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Cristal USA, Inc. and International Chemical Workers Union Council of the United Food & Commercial Workers International Union, AFL-CIO, CLC, Petitioner. Case 08-RC-184947

May 18, 2017

ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND MCFERRAN

The National Labor Relations Board has carefully considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election, as well as the Petitioner's opposition brief. The request for review is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we find that the Acting Regional Director correctly applied the two-step framework set out by the Board in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, enf. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), in finding the petitioned-for unit of Plant 2 North production employees to be an appropriate unit. Under that framework, which adheres to well-settled precedent that the Board need find "only that the unit proposed is an appropriate, rather than the most appropriate unit," *Specialty Healthcare*, supra at 940 (emphasis in original), the Board first determines whether the petitioned-for employees are readily identifiable, and whether they share a community of interest. In appraising community of interest, the Board applies the following traditional factors: whether the employees are organized into a separate department; 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 other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. If the Board finds that the petitioned-for unit has a community of interest, the Employer has the burden of demonstrating that the additional employees it seeks to include share an "overwhelming community of interest" with the petitioned-for employees, such that there "is no legitimate basis upon which to exclude" the additional employees from the unit. *Specialty Healthcare*, supra at 944-946.

In this case, the petitioned-for Plant 2 North production employees work in a plant separate from other production employees, have skills and specialized training specific to producing a particular chemical, and produce that chemical as a distinct part of the Employer's production process. They are commonly supervised by the Plant 2 North Manufacturing Superintendent. Although they share some facility-wide terms and conditions of employment with other employees, their actual contact and interchange with other employees is minimal. They do not temporarily interchange with Plant 2 South production employees. Their performance of voluntary warehouse overtime work is sporadic and employees outside the petitioned-for unit do not reciprocate by performing Plant 2 North production work. See *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 10 (2014) (temporary interchange and one-way interchange are accorded little weight in community of interest analyses), enf. 824 F.3d 557 (5th Cir. 2016). As for contact between the

Dated, Washington, D.C. May 18, 2017

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MISCIMARRA, dissenting.

I would grant review of the Regional Director's finding that a bargaining unit consisting of Plant 2 North production employees is appropriate, excluding Plant 2 South production and warehouse employees, on the basis that the Regional Director applied *Specialty Healthcare* in upholding the exclusion of the latter employees, and I believe *Specialty Healthcare* was wrongly decided for the reasons expressed in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22-33 (2014) (Member Miscimarra, dissenting). Additionally, although Plant 2 North and Plant 2 South are located on opposite sides of a public road, and each facility has a separate manufacturing superintendent (both of whom report to the same operations manager), both facilities process titanium dioxide, and most of Plant 2 North's production of another chemical, titanium tetrachloride, is subject to further processing in Plant 2 South. To facilitate the processing of these chemicals, Plant 2 North and Plant 2 South are connected by an underground system of pipes. Plant 2 North and Plant 2 South are therefore functionally integrated. Moreover, the production employees in Plant 2 North and Plant 2 South wear the same uniform, use similar protective equipment, attend the same orientation program, and receive the same employee benefits with regard to health insurance, retirement, holiday, and vacation, among other things. The Regional Director's Decision and Direction

Plant 2 North and South production employees, it is limited to coordinating activities during periodic downtime or shutdown operations. Contact between the Plant 2 North production employees and the maintenance employees is similarly sporadic, limited to occasional on-site equipment repairs of production machinery, and coordinating to ensure that electricity is cut off to equipment that is being repaired. Finally, the Plant 2 North production employees have separate day-to-day supervision. They are also under an entirely different chain of command than the maintenance and warehouse employees. We accordingly find that the petitioned-for production workers share a community of interest. Further, we find that the Employer has not established—and our dissenting colleague has not shown by the facts he cites—an overwhelming community of interest between the petitioned-for employees and employees outside the unit. We therefore find the petitioned-for employees to constitute an appropriate unit.

of Election in *Cristal II* (Case 8–RC–188482) further indicates some interchange between Plant 2 South production employees and Plant 2 South warehouse employees, and all employees working in production positions in Plant 2 North and Plant 2 South and warehouse positions in Plant 2 South are affected by any startup or shutdown of operations. See *Cristal USA, Inc.*, 365 NLRB No. 74 (2017) (Member Miscimarra, dissenting). In these circumstances, I would grant review on the basis that substantial questions exist regarding whether the unit consisting exclusively of Plant 2 North production employees erroneously disregards or discounts the community of interests these employees share with Plant

2 South production and warehouse employees and promotes instability by creating a fractured or fragmented unit. See *Macy's, Inc.*, supra, slip op. at 27–29 (Member Miscimarra, dissenting); *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 10–18 (2015) (Member Johnson, dissenting).

Dated, Washington, D.C. May 18, 2017

Philip A. Miscimarra,

Chairman

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