argument waived.

###### *Objections 2, 3, & 4*

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<sup>4</sup> To the extent that the Employer argues that the Region is bound by the previous 2008 stipulated election agreement between the Employer and the United Steelworkers, Local 7334 which included a broader unit, the argument is without merit. First, the Petitioner did not enter into the stipulation. Moreover, the Board is not bound by prior unit stipulations when considering the appropriateness of a petitioned-for unit. See *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1083 (2004) (The Board has found petitioned-for units to be appropriate despite the parties' prior stipulations to previous elections in different or larger units)

The Employer next objects to Section 102.64(a) arguing that this section violates the Act and/or the APA because it limits the purpose of a hearing conducted under Section 9(c) of the Act as being solely “to determine if a question of representation exists.” The Employer further contends that the Section also asserts that “disputes concerning individuals’ eligibility to vote or inclusion in an appropriate unit ordinarily not be litigated or resolved before an election is conducted.” The Employer also argues that Section 102.66(a) violates the Act and/or the APA because it limits the right of parties in pre-election hearings to introduce into the record evidence that is “relevant to the existence of a question of representation” thereby excluding other issues contemplated by Section 9(c) of the Act.

I find the Rule is consistent with Section 9 of the Act because it provides for an appropriate pre-election hearing upon due notice. Consistent with the language of the statute, the Rule explicitly states that “[t]he purpose of a hearing conducted under Section 9(c) of the Act is to determine if a question of representation exists,” 29 C.F.R. Section 102.64(a), 79 Fed. Reg. 74482, and it explicitly grants parties the right to introduce evidence at the pre-election hearing which is “relevant to the existence of a question of representation,” 29 C.F.R. §102.66(a), *id.* at 74483. In addition, the Rule makes clear that unit appropriateness questions are relevant to the existence of a question of representation, and thus those issues can be litigated at a pre-election hearing, and will be decided by the regional director. 29 C.F.R. §§ 102.64(a), 102.67(a), 79 Fed. Reg. 74482, 74485. The amendments clarifying the purpose of the pre-election hearing, and the evidence that the parties have a right to introduce at that hearing, are fully consistent with the statute.

#### *Objection 5*

The Employer also objects to Section 102.66(c). The Employer argues that this Section violates the Act and/or APA because it requires parties to make “offers of proof” at the outset of any hearing, and authorizes Regional Directors to bar the parties from entering evidence into the record if such offers of proof are deemed to be insufficient to sustain the proponent’s position.

The Board has long sanctioned a hearing officer’s authority to require a party to submit an offer of proof summarizing and explaining its proffered evidence as well as a hearing officer’s authority to rule on the offer of proof. The Rule does no more than reaffirm and codify the preexisting authority of the hearing officer to require parties to make offers of proof if the hearing officer believes it would be useful to do so. *See Laurel Associates, Inc.*, 325 NLRB No. 101, 603 & n. 1 (hearing officer properly required employer to make an offer in support of its claim that the presumptively appropriate petitioned-for unit was not in fact appropriate and then properly rejected it); *Mariah, Inc.*, 322 NLRB No. 114, 586 n. 1, 588 (hearing officer properly permitted employer to make, and then properly rejected, an offer of proof regarding the eligibility of strikers because such matters are decided post-election if necessary); *Franklin Hospital Medical Center*, 337 NLRB 826, 826-27 & n. 2 (2002) (hearing officer properly rejected employer’s offer of proof regarding alleged supervisor status of certain individuals).

#### *Objection 6*

The Employer argues that Section 102.66(h) violates the Act and/or APA because it denies employers the opportunity to present post-hearing briefs and to review a hearing transcript prior to stating their post-hearing positions on the record, except upon special permission of the Regional Director and addressing only subjects permitted by the Regional Director.

The Employer failed to move on the record for permission to file a brief. See C.F.R. § 102.66(h). Accordingly, I deem this argument waived.

#### *Objection 7*

The Employer argues that Section 102.67(l) violates the Act and/or the APA as it requires employers to disclose to unions personal and private information pertaining to employees, including home numbers and personal email addresses. The Employer argues that this is unprecedented.

In the Rule, the Board found that requiring the initial list would aid in “expeditiously resolv[ing] questions of representation by facilitating entry into election agreements, narrowing the scope of the pre-election hearing in the event that parties are unable to enter into an election agreement, and reducing the need for election-day challenges based solely on lack of knowledge of the voters’ identity.” 79 Fed. Reg. 74366. The Board’s experience “demonstrated that clear communication about the specific employees involved generally facilitates election agreements or results in more orderly litigation.” 79 Fed. Reg. 74309; 74362-64 (discussing the utility of the Statement of Position)). The Board appropriately concluded that the burden of producing such lists is minimal, given existing recordkeeping requirements for employers. 79 Fed. Reg. 74368. As a practical matter, employers are already required to determine which employees would be included in the unit prior to the pre-election hearing in order to adequately prepare; the Rule merely requires them to make that information available to all parties. Moreover, these substantial benefits greatly outweigh any privacy burden, given that jobsites and classification – which are often publicly observable – fall far from the core zone of personal privacy recognized by the law.

#### *Objection 8*

The Employer also objects to Section 101.21(d). The Employer asserts that this section violated the Act and/or APA because it eliminates the longstanding requirement that election ballots be impounded while any Request for Review of the Regional Director’s decision is pending at the Board and eliminates the previous 25-day waiting period for review filings which previously allowed the Board time to consider such requests for review prior to the vote.

The Board found that it made little sense to apply the 25-day waiting period, which by definition delays resolution of the question of representation, to all directed-election cases because requests for review were filed just in a small percentage of cases, were granted in an even smaller percentage, and if the Board had not yet ruled on the request at the time the election was scheduled to take place, as was not infrequently the case, the election went ahead anyway. 79 Fed. Reg. at 74309-10, 74409-10. The rulemaking record reflected a “near consensus that th[e] 25-day waiting] period serves little purpose.” *Id.* at 74410. Moreover, the 25-day waiting

period's original purpose had nothing to do with campaigning. The Board did not err in eliminating it. *Id.*

### *Objection 9*

The Employer further argues that Sections 102.62(b) and 102.69 also violate the Act and/or the APA because they eliminate the right of employers to obtain mandatory Board review of post-election disputes if they enter into stipulated election agreements prior to the election instead of exercising their right to a pre-election hearing.

In enacting Section 3(b) of the Act, Congress authorized the Board to delegate to its regional directors the power to certify the results of elections subject only to discretionary Board review. The Rule merely standardized the process for requesting review across all stages of the election. Because the rules prior to the amendments had long provided that pre-election disputes were subject only to discretionary review and that decision had been upheld by the Supreme Court, the Board found that it was “clearly permit[ted]. . .to adopt the final rule’s amendments concerning post-election review.” 79 Fed. Reg. at 74332-33 (citing *Magnesium Casting Co., v. NLRB*, 401 U.S. 137, 141-42 (1971)). Discretionary review still provides the parties with a full opportunity to raise contested issues, while conserving Board resources and promoting efficiency by eliminating the unnecessary review of meritless disputes. 79 Fed. Reg. at 74,331-32.

## **B. Specific Objections Arguing that the New Representation Case Rules & Specialty Healthcare Improperly Infringe Upon an Employer’s Free Speech and Due Process Rights**

### *Objection 1*

The Employer objects to the Rule arguing that it violates due process and free speech because it emphasizes off-the-record consultations between the hearing officer and the Regional Director, who does not even attend the hearing, on such issues as exclusion of evidence at the hearing. The Employer asserts that it cannot meaningfully challenge these off the record consultations nor can the Board meaningfully review such consultations.

As shown in the commentary (and as more fully discussed in connection with § 102.66), this aspect of the final rule codifies a best practice that has been in place for decades. The practice does not run afoul of the statute’s requirement that hearing officers not make recommendations as to how the regional director should rule. Further, there is no similarity between a hearing officer seeking a regional director’s ruling on an offer of proof, and the practice—prohibited in 1947—of trial examiners attending executive sessions of the Board to defend the trial examiner’s findings against party exceptions. See S. Rep. No. 80-105, at 10.

In any event, parties retain the right to present their arguments directly to the regional director through a request for special permission to appeal. Amended 102.65(c); see *Laurel Assoc. Inc.*, 325 NLRB at 603 & n. 13 (regional director rules on party’s request for special permission to appeal a hearing officer’s rejection of its offer of proof).

### *Objection 2*

The Employer objects to the Rule as violating due process and free speech because it contains provisions that allow the hearing officer to require offers of proof in lieu of actual evidence and thus violates the statutory guarantee of an appropriate hearing. I find this argument to be without merit for the same reasons addressed above under Objection 5.

### *Objection 3*

The Employer next objects to the Rule as violating due process and free speech because it contains provisions that sharply limit the opportunity for employers to seek pre-election Board review or a stay of the election, and eliminate a 25-day automatic waiting period for such review. I find this argument to be without merit for the same reasons addressed above under Objection 8.

### *Objection 4*

The Employer further objects to the Rule as violating due process and free speech because it deprives employers of sufficient time to investigate factual and legal issues relevant to the petition.

The 8-day hearing time-frame merely codifies pre-Rule best practices in the Board's regional offices. 79 Fed. Reg. 74309, 74370; see also *id.* at 74368, 74372-74 74424-25 (rejecting the claim that employers generally need more time to prepare for hearing, given that the union will have previously identified in its petition its view of an appropriate unit and that employers already know all of the requisite facts to take a position on the unit before the petition is even filed). These provisions provide adequate time to prepare. See *Croft Metals, Inc.*, 337 NLRB 688, 688 (2002) ("By providing parties with at least 5 working days' notice, we make certain that parties to representation cases avoid the Hobson's choice of either proceeding unprepared on short notice or refusing to proceed at all.").

### *Objection 5*

The Employer objects to the Rule as violating due process and free speech because vests hearing officers with decision-making authority, contrary to Section 9(c)(1)'s requirements that such officers "shall not make any recommendations with respect" to the hearings they conduct. I find this argument to be without merit for the same reasons addressed above under Objection 5.

### *Objection 6*

Lastly, the Employer objects to the Rule arguing that it violates due process and free speech because it provides for no penalties for misuse of employees' confidential personal information.

Contrary to the Employer's contention, the Rule seeks to deter and remedy any misuse of voter contact information. The Board noted that in *Excelsior*, 156 NLRB at 1244, it had reserved the right to provide remedies if voter contact information was misused. And "the rulemaking

record shows not a single instance of voter list misuse dating back to the 1960s.” 79 Fed. Reg. at 74428. Based on that record, the Board chose to take the same approach as in *Excelsior*, noting that it will provide an “appropriate remedy” for any such misuse, leaving the question of precise remedies “to case-by-case adjudication.” Id. at 74359-60. Such remedies could include, in appropriate circumstances, setting aside elections results, seeking injunctive relief in district court, or finding that the misuse constitutes an unfair labor practice, in violation of Section 8(b)(1)(A) of the Act. Id. at 74359. The Board further noted that Section 102.177 of its Rules and Regulations (29 C.F.R. § 102.177), provides for the discipline of attorneys and other representatives for misconduct “at any stage of any [Board] proceeding.” Id. n.259. Accordingly, the Rule’s case-by-case approach in remedying voter list misuse is reasonable, given the nearly 50-year absence of evidence of such misuse.

Finally, the Employer argues that the *Specialty Healthcare* standard violates the Employer’s free speech and due process rights. The Employer’s asserts that the standard violates Section 9(b) of the Act which mandates that the Board “decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”

All the circuit courts which have considered challenges to the Board’s standard for determining whether a proposed bargaining unit is an appropriate unit as clarified in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), specifically, the Third, Fourth, Fifth, Sixth, Seventh and Eighth Circuits, have rejected such challenges. See *NLRB v. FedEx Freight, Inc.*, \_\_ F.3d \_\_, 2016 WL 4191498 (3d Cir. Aug. 9, 2016); *Nestle Dreyer’s Ice Cream Co. v. NLRB*, 821 F.3d 489, 496-502 (4th Cir. 2016); *Macy’s Inc. v. NLRB*, 824 F.3d 557, 567-70 (5th Cir. 2016), *pet. for reh’g en banc filed* (Jul. 18, 2016); *Kindred Nursing Ctrs. East, LLC v. NLRB*, 727 F.3d 552, 561-63 (6th Cir. 2013); *FedEx Freight, Inc. v. NLRB*, \_\_ F.3d \_\_, 2016 WL 5929822 (7th Cir.2016); *FedEx Freight, Inc. v. NLRB*, 816 F.3d 515, 525 (8th Cir.), *reh’g & reh’g en banc denied* (May 26, 2016). The Employer’s amorphous assertion that “the *Specialty Healthcare* cannot be squared with Section 9(b) of the Act” was specifically rejected in the Eighth Circuit’s *FedEx Freight* decision, 816 F.3d at 522-25, and I reject it here, too.

## V. CONCLUSION

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

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

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

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

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Plant 2 North production employees, including chemical operators (process technicians) and relief/step-up operators, employed by the Employer at its Ashtabula, Ohio facility; excluding all other employees, Plant 2 North maintenance mechanics, Plant 2 North I&E technicians, Plant 2 South step-up operators, Plant 2 South lead oxide operators, Plant 2 South relief oxide operators, Plant 2 South oxide operators, Plant 2 South WAT operators, Plant 2 South relief WAT operators, Plant 2 South WAT operators, Plant 2 South lead finished product operators, Plant 2 South finished product operators, Plant 2 South maintenance mechanics, Plant 2 South I&E technicians, Plant 2 South warehouse persons, Plant 2 South warehouse leads, and office clerical employees, guards, and managers and supervisors as defined in the Act.

There are approximately 28 employees in the Unit found appropriate.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate, above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Chemical Workers Union Council of the United Food & Commercial Workers International Union, AFL-CIO, CLC.

### **A. Election Details**

The election will be held on Thursday, November 10, 2016 from 5:00 a.m. to 7:00 a.m. and 5:00 p.m. to 7:00 p.m. and Friday, November 11, 2016 from 5:00 a.m. to 7:00 a.m. in the North Plant Administration Building Conference Room at 1704 State Road, Ashtabula, Ohio 44004.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending October 31, 2016, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

### C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, November 7, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least three (3) full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

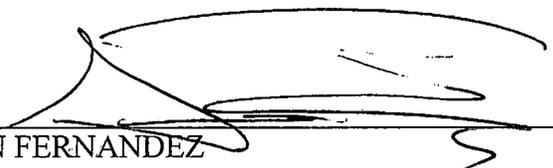
**VII. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Cleveland, Ohio this 3<sup>rd</sup> day of November 2016.



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SUSAN FERNANDEZ  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 08  
1240 E 9TH ST  
STE 1695  
CLEVELAND, OH 44199-2086



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

**Those eligible to vote are:** All full-time and regular part-time Plant 2 North production employees, including chemical operators (process technicians) and relief/step-up operators, employed by the Employer at its Ashtabula, Ohio facility during the payroll period ending October 31, 2016.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

**Those not eligible to vote are:** All other employees, Plant 2 North maintenance mechanics, Plant 2 North I&E technicians, Plant 2 South step-up operators, Plant 2 South lead oxide operators, Plant 2 South relief oxide operators, Plant 2 South oxide operators, Plant 2 South WAT operators, Plant 2 South relief WAT operators, Plant 2 South WAT operators, Plant 2 South lead finished product operators, Plant 2 South finished product operators, Plant 2 South maintenance mechanics, Plant 2 South I&E technicians, Plant 2 South warehouse persons, Plant 2 South warehouse leads, and office clerical employees, guards, and managers and supervisors as defined in the Act who were employed by the Employer.

**DATE, TIME AND PLACE OF ELECTION**

Thursday, November 10, 2016	5:00 a.m. to 7:00 a.m. and 5:00 p.m. to 7:00 p.m.	North Plant Administration Building Conference Room 1704 State Road Ashtabula, Ohio 44004
and	and	
Friday, November 11, 2016	5:00 a.m. to 7:00 a.m.	

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

	UNITED STATES OF AMERICA National Labor Relations Board 08-RC-184947	
OFFICIAL SECRET BALLOT For certain employees of CRISTAL USA, INC.		
Do you wish to be represented for purposes of collective bargaining by INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL OF THE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, CLC?		
MARK AN "X" IN THE SQUARE OF YOUR CHOICE		
YES <input type="checkbox"/>		NO <input type="checkbox"/>
DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box. If you spoil this ballot, return it to the Board Agent for a new one. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.		



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

**SPECIAL ASSISTANCE:** Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

**PROCESS OF VOTING:** Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. **DO NOT SIGN YOUR BALLOT.** Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

**CHALLENGE OF VOTERS:** If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. **DO NOT SIGN YOUR BALLOT.** Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

**It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

**The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:**

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

**The National Labor Relations Board protects your right to a free choice.**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (216)522-3715 or visit the NLRB website [www.nlr.gov](http://www.nlr.gov) for assistance.