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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In the Matter of:	:	
CRISTAL USA, INC.,	:	
	:	
Respondent,	:	
	:	
And	:	Case No. 08-CA-200737
	:	
INTERNATIONAL CHEMICAL	:	
WORKERS UNION COUNCIL OF	:	
THE UNITED FOOD AND	:	
COMMERCIAL WORKERS	:	
INTERNATIONAL UNION, AFL-CIO-	:	
CLC,	:	
	:	
Charging Party.	:	

**RESPONDENT CRISTAL USA, INC.’S CROSS MOTION  
FOR SUMMARY JUDGMENT**

Pursuant to Section 102.24(b) of the Board’s Rules and Regulations and under the legal standard readopted in *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), Respondent Cristal USA, Inc. (“Cristal” or the “Company”) respectfully moves the Board for an order: (1) granting summary judgment in its favor; (2) dismissing the General Counsel’s Complaint; (3) vacating the Certification of Representative in the representation case out of which this case arose, Case 08-RC-188482 (the “Warehouse R-Case”); and (4) dismissing the election petition filed in the Warehouse R-Case by the International Chemical Workers Union Council of the United Food & Commercial Workers International Union (the “Union”).<sup>1</sup>

The grounds for this Motion, which the Memorandum that follows set out more fully, are

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<sup>1</sup> Cristal has also filed a Cross Motion for Summary Judgment in the companion case to this one, Case 08-CA-200330, which the Company has moved the Board to consolidate with this case.

that when evaluated under the traditional community of interest standard to which the Board returned in *PCC Structural*s, instead of, as it was, the standard adopted in the Board's now defunct decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), the evidence presented at the hearing in the Warehouse R-Case demonstrates that no genuine issue of material fact exists precluding a finding that the unit of warehouse employees in which the Regional Director directed the election won by the Union in the Warehouse R-Case is inappropriate. Because the unit is inappropriate, it necessarily follows that the Regional Director improperly certified the Union as the representative of the employees in the unit, and Cristal is not now and has never been obligated to recognize and bargain with the Union as the representative of those employees. Accordingly, the General Counsel's Complaint must be dismissed and the outcome in the Warehouse R-Case undone by revoking the Union's certification and dismissing the Union's election petition.

## **MEMORANDUM IN SUPPORT**

### **I. STATEMENT OF THE CASE**

Cristal is part of a family of companies that manufactures titanium dioxide products internationally on five continents. In Ashtabula, Ohio, the Company operates two plants, known as Plant 1 and Plant 2, on 140 acres just south of Lake Erie. Each plant produces purified titanium dioxide (TiO<sub>2</sub>) for sale to various markets. They do so through a system that uses chlorine to react with titanium-bearing ores, in a high temperature process, to create titanium tetrachloride (TiCl<sub>4</sub>), which is condensed and purified, and then oxidized to create TiO<sub>2</sub>. After that process is completed, the TiO<sub>2</sub> is finished, packaged, warehoused and shipped to customers.

(G.C. Ex. 5, Ex. 2, Tr. pp.37-49, Exs. 5-6).<sup>2</sup>

Local 7334 of the United Steelworkers Union has represented a wall-to-wall unit of production and maintenance employees at Plant 1, which employs around 250 employees, since the 1960s. In 2008, the Steelworkers, the first union to do so, filed a representation petition seeking to represent the employees of Plant 2, which employs around 220 employees. In Case 08-RC-16951, Cristal and the Steelworkers entered into a stipulated election agreement calling for an election at Plant 2 in a unit, as at Plant 1, of all production and maintenance employees. The Steelworkers lost the election. (G.C. Ex. 5, Ex. 2, Tr. pp. 34-35, Exs. 15-17).

Eight years later, in the fall of 2016, the International Chemical Workers Union Council of the United Food & Commercial Workers International Union (the “Union”) became the second union to attempt to organize the Plant 2 employees. The story that the Union’s conduct tells is one of a union that, despite trying, was unable to garner support among a majority of the plant’s employees but able to find it in a couple small subgroups, and that decided to take advantage of the opportunity *Specialty Healthcare* gave it to seek to gain a foothold in those subgroups. (Cristal Ex. 1 to Mem. Opp. G.C. MSJ, Tr. pp. 119-122).

The story begins with a petition the Union filed on September 13, 2016, in Case 08-RC-184028, seeking an election among a subset of Plant 2 employees from different departments. The petitioned-for unit was made up of “[a]ll full time and regular part time TICL4 (North) plant production (chemical operators, CRO’s, step ups/relief operators), maintenance (mechanical, I&E, & planner), and South Plant warehouse employees. The Union withdrew its petition on September 22, 2016, shortly after Cristal submitted its statement of position outlining the reasons

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<sup>2</sup> References to the exhibits to the General Counsel’s Motion for Summary Judgment in this case are abbreviated, “G.C. Ex. \_\_,” followed, where applicable, to references to the exhibits from the Warehouse R-Case that are part of the exhibit.

why the petitioned-for unit was inappropriate. (See G.C. Ex. 6 in Case 08-CA-200330, Exs. 1 and 2). Four days later, on September 26, 2016, the Union filed its petition in Case 08-RC-184947 (the “TiCl4 R-Case”), seeking an election among only TiCl4 operators, i.e., a subset of the unit named in the first petition, as well as a subset of Plant 2’s production employees. (G.C. Ex. 1 in Case 08-CA-200330). Then, on November 21, 2016, the Union filed its third petition, in the Warehouse R-Case, seeking an election involving only warehouse employees, another subset of the unit named in the first petition. (G.C. Ex. 1 in Case 08-CA-200737).<sup>3</sup>

On October 4, 2016, a hearing was held in the TiCl4 R-Case to determine the appropriateness of the petitioned-for unit. On November 30, 2016, a hearing was held in the Warehouse R-Case to determine whether the petitioned-for unit in that case was appropriate. At the hearings on both petitions, the Company contended that the smallest and only appropriate unit was a wall-to-wall production, maintenance and warehouse unit.

Rejecting the Company’s arguments, the Regional Director approved and directed separate elections among the employees in the units sought in the TiCl4 R-Case and the Warehouse R-Case. (G.C. Ex. 2; G.C. Ex 2 in Case 08-CA-200330). The Union prevailed in each election. The Regional Director issued a Certification of Representative on December 1, 2016, in the TiCl4 R-Case, certifying the Union as the representative of the employees in the TiCl4 unit. On January 20, 2017, he issued a Certification of Representative in the Warehouse R-Case, certifying the Union as the representative of the employees in the warehouse unit. The Company requested review of the Decision and Direction of Election in both cases. (G.C. Ex. 5; G.C. Ex. 6 in Case 08-CA-200330). Over then Chairman Miscimarra’s dissent, the Board denied

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<sup>3</sup> References to the exhibits to the General Counsel’s Motion for Summary Judgment in TiCl4 R-Case are abbreviated, “G.C. Ex. \_\_\_ in Case 08-CA-200330,” followed, where applicable, to references to the exhibits from the TiCl4 R-Case that are part of the exhibit.

the Company's Request for Review in the Warehouse R-Case on May 10, 2017, in a decision reported at 365 NLRB No. 74. (G.C. Ex. 6). It denied the Company's Request for Review in the TiCl4 R-Case on May 18, 2017, again over then Chairman Miscimarra's dissent, in a decision reported at 365 NLRB No. 82. (G.C. Ex. 7 in Case 08-CA-200330). The Company filed a Motion for Reconsideration in the Warehouse R-Case on May 24, 2017, and one in the TiCl4 R-Case on June 1, 2017. (G.C. Ex. 7; G.C. Ex. 8 in Case 08-CA-200330 ). The Board denied the Company's Motions for Reconsideration on June 27, 2017 (G.C. Ex. 8; G.C. Ex. 9 in Case 08-CA-200330).

On June 8, 2017, the Union filed its unfair labor practice charge in Case 08-CA-200330, arising out of the TiCl4 R-Case, and on June 15, 2017, it filed its charge in this case, arising out of the Warehouse R-Case, alleging in each charge that Cristal violated Section 8(a)(5) and (1) of the Act by failing to bargain with, and failing to furnish information to, the Union. (G.C. Exs. 11-12; G.C. Ex. 12 in Case 08-CA-200330). The Regional Director issued Complaints in each case, one in Case 08-CA-200330 on June 23, 2017, and one in this case on June 29, 2017. Cristal timely answered each Complaint and the General Counsel then filed identical motions for summary judgment in both cases on September 22, 2017. (G.C. Exs. 13-14; G.C. Exs. 13-14 in Case 08-CA-200330). Cristal moved to consolidate the cases on October 9, 2017, and on October 10, 2017, filed a memorandum in opposition to the General Counsel's motion in each case.

On December 15, 2017, the Board issued *PCC Structurals*, a 3-2 decision overruling *Specialty Healthcare*, under which the TiCl4 R-Case and Warehouse R-Case were decided, and reinstating the traditional community of interest test that preceded the test adopted in *Specialty Healthcare*. The Board's determination in *PCC Structurals* to overrule *Specialty Healthcare* and

return to the traditional community of interest test provides the requisite special circumstances to remove this case from the reach of the longstanding rule, currently set out in Section 102.67(g) of the Board's Rules and Regulations, prohibiting relitigation in a subsequent unfair labor practice case of an issue that was or could have been litigated in an underlying representation case. The decision, thus, provides Cristal with standing to move for summary judgment, and an order dismissing the General Counsel's Complaint, and vacating the certification issued to the Union in the Warehouse R-Case. And as the discussion that follows demonstrates, when the facts of the Warehouse R-Case are evaluated under the traditional community of interest test, the conclusion is inescapable that the relief Cristal requests is warranted.

## **II. STATEMENT OF FACTS**

The following Statement of Facts is taken from Cristal's Request for Review in the Warehouse R-Case and is presented verbatim to facilitate an assessment of Cristal's contention that a unit consisting of only the Plant 2 North warehouse employees is not appropriate under the traditional community of interest test.

Overall management responsibility for both Plant 1 and Plant 2 rests with Scott Strayer, the Ashtabula Complex General Manager. (G.C. Ex. 5, Ex. 2, Tr. p. 37, Ex. 1). Unlike at Plant 1, which consists of contiguous facilities, the process by which TiO<sub>2</sub> is produced at Plant 2 is separated by the public road on which Plant 2 is located. On the north side of the road is what is referred to as the North Plant or Plant 2 North. On the south side of the road, kitty-corner from the North Plant, is what is referred to as the South Plant or Plant 2 South. (G.C. Ex. 5, Ex. 2, Tr. pp. 44-49, Ex. 5).

Plant 2 employs 220 employees. (G.C. Ex. 5, Ex. 2, Tr. p. 34). The production process begins at Plant 2 at the North Plant where purified TiCl<sub>4</sub> is created and transported by pipeline to the South Plant, where it is further processed into TiO<sub>2</sub>. During the production process at the

South Plant chlorine is removed from the product, recycled and transported to the North Plant for re-use in the production process. Additionally, waste water from both the North and South Plants is transported to a treatment facility physically located behind the North Plant. Upon completion of the TiO<sub>2</sub> production process at the South Plant, the finished product is prepared for shipment in the warehouse at the South Plant. (G.C. Ex. 5, Ex. 2, Tr. pp. 38-46).

At the North Plant, production employees (process technicians, a/k/a TiCl<sub>4</sub> operators, and step up operators) work in four 7-person teams. Each team works 12-hour rotating shifts, with one 7-person team working at a time. Sixteen maintenance mechanics (including one step up maintenance mechanic), and 12 instrument and electrical (“I&E”) technicians (including one step up I&E technician), work in the maintenance department at the North Plant. Twelve of the maintenance mechanics work a 7:00 a.m. to 3:30 p.m. schedule. The other four work a 12-hour rotating shift, with one each assigned to work the same hours as one of the four rotating North Plant operations teams. Eight of the I&E technicians work a 7:00 a.m. to 3:30 p.m. schedule, including the step up I&E technician, who works in both the North and the South Plant. The other four I&E technicians work a 12-hour rotating shift, with one assigned to work the same hours as one of the four rotating North Plant operations teams. They are responsible for instrument and electrical work during their shifts in both the North and the South Plant. All of the I&E technicians who work in either the North Plant or South Plant report to the same supervisor. (G.C. Ex. 5, Ex. 2, Tr. pp. 50-66, Ex. 1).

At the South Plant, the Company employs four 13- or 14-person teams of operations department employees to complete the TiO<sub>2</sub> oxidation, finishing and packaging processes. Like the operations employees at the North Plant, the teams work 12-hour rotating shifts, with one team working at a time. In the maintenance department at the South Plant, the Company

employs 21 maintenance mechanics, and eight I&E technicians (besides those noted earlier who work in both the North and South Plant). Seventeen of the maintenance mechanics work a 7:00 a.m. to 3:30 p.m. schedule. The other four work a 12-hour rotating shift, with one each assigned to work the same hours as one of the rotating South Plant operations teams. All the maintenance mechanics share the same supervisor, who reports to the maintenance superintendent. The eight I&E technicians work a 7:00 a.m. to 3:30 p.m. schedule. Again, there are four I&E technicians who work a 12-hour rotating shift, with one assigned at a time, to cover both the North and the South Plant. The South Plant and North Plant I&E technicians report to the same supervisor. (G.C. Ex. 5, Ex. 2, Tr. pp. 50-109, Ex. 1).

The last phase of the production process occurs in the warehouse, where packaged TiO<sub>2</sub> that has been moved to the warehouse by finished product operators (“FPOs”) is sealed and staged for shipment. Six hourly employees work in the warehouse, five warehouse persons and one warehouse lead. At the time of the hearing, the warehouse lead was Jeremy Pildner. The warehouse persons’ regular work schedule is 7:00 a.m. to 3:30 p.m., Monday through Friday, with optional overtime both during the workweek and on weekends. (G.C. Ex. 5, Ex. 3, Tr. pp. 33, 34-35). The warehouse lead reports to the North American Distribution and Logistics Manager, Lisa Powers. (G.C. Ex. 5, Ex. 3, Tr. pp. 23-24). Ms. Powers has a physical office at Plant 2 in Ashtabula and spends the majority of her time there. She regularly interacts with Plant 2 leadership, including Scott Strayer, on day-to-day operational matters, and during regular management meetings, weekly “walkabouts,” and safety management team meetings. (G.C. Ex. 5, Ex. 3, Tr. pp. 27-28).

### III. ARGUMENT

#### A. **Cristal Has Standing To Move For Summary Judgment On The Grounds The Warehouse Unit Is Inappropriate Under *PCC Structural*s**

Section 102.67(g) of the Board's Rules and Regulations recites a long-established policy of the Board generally not to permit relitigation in a related unfair labor practice case of an issue that was or could have been litigated in a representation case. It reads in full:

The Regional Director's actions are final unless a request for review is granted. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmation of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

The Board recognizes two exceptions to this rule, one for newly discovered, previously unavailable evidence, and one for special circumstances. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); *Duke University*, 311 NLRB 182 (1993); *Heuer International Trucks*, 279 NLRB 127 (1986); *Sub-Zero Freezer Co.*, 271 NLRB 47 (1984) (dismissing complaint, vacating decision in representation case, revoking union's certification and remanding case to regional director based upon special circumstances). The Board has also found that it has the power, in the absence of newly discovered, previously unavailable evidence or special circumstances, to reconsider in a technical 8(a)(5) test of certification case a determination in the underlying representation case under a newly-adopted legal standard. *St. Francis Hospital*, 271 NLRB 948 (1984) (dismissing complaint and remanding case to regional director for consideration under newly-adopted legal standard).

Here, *PCC Structural*s provides the Board both special circumstances and cause *sua sponte* to reconsider the unit determination in the Warehouse R-Case. Support for the Board's

reconsidering the unit determination in this case is provided by action the Board took within a week of its issuance of *PCC Structural*s in a case pending before the District of Columbia Court of Appeals, *Volkswagen Group of America v. NLRB*, Case No. 16-1309. In that case the Board filed a motion with the Court, which the Court granted, asking the Court to remand its *Specialty Healthcare*-based decision to the Board for reconsideration under *PCC Structural*s. (a copy of the Board's Motion is attached as Exhibit A). The General Counsel too has determined that *PCC Structural*s provides the requisite extraordinary circumstances to revisit unit determinations or election agreements made prior to the case's issuance in pending representation cases. In Memorandum OM 18-05, Associate General Counsel Beth Tursell advised all Regional Directors, Officers-in-Charge and Resident Officers that the "modification of extant law by the Board in *PCC* constitutes such an 'unusual' or 'extraordinary' change in circumstances as to warrant reconsideration of the propriety of a bargaining unit defined under a stipulated or consent election agreement or decision and direction of election in a currently active case." (a copy of the Memorandum is attached as Exhibit B).

This case should be treated the same as a test of certification case like *Volkswagen*, which was post-oral argument and pending for a decision in the court of appeals when the Board moved to remand it, and all pending cases in which unit decisions were issued or agreements made under *Specialty Healthcare*. Among its other arguments, Cristal argued in its Statement of Position in the Warehouse R-Case that the unit of warehouse employees sought by the Union violated Section 9(c)(5) of the Act and that the standard adopted in *Specialty Healthcare* violated Section 9(b), which were among the reasons the Board gave for overruling *Specialty Healthcare* in *PCC Structural*s. (see Cristal's Statement of Position in the Warehouse R-Case, pp. 7-9, and 14, attached as Exhibit C). Cristal repeated and expanded upon those arguments in its Request

for Review (G.C. Ex. 6). Cristal, thus, preserved the arguments for review, making this case ripe for reconsideration under *PCC Structural*s.

**B. When Evaluated Under The Traditional Community Of Interest Test, The Evidence Establishes That A Unit Of Warehouse Employees Is Inappropriate And The Smallest Appropriate Unit Is One Consisting Of All Plant 2 Production, Maintenance And Warehouse Employees**

In describing the traditional community of interest test to which it returned in *PCC Structural*s, the Board quoted the following passage from *United Operations, Inc.*, 338 NLRB 123 (2002), stating that the passage captures what the test requires the Board to determine in each case, which is:

[W]hether 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.

Explaining how the analysis under this test is conducted, the Board added:

In weighing both the shared and the distinct interests of petitioned-for and excluded employees, we take guidance from the Second Circuit’s decision in *Constellation Brands* [*Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784 (2d Cir. 2016)]. Thus, we agree with the Second Circuit that the Board must determine whether “excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.” *Constellation Brands*, supra at 794. Having made that determination—applying the Board’s traditional community-of-interest factors recited above—the appropriate-unit analysis is at an end.

365 NLRB No. 160, slip op. at p. 11.

Using the *PCC Structural*s method of analysis here demonstrates that the shared interests the warehouse employees have with production and maintenance employees on a Plant 2-wide basis far outweigh the scant separate interests warehouse employees share amongst themselves.

**1. The Warehouse Employees Do Not Have Sufficient Shared Interests To Find They Have A Distinct Community Of Interest Apart From Plant 2 Production And Maintenance Employees**

In applying the first prong of the *Specialty Healthcare* framework, the Regional Director, found that the warehouse employees were “readily identifiable as a group” because: they work in the same department and perform the same functions in a defined work area; they share the same classification and possess similar skills; they report to an area where only warehouse employees report; and they fall under a separate chain of command than production and maintenance employees. (G.C. Ex. 2, p.11).

The Regional Director then found that warehouse employees “share a community of interest under the Board’s traditional criteria,” basing that conclusion on the same reasons he gave for finding they were readily identifiable as a group, i.e., they “work in the same location, perform the same function, work the same shift, use the same equipment, and hold the same job classification.” (Id.). He added that their work had “a shared purpose and functional integration” in that “they all perform warehouse functions and ensure that products are shipped to customers.” (Id.). Comparing them to production and maintenance employees, the Regional Director found that warehouse employees “have distinct job functions and perform distinct work,” noting that they have “separate job descriptions” from other employees, their work is different from production and maintenance work, and they have limited contact, interaction and interchange with other employees. (Id. at pp. 11-12).

Relying upon the same analysis, but fitting it to the then applicable legal standard, the Regional Director next found that Cristal had failed to meet its burden under *Specialty Healthcare* to prove that production and maintenance employees share such an overwhelming community of interest with warehouse employees as to make a unit limited to warehouse

employees inappropriate. To illustrate, he repeated that warehouse employees work in a separate department, the petitioned-for unit included all employees in that department, and the warehouse employees are separately supervised. He added that warehouse employees “work in their own distinct space,” and that the evidence of temporary and permanent interchange among employees and contact between groups was not enough to make a difference. He also found it to be of no meaningful import that the production, maintenance and warehouse employee receive the same benefits and work under the same terms and conditions of employment, and discounted the evidence of the high degree of functional integration in the production process by comparing the production of TiO<sub>2</sub> to training guide dogs.

Distilled to its essence, the Regional Director’s finding was that it was sufficient that the warehouse employees work in a separate department from production and maintenance employees to permit an election in a unit of just them. That the factors on which he relied were ones that could be said of many, if not most, “departments” demonstrates as much. To treat them as sufficient to carry the day would not only conflict, but could not be reconciled, as the Board found in *PCC Structural*s, with Section 9(b)’s mandate that the Board “decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”

Besides predicating his analysis on a test that misread the requirement of Section 9(b) and impermissibly favored units based upon the extent of a union’s success in organizing employees, the Regional Director made a host of factual findings that do not withstand analysis. He also overlooked or unduly discounted a number of facts that establish the warehouse employees do not have a sufficiently distinct community of interest apart from the production and maintenance

employees to constitute a separate unit and that their shared interests with those employees demonstrate the smallest appropriate unit is one that includes all of them together.

1. *Work Location.* The Regional Director's finding that the warehouse employees work in their own "distinct space" and are the only employees assigned to work exclusively in the warehouse loses its weight when considered in light of the evidence of who works with and around them. The warehouse is located in the same physical location (Plant 2 South) in which South Plant maintenance and production employees work. (G.C. Ex. 5, Ex. 2, Tr. pp. 50-109). The warehouse employees share with their Plant 2 South coworkers a parking lot, a locker room, and a secure entrance. (G.C. Ex. 5, Ex. 3, Tr. pp. 54-55). And perhaps most importantly, Plant 2 South Finished Product Operators enter the warehouse section of the South Plant on a daily basis to deliver finished product, collect supplies, and/or use the pallet inverter or the wrapper, and production employees enter the area to work overtime alongside the warehouse employees. (G.C. Ex. 5, Ex. 2, Tr. pp. 113-114, Ex. 22; G.C. Ex. 5, Ex. 3, Tr. pp. 46-47).

2. *Production Employees Temporary Interchange in the Warehouse.* The Regional Director's finding that the warehouse employees perform the same, distinct job functions, hold the same job classification, and have distinct and separate work apart from the other employees fails scrutiny when considered against the evidence of the number of Plant 2 (North and South Plant) production employees who work overtime hours in the warehouse on a regular (almost daily) basis alongside the warehouse employees (G.C. Ex. 5, Ex. 2, Tr. pp. 113-114, Ex. 22; G.C. Ex. 5, Ex. 3, Tr. pp. 65-68, 70-71, Exs. 3, 6, 9). Production employees routinely and regularly perform the same job functions as warehouse employees. Any production employee who wishes to work overtime hours in the warehouse – and there are many employees who do – can be trained in minimal time (eight hours or less, depending on if they were only being requalified).

(G.C. Ex. 5, Ex. 3, Tr. p. 58). Notwithstanding that on any given day any number of production employees may be found working overtime in the warehouse, the Regional Director incredibly found that “[t]his contact and interchange is limited” and, inappositely citing Hilton Hotel Corp., 287 NLRB 359, 360 (1987), “simply not ‘the type of periodic temporary transfers or lateral, two-way departments that may suggest blurred departmental lines and a truly fluid work force with comparable skills.’” In light of what the record in the Warehouse R-Case establishes, it is not an understatement to say that in finding the almost daily transfer of production employees to work overtime in the warehouse, sometimes in numbers as high as the warehouse employees, was not evidence of a shared community of interest, the Regional Director effectively ruled out temporary transfers as a factor in his analysis and in the process ignored decades of Board precedent. The Regional Director plainly erred.

3. *Permanent Interchange.* At Plant 2, a production employee’s normal career progression starts at Plant 2 South. Next, an employee is usually awarded a bid<sup>4</sup> as a TiCl4 operator at Plant 2 North. Employees then sometimes return to a position at Plant 2 South or move into the warehouse. (G.C. Ex. 5, Ex. 2, Tr. pp. 87-89, 198-200, Ex. 19). Of the five employees who worked in the warehouse as warehouse persons at the time of the hearing, all of them previously worked as a finished product operator at the South Plant and three of them previously worked as a chemical operator at either the North or South Plant. (G.C. Ex. 5, Ex. 2, Exs. 19-20, 22). The Regional Director acknowledged the evidence of permanent transfers, but commented that, under Board law, evidence of permanent transfers is given less weight in assessing if a community of interest exists than evidence of temporary interchange. The Regional Director’s error, however, was in giving the evidence (ironically enough, along with

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<sup>4</sup> At Plant 2, all available positions are posted for bid. Bids are awarded based on overall company seniority. (G.C. Ex. 8, Ex. A, Ex. 2, pp. 180-224, Ex. 7).

the evidence of temporary interchange) no weight.

4. *Production Department Finished Product Operators Interaction with Warehouse Employees.* As expected by their entry into the warehouse section of the South Plant on a daily basis to deliver finished product, collect supplies, and/or use the pallet inverter or the wrapper, Plant 2 South Finished Product Operators come into contact and interact with warehouse employees on a regular basis. The Regional Director's finding that Finished Product Operators have "very little interaction" with the warehouse employees reads something into the record that is not there and overlooks the point behind the evidence. The point is that production employees have regular business in the warehouse and, as such, inevitably come across and must interact with warehouse employees. (G.C. Ex. 5, Ex. 3, Tr. pp. 46-47).

5. *Contact and Interaction Between Warehouse Employees and Maintenance Employees.* The Regional Director also improperly discounted the contact and interaction warehouse employees have with maintenance employees. South Plant maintenance mechanics and I&E technicians are responsible for maintenance-related functions in the warehouse. Those functions require them from time to time to interact with warehouse employees. The interaction is not unlike the interaction maintenance employees have with production employees. (G.C. Ex. 5, Ex. 3, Tr. pp. 28-30). The contact is enough, along with the other factors, to demonstrate that warehouse employees and South Plant maintenance employees have sufficient shared interests to support a finding that only a wall-to-wall production, maintenance and warehouse unit is appropriate. The Regional Director erred in considering their contact in isolation and finding it to be too limited to make a difference.

6. *Hours of Work.* The Regional Director also erred in finding the warehouse employees have a distinct community of interest because they work the same shift. Most

maintenance employees work the same shift as the warehouse employees. (G.C. Ex. 5, Ex. 3, Tr. p. 33). And, again, production employees regularly work alongside warehouse employees. (G.C. Ex. 5, Ex. 2, Tr. pp. 113-114, Ex. 22; G.C. Ex. 5, Ex. 3, Tr. pp. 65-68, 70-71, Exs. 3, 6, 9).

7. *Equipment.* The Regional Director's reliance on the fact warehouse employees use the same equipment was also misplaced. The equipment used by the warehouse employees – forklifts, pallet inverters, and wrappers – are also used by production employees. (G.C. Ex. 5, Ex. 3, Tr. pp. 46-47). All Plant 2 production, maintenance, and warehouse employees also utilize the same standard safety equipment. (G.C. Ex. 5, Ex. 2, Tr. p. 90). Warehouse employees, thus, do not use unique tools that differentiate them from the other Plant 2 employees.

8. *Skills and Training.* The Regional Director's finding that the warehouse employees have distinct skills and training compared to the other Plant 2 employees overlooks that the training they receive is minimal and neither unique nor difficult. Employees are required to take an eight hour training course to qualify to work in the warehouse. (G.C. Ex. 5, Ex. 3, Tr. p.58). It is training that many production employees have taken and passed to qualify to work in the warehouse. (G.C. Ex. 5, Ex. 2, Tr. pp. 113-114, Ex. 22; G.C. Ex. 5, Ex. 3, Tr. pp. 65-68, 70-71, Exs. 3, 6, 9).

9. *Supervision.* While it is true that warehouse employees are separately supervised from and subject to a different chain of command than production and maintenance employees, the Regional Director gave too much weight to this factor in light of the evidence of the interaction between warehouse management and production and maintenance management. North American Distribution and Logistics Manager Powers has an office at Plant 2 and spends the majority of her time there. She regularly interacts with Plant 2 leadership, including Scott Strayer, on day-to-day operational matters, and during regular management meetings, weekly

“walkabouts,” and safety management team meetings. (G.C. Ex. 5, Ex. 3, Tr. pp. 27-28). To use her words in describing the connection, “it’s very integrated – most people would think that I report to the site director, because I have more interaction with him than I do my manager in Baltimore.” (Id. at Tr. p. 28).

10. *Wages and Benefits.* Plant 2 has one wage scale that sets out the wage rates of all production, maintenance, and warehouse employees. All employees, regardless of position, receive the same benefit package. (Cristal TiCl<sub>4</sub> R-Case Ex. 21, attached as Exhibit D; G.C. Ex. 5, Ex. 2, Tr. pp. 179-187, 210, Ex. 11).

11. *Employer Policies.* All Plant 2 production, maintenance and warehouse employees are subject to the same Company policies and work under the same terms and conditions of employment. (G.C. Ex. 5, Ex. 2, Tr. pp. 180-224, Exs. 7, 13).

12. *Functional Integration.* The Regional Director relied upon *Guide Dogs for the Blind, Inc.*, 359 NLRB 1412, 1418 (2013), to find that “sharing an end goal of producing titanium dioxide . . . alone does not establish that the employees at issue ‘are so functionally integrated as to blur the differences between’ the groups.” *Guide Dogs*, however, and the analysis of the responsibilities of the “dog-handling” employees to which the quoted language went, neither applies here nor survives the overruling of *Specialty Healthcare*. Functional integration has historically been an important, and arguably the most important factor in the community of interest analysis. Here, the work the warehouse employees perform is functionally integrated with, and the final step in the achievement of, Plant 2’s overall mission – the production of TiO<sub>2</sub> for sale to the Company’s customers. Cristal’s structure requires production, maintenance, and warehouse employees to work together toward that objective and demonstrates that Plant 2 is highly integrated. Each phase of the production process is inextricably linked to

the other phases. That is perhaps best illustrated by the fact that if any phase of the process shuts down, all of Plant 2 must stop working. (G.C. Ex. 5, Ex. 2, Tr. pp. 95, 97-98, Ex. 13(N)).

Besides the foregoing considerations, a host of other undisputed facts show that no group of workers at Plant 2 – production, maintenance or warehouse – have meaningfully distinct interests from the other groups. They include the following:

1. *Maintenance Employee Interchange Between Plants.* Plant 2 maintenance employees are permitted to work at both the North and South Plants and many regularly work at both plants. (G.C. Ex. 5, Ex. 2, Tr. p. 106).

2. *Contact and Interaction Between Production and Maintenance Employees.* Plant 2 production and maintenance employees regularly and routinely interact with each other, particularly on maintenance repairs and issues that require diagnostics, troubleshooting, and the lockout-tagout of equipment and sources of energy. (G.C. Ex. 5, Ex. 2, Tr. pp. 79-87, Exs. 13(O) and (P)).

3. *Contact and Interaction Between North and South Plant Production Employees.* Production employees who work in the control rooms at the North and South Plant are able to view the control screens for both plants, and communicate with each other to determine appropriate production levels and identify issues in the production process, including during the 12-15 downtime events each month. (G.C. Ex. 5, Ex. 2, Tr. pp. 93-95). North and South Plant operators regularly take samples to the lab (located at the South Plant) to be tested, resulting in their occasionally coming into contact with each other. (G.C. Ex. 5, Ex. 2, Tr. pp. 110-111).

4. *Participation and Contact Serving on Voluntary Workplace Committees.* Plant 2 production, maintenance, and warehouse employees participate on the same voluntary workplace committees. (G.C. Ex. 5, Ex. 2, Tr. pp. 115-117, Ex. 23).

5. *Common Services.* All Plant 2 production, maintenance and warehouse employees fall under the umbrella of the same group of shared services, including engineering, process control, finance, procurement, environmental services, safety service, labor relations (human resources), information technology, and procurement. In particular, there is common control over all labor relations functions at the North Plant and the South Plant. (G.C. Ex. 5, Ex. 2, Tr. pp. 118-123).

6. *Safety Equipment.* Plant 2 production, maintenance, and warehouse employees utilize the same standard safety equipment. (G.C. Ex. 5, Ex. 2, Tr. p. 90).

7. *Uniform Policy.* Plant 2 production, maintenance, and warehouse employees are covered by the same uniform policy. (G.C. Ex. 5, Ex. 2, Tr. pp. 211-212, Ex. 13(J)).

8. *Orientation.* The onboarding and orientation process for Plant 2 production, maintenance, and warehouse employees is virtually identical. (G.C. Ex. 5, Ex. 2, Tr. p. 209, Ex. 11).

9. *Recording Hours Worked and Payday.* All Plant 2 production, maintenance, and warehouse employees record their time in the same manner and are paid on the same date. (G.C. Ex. 5, Ex. 2, Tr. p. 212).

In applying the traditional community of interest test, the Board has a long history of holding on facts analogous to those presented here that a petitioned-for subset of employees comparable to the warehouse unit here is inappropriate, finding in those cases that the employees in the proposed unit did not share the requisite separate and distinct community of interest to form a standalone unit. The following cases are illustrative.

In *Peerless Products Company*, 114 NLRB 1586 (1955), the petitioner and intervenor sought a unit limited to the employer's production department, while the employer contended

that only a plantwide unit was appropriate. The Board agreed with the employer and dismissed the petition based upon evidence of employee interchange between departments, the interrelationship of the employees' work, and the petitioner's representation of employees of other employers in units that included employees besides production employees. It was of no moment to the Board that the different employee groups of the employer worked at different locations. The Board said the "difference in the situs of employment of the employee groups here involved does not necessarily determine . . . that they do not have a community of interest in their employment." It also did not make a difference to the Board that production employees were paid differently from employees in other groups. The only factor the Board found that supported the petitioned-for unit was the extent of the petitioner's and intervenor's organization of employees. The Board commented, however, that "extent of employee organization is not, standing alone, a proper determinant of a bargaining unit" and may not be "the controlling factor in such determination. 114 NLRB at 1588. *See also, Birdsall, Inc.*, 268 NLRB 186, 190 n.14 (1983).

In *North American Rockwell*, 193 NLRB 983 (1971), the union sought an election in a unit limited to technical employees employed in one payroll group at one of five divisions of the employer's aerospace and systems group, or alternatively all technical employees at the division. The employer contended that the only appropriate unit had to include employees from all five divisions and, alternatively, that a unit could not be appropriately limited to technical employees from the one payroll group. Finding, among other things, that the employer's operations at the five divisions were highly integrated and centralized and that the employer employed technical employees at each division who worked in classifications and performed work similar to the petitioned-for employees, the Board held both alternative petitioned-for units to be inappropriate.

In doing so, the Board explained:

It has long been held that employees possessing similar interests in terms and conditions of employment must be afforded the same treatment for purposes of unit placement. [W]e find that the group of employees requested by the Petitioner comprises only a small segment of a large group of unrepresented employees who perform similar work, hold similar classifications, and have similar interests. Furthermore, the Employer's operations are highly integrated and centralized and collective bargaining for all the Employer's represented employees in the Los Angeles area has always been on a multidivision basis.

193 NLRB at 984.

In *Neodata Product/Distribution*, 312 NLRB 987 (1993), the union petitioned for an election in a unit consisting of all employees employed at one of two facilities of the employer in Des Moines, Iowa, which was located approximately three miles from the second facility. The employer, which was engaged in the product distribution business for the direct marketing industry, contended the only appropriate unit was one that included employees at both facilities.

The Board agreed with the employer, basing its decision on the following considerations:

- The facilities were functionally integrated and effectively operated as a single unit, as reflected by employees at each facility fully and equally participating at the various stages of the employer's overall production process to accomplish the employer's ultimate production goals, and linkage of the facilities by a common computer system, facts which the Board found demonstrated that, despite being physically separate from each other, employees at both facilities constituted "integral and indispensable parts of a single 'order flow process'";
- Various employees from each facility had personal, telephone, and facsimile contact from time to time with employees from the other facility;
- Employees were able to transfer from one facility to the other, and bid on posted jobs at each facility;
- Employees at both facilities received the same fringe benefits; and
- The employer's director of operations had overall responsibility for daily operations and labor relations policy.

312 NLRB at 988-989.

In *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999), the Board held to be inappropriate a petitioned-for unit of trailer interchange clerks, vehicle and equipment receiving clerks, and equipment control clerks employed at the Port of Miami Terminal Facility. The Board determined that the smallest appropriate unit had to also include employees who performed similar clerical and inspection tasks as those performed by the employees in the petitioned-for unit. That included dispatch employees, boarding agents, inbound coordinators, parts/purchasing clerks, and stevedore coordinators. In arriving at its holding, the Board found that there was “a high degree of functional integration in [the employer’s] operations and that work performed by [the petitioned-for] employees [was] directly related to and integrated with the work of the majority, if not all, of the Employer’s remaining employees.” 327 NLRB at 556. The Board, thus, concluded that the work performed by the employees in the petitioned-for unit was “not so dissimilar from the duties of many other classifications to warrant separate representation.” *Id.* It also discounted the fact that the employees in the various classifications had separate immediate supervision because “the Employer [maintained] a system of wage levels that [were] applied companywide, as well as fringe benefits, work and safety rules, and personnel policies and practices that [were] applied uniformly.” *Id.*

In *The Boeing Company*, 337 NLRB 152 (2001), the union petitioned for an election in a unit consisting of “recovery and modification employees, including mechanics, tools and parts attendants, and quality assurance employees employed by the employer at the Charleston, South Carolina Air Force Base. The employer maintained that the smallest appropriate unit needed to include all production and maintenance employees employed at the Base. The regional director approved the petitioned-for unit, finding the unit to be appropriate because the employees in the unit worked on different equipment than other employees, were geographically separate from

other employees, and had minimal contact or interchange with other employees. The Board reversed that finding, determining that the petitioned-for employees did not possess the requisite separate and distinct community of interest from the other employees to constitute an appropriate unit. The factors that led the Board to that conclusion were that (1) the petitioned-for employees possessed similar skills, received similar training, and did similar work as the other employees, (2) the work performed by the other employees was highly integrated with the work performed by the petitioned-for employees, and (3) all employees received the same benefits, were subject to the same personnel policies, received comparable wages, shared a common lunch area and occasionally permanently transferred into each other's group. Explaining why it disagreed with the regional director's finding, the Board commented:

We recognize that the [petitioned-for] employees are separately supervised, attend separate employee meetings, work in a separate area from [the other employees], and never temporarily transfer into the [other work groups]. These distinctions, however, are offset by the highly integrated work force, the similarity in training and job functions between [the employees], and the comparable terms and conditions of employment among all [the] groups.

337 NLRB at 153.

In *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004), the union petitioned for elections in three separate units at the employer's Deerfield Beach, Florida distribution facility (1) a fluid processing unit made up of employees involved in the processing and bottling of milk, soda, juice and water, and the manufacture and bagging of ice, (2) a unit of warehouse employees who used the "Dallas" computer system to track the movement of product through the warehouse, and (3) a unit of all other warehouse employees involved in warehousing bulk grocery items. The employer contended that the smallest appropriate unit was a wall-to-wall production and maintenance unit. The regional director disagreed with both the union and the employer, finding two units to be appropriate, a fluid processing unit broader than the one petitioned-for, and a

distribution unit made up of “Dallas/non-Dallas” warehouse employees plus some additional employees. The regional director excluded pallet repair, dispatch and garage employees at three nearby satellite facilities, but included spotter/jockeys, who were included among the employees the union sought in the petitioned-for non-Dallas unit. On the employer’s request for review, the Board reversed, agreeing with the employer that the smallest appropriate unit was a plantwide production and maintenance unit, including all employees who worked in the satellite buildings.

In finding a production and maintenance unit to be the smallest appropriate unit, the Board relied upon evidence showing: (1) the entire complex, in a variety of respects, was functionally integrated, (2) the functional integration resulted in a “significant amount of work-related contact” among employees in the fluid processing area and distribution area, (3) a significant number of permanent transfers had occurred between the fluid processing and distribution areas, and there had also been temporary interchange between fluid processing and distribution employees, (4) even if their responsibilities were not the same, the skills and duties of employees in both areas were relatively similar, and (5) all employees at the facility had substantially the same wages, benefits, work rules and policies, and other terms and conditions of employment. The only factor the Board cited that provided any support for the regional director’s decision was that the fluid processing and distribution operations were in separate business units, which created a distinction between them in terms of supervision and control of labor relations. The Board determined, however, that “the other factors demonstrating the community of interest between the two groups of employees outweigh this distinction.” 343 NLRB at 1026-1027.

Besides these cases, support for a finding that a unit limited to TiCl<sub>4</sub> operators is inappropriate may also be gleaned from *Azta Indiana Gaming Co.*, 349 NLRB 603 (2007)

(petitioned-for unit of beverage department employees found inappropriate and smallest appropriate unit found to consist of beverage, catering and restaurant employees); *Buckhorn, Inc.*, 343 NLRB 201 (2004) (petitioned-for unit of maintenance employees found to be inappropriate based upon, among other factors, highly integrated nature of employer's production process and common working conditions and employment terms of all employees); *Hotel Services Group*, 328 NLRB 116 (1999) (petitioned-for unit of licensed massage therapists, apart from other licensed employees, not appropriate); *Aurora Fast Freight, Inc.*, 324 NLRB 20 (1997) (petitioned-for unit of office clericals limited to one office inappropriate).

Two cases decided under the *Specialty Healthcare* standard also support a finding a unit limited to warehouse employees is inappropriate. In *A.S.V., Inc.*, 360 NLRB 1252 (2014), the Board found that the petitioned-for unit, which consisted of only a select portion of the facility's production employees, did not constitute a distinct, homogenous group of employees that would warrant granting the union's request for a separate unit. The petitioned-for group of employees were primarily responsible for completing one specific portion of the production process. Those employees were subject to the same handbook, working conditions, benefits, wages and work rules as the remainder of the production department. The Board found the petitioned-for unit was not appropriate because it was not a distinct group of employees. The Board based that finding on the highly integrated nature of the employer's operation, finding "no rational basis for excluding some assembly [i.e. production] employees while including other assembly employees." 360 NLRB at 1255.

In *Neiman Marcus*, 361 NLRB 50 (2014), another case decided under the *Specialty Healthcare* standard, the union sought to organize employees working in the second floor salon shoe department of the company's multi-floor, Manhattan store and the contemporary footwear

employees working on the fifth floor of the store, who themselves were a subset of the larger contemporary sportswear department. The Board held the petitioned-for unit was fractured because it did not constitute a true “departmental unit” that included the entire group of employees who shared a community of interest.

In summary, measuring the evidence presented in the Warehouse R-Case under the traditional community of interest test, as applied in the foregoing cases, leads to but one conclusion and that is that the warehouse unit in which the Regional Director directed an election was inappropriate and the smallest appropriate unit is one consisting of all Plant 2 production, maintenance and warehouse employees.<sup>5</sup>

**2. The History Of Dealings Between Cristal And The Steelworkers Supports A Finding That The Smallest Appropriate Unit Is A Production, Maintenance And Warehouse Unit**

The Board recognizes that collective bargaining history is a relevant factor in determining the appropriateness of a petitioned-for unit. The underlying rationale behind recognizing bargaining history is that the Board is “reluctant to disturb bargaining units which have been established by the mutual agreement of the parties and in which there have been long histories of continuous and harmonious collective bargaining.” *St. Joseph Hosp. & Med. Ctr.*, 219 NLRB 892, 893 (1975). Although no history of collective bargaining exists at Plant 2, the Steelworkers’ longstanding representation of the production and maintenance unit at Plant 1 and

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<sup>5</sup> Then Chairman Miscimarra’s dissent from the decision denying Cristal’s Request for Review in the Warehouse R-Case reflects he would have arrived at that conclusion. In his opinion, the functional integration of the North and South Plants, the interchange between production and warehouse employees, and the shared terms and conditions under which employees at both plants work raised substantial questions “regarding whether the unit consisting exclusively of Plant 2 South warehouse employees erroneously disregards or discounts the community of interests these employees share with production employees in Plant 2 North and Plant 2 South and promotes instability by creating a fractured or fragmented unit.” 365 NLRB No. 74

the prior efforts by the Steelworkers to organize a production and maintenance unit at Plant 2  
lend further support to a finding that only a wall-to-wall unit is appropriate at Plant 2.

**3. A Unit Consisting Of Only Warehouse Employees Is Not  
Conducive To Effective Collective Bargaining.**

The Board has long held that part of its mission is to create efficient and stable collective bargaining relationships. See *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Section 9(b) of the Act requires the Board to approve appropriate bargaining units “in each case” that assure employees the “fullest freedom in exercising the rights guaranteed by” the Act. 29 U.S.C. § 159(b). Historically, in the manufacturing industry, the Board has recognized that it must balance the realities of an employer’s business, and how a unit might impact the employer’s operations, against the need for bargaining rights, industrial peace and stability. As a result, the Board has consistently found that wall-to-wall production, maintenance, and warehouse units are presumptively appropriate. See *Gourmet, Inc., d/b/a Jackson’s Liquors*, 208 NLRB 807m 808 (1974) (“The employerwide unit ... is presumptively appropriate.”); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (“A plantwide unit is presumptively appropriate under the Act. And a community of interest inherently exists among such employees.”) Specifically, in *Kalamazoo Paper Box Corp.*, the Board recognized the need to balance business realities and the need for bargaining rights, industrial peace and stability:

Because the scope of the unit is basic to and permeates the whole of the collective- bargaining relationship, each unit determination . . . must have a direct relevancy to the circumstances within which the collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

136 NLRB 134, 137 (1962) (internal citations omitted). The Board wanted to avoid:

. . .creating a fictional mold within which the parties would be required to force their bargaining relationship. Such a

determination could only create a state of chaos rather than foster stable collective bargaining, and could hardly be said to 'assure to employees the fullest freedom in exercising the rights guaranteed by this Act' as contemplated by Section 9(b).

*Id.* at 139-40. The "chaos" the Board wanted to avoid is the artificial result employers experience when unions carve out micro units from their production process. The Board has long recognized that each unit determination must have direct relevance to the circumstances under which collective bargaining is to take place. *American Cyanamid Co.*, 131 NLRB 909, 911 (1961). Under the Act, the Board must apply a functional approach that examines how the requested bargaining unit impacts the operation of Cristal's business.

In this case, the elevation of job titles and classifications, over Cristal's integrated and functional team approach, created a bargaining obligation for a group of employees that have no meaningfully distinct characteristics apart from the production and maintenance employees at Plant 2. Unless the unit determination is overturned, Cristal will have a bargaining obligation for small, fractured group of employees. This artificial division will impact Cristal's team approach by isolating the warehouse employees from production and maintenance employees through separate bargaining and different terms and conditions of employment.

The Company created a stable, integrated manufacturing process in which all production, maintenance, and warehouse employees work side-by-side, have the same rules, have the same benefits and work under the same compensation structure. The gerrymandered unit of warehouse employees would break this structure apart and create a risk that this small group of employees could shut down production for both plants and put the unrepresented hourly employees out of work.

**IV. CONCLUSION**

For all the foregoing reasons, as well as the reasons set forth in Cristal's Answer to the Complaint in this matter and in Case 08-CA-200330, and in the record in Warehouse R-Case and the TiCl4 R-Case, Cristal respectfully requests that the Board grant the Company's Cross Motion for Summary Judgment and issue an Order dismissing the Complaint in this case with prejudice, revoking the Certification of Representative in the Warehouse R-Case, and dismissing the Union's Petition in the Warehouse R-Case.

Respectfully submitted,

/s/ David A. Kadela

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**CERTIFICATE OF SERVICE**

I certify that the foregoing *Cristal USA, Inc.'s Cross Motion for Summary Judgment and Memorandum in Support Thereof* was electronically filed on February 16, 2018, through the Board's website, is available for viewing and downloading from the Board's website, and will be sent by means allowed under the Board's Rules and Regulations to the following parties:

Allen Binstock, Regional Director  
NATIONAL LABOR RELATIONS BOARD  
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Cleveland, OH 44199-2086

And

Lance Heasley, General Organizer  
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And

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/s/ David A. Kadela  
David A. Kadela

RESPONDENT CRISTAL USA, INC.  
CROSS-MOTION FOR SUMMARY JUDGMENT  
CASE 08-CA-200737

EXHIBIT A

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>VOLKSWAGEN GROUP OF AMERICA, INC.</b>	)	
	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	Nos. 16-1309, 16-1353
	)	
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	
Respondent/Cross-Petitioner	)	
	)	<b><u>Argued on Nov. 6, 2017</u></b>
and	)	
	)	
<b>UNITED AUTO WORKERS, LOCAL 42</b>	)	
	)	
Intervenor	)	

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**MOTION OF THE NATIONAL LABOR RELATIONS BOARD  
FOR REMAND OF THE CASE TO THE BOARD FOR  
RECONSIDERATION IN LIGHT OF NEW BOARD PRECEDENT**

To the Honorable, the Judges of the United States  
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board respectfully moves the Court to remand this case to the Board for further consideration in light of the Board's recent decision in *PCC Structural Inc.*, 365 NLRB No. 160 (Dec. 15, 2017) (copy attached). In support of this motion, the Board shows as follows:

1. On August 26, 2016, the Board issued a Decision and Order against Volkswagen Group of America Inc. (“Volkswagen”) reported at 364 NLRB No. 110, which was based in part on the Board’s Decision on Review in the underlying representation proceeding. In that underlying proceeding, the Board applied the standard set out in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *affirmed sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), for determining an appropriate unit for collective bargaining, and found the petitioned-for unit of maintenance employees appropriate. Based on that finding, the Board concluded that Volkswagen violated the Act by refusing to collectively bargain with the employees’ representative.

2. Thereafter, Volkswagen filed a petition for review in this Court. The Board then filed a cross-application for enforcement. United Auto Workers, Local 42, the charging party before the Board, intervened on behalf of the Board. Thereafter, the Court consolidated the cases. The parties completed briefing and the case was argued and submitted on November 6, 2017.

3. On December 15, 2017, the Board issued its Decision and Order in *PCC Structural Inc.*, 365 NLRB No. 160 (copy attached). In that case, the Board overruled its standard set out in *Specialty Healthcare*, and “clarif[ied] the correct standard for determining whether a proposed bargaining unit constitutes an

appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees.” Slip op. at 1.

4. In view of the Board’s express overruling of the Board decision upon which the case currently under review is founded, the Board requests that the Court remand the case to the Board so that the Board may reconsider the case in light of its current precedent established in *PCC Structural Inc.*, 365 NLRB No. 160 (Dec. 14, 2017).

WHEREFORE, the Board respectfully requests that the Court remand the case to the Board.

Respectfully submitted,

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
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Dated at Washington, DC  
this 19th day of December 2017

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>VOLKSWAGEN GROUP OF AMERICA, INC.</b>	)	
	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	<b>Nos. 16-1309, 16-1353</b>
	)	
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
and	)	
	)	
<b>UNITED AUTO WORKERS, LOCAL 42</b>	)	
	)	
Intervenor	)	

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 27(d)(2), the Board certifies that this motion contains 409 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

s/Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001  
(202) 273-2960

Dated at Washington, DC  
this 19th day of December 2017

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>VOLKSWAGEN GROUP OF AMERICA, INC.</b>	)	
	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	Nos. 16-1309, 16-1353
	)	
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
and	)	
	)	
<b>UNITED AUTO WORKERS, LOCAL 42</b>	)	
	)	
Intervenor	)	
	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated at Washington, DC  
this 19th day of December 2017

/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570

RESPONDENT CRISTAL USA, INC.  
CROSS-MOTION FOR SUMMARY JUDGMENT  
CASE 08-CA-200737

EXHIBIT B

OFFICE OF THE GENERAL COUNSEL  
Division of Operations Management

MEMORANDUM OM 18-05

December 22, 2017

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Beth Tursell, Associate to the General Counsel

SUBJECT: *Representation Case Procedures in Light of PCC Structural, Inc.*,  
365 NLRB No. 160 (2017)

In *PCC Structural, Inc.*, 365 NLRB No. 160 (December 15, 2017), the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), thereby specifically discarding the previous overwhelming community-of-interest standard. Rather, under the analysis set forth therein, “applying the Board’s traditional community-of-interests factors, the Board will determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.” *PCC Structural, Inc.*, 365 NLRB, slip op. at 7. The Board remanded the case to the Regional Director for further appropriate action, including, if necessary the reopening of the record and analysis of the appropriate unit under the new standard. *PCC Structural, Inc.*, 365 NLRB, slip op. at 13.

Both the Board’s Rules and Regulations and the Representation Casehandling Manual provide the framework through which Regional Offices will be able to address the appropriateness of petitioned-for bargaining units under *PCC*. Regions are to consistently apply the Board’s new analysis at all stages of case processing in currently active cases.<sup>1</sup> In order to effectuate this desired consistency, Regions are to utilize the following practices in all active cases.

**I. Addressing Appropriateness of Bargaining Unit Through Issuance of Notice to Show Cause in Currently Active Cases**

Regional Directors have discretion to entertain requests to revisit a unit determination. For instance, under CHM section 11097, a Regional Director has the discretion to approve a request to withdraw from an election agreement upon an “affirmative showing of unusual circumstances.” Under Section 102.65(e)(1) of the Board’s Rules and Regulations, a Regional Director has the authority to reopen the record after close of a pre-election hearing or after issuance of a decision and direction of election upon a showing of “extraordinary circumstances.” That section of the Board’s Rules and Regulations further authorizes a Regional Director to treat a request for review filed with the Board as a motion for reconsideration of his or her pre-election decision. The modification of extant law by the Board in *PCC* constitutes such an “unusual” or “extraordinary” change in circumstances as to warrant reconsideration

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<sup>1</sup> For purposes of this memo “currently active cases” are defined as those open RC, RM and UC cases where the case is not presently before the Board on a request for review and where the employees do not comprise a conforming unit in the context of an acute care hospital.

of the propriety of a bargaining unit defined under a stipulated or consent election agreement or decision and direction of election in a currently active case.

Regions should routinely afford the parties to an R case an opportunity to argue that the *PCC* decision has now rendered a recently consented, stipulated or directed bargaining unit inappropriate in a currently active case. Parties should be given an opportunity to revisit a unit determination at this juncture, rather than wait for the Board to determine whether to remand the case pursuant to a later request for review. This is true whether the case is in a pre-election or post-election posture as we should address these unit issues in pending representation cases as soon as possible. Thus, Regional Directors should routinely entertain a party's request to introduce evidence relevant to a *PCC* analysis in a currently active case, whether in the form of a motion after opening of a hearing or issuance of a decision and direction of election, or pursuant to a request by letter after entering into a stipulated or consent election agreement, even if an election has already been held.

Furthermore, where no party has sought reconsideration of an election agreement or unit determination in a currently active case, Regions should issue a Notice to Show Cause directing any party to the case to show cause, with specifics, as to why the stipulated or directed bargaining unit is inappropriate pursuant to the analysis set forth in *PCC*. The show cause notice will require a party to affirmatively identify with significant specificity those community of interest factors a party is relying upon to show that the directed unit is not sufficiently distinct from another employee group such that it should be rendered inappropriate. A party's general request that the Regional Director review a unit determination under the *PCC* analysis is insufficient, standing alone, to satisfy the party's burden of presenting specific community-of-interest factors upon which such a determination could be made.<sup>2</sup> However, the Region should not allow parties to re-litigate a standard community-of-interest analysis where they have had the opportunity to do so already. Thus, issuance of a Notice to Show Cause is unnecessary where both parties either were invited by the Regional Director or Hearing Officer to address traditional community-of-interest factors without regard to *Specialty Healthcare*.

Regions should issue show cause notices for any currently active case at any point after entry into a stipulated or consent election agreement, or after issuance of a pre-election decision or post-election determination of challenges or objections unless a request for review has been filed with the Board. Model Notices to Show Cause for cases where the unit was determined by stipulated or consent agreement and by decision and direction of election are appended to this Memorandum.

## **II. Looking Forward - Regional Director Discretion Regarding Hearings and Elections in Light of *PCC***

In light of the issuance of *PCC*, it is anticipated that parties will raise concerns regarding the impact of this significant case. Regional Directors have always been afforded a wide range of discretion in the handling of representation case matters and they will continue to use their substantial discretion to address the issues that will inevitably arise under *PCC*. As set forth in the Board's Rules and Regulations, Regional Directors have:

- **Discretion to set the hearing beyond the eighth day** after service of the notice of hearing in matters involving unusually complex issues, including substantial community-of-interest issues. Under

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<sup>2</sup> The parties should be advised that the same specificity requirement will be applied to a motion after the opening of a hearing or a letter sent after entering into a stipulated or consent election agreement.

the community-of-interest standard set forth in *PCC*, a fact intensive analysis is required, and therefore, it is anticipated that parties may request additional time to ascertain the appropriate unit and to prepare their evidence for hearing.

- **Discretion to postpone hearings and the due date for the Statement of Position (SOP)** for up to 2 days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. As set forth in GC 15-06:

*A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should be filed with the regional director and should include the positions of the other parties regarding the postponement. E-filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties*

*A request to postpone the hearing is not automatically to be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that the postponements of both are sought.*

- **Discretion to set an election date for the “earliest date practicable”** consistent with the Board’s Rules and Regulations, where the date is based on the circumstances of each case. A substantial change in law such as that in *PCC* is one such circumstance where, particularly in the short term, additional time may be required to set an election date. Similarly, where a unit is expanded in a Decision and Direction of Election, Regions are reminded of the Regional Director’s discretion to grant a reasonable amount of time, which may necessarily extend beyond the normal 2 days, to secure an additional showing of interest.

### III. Hearings in Light of *PCC*

Where cases proceed to hearing, the record will necessarily be fact intensive as community-of-interest factors are litigated. The hearing need not be protracted however, and efforts must be made to streamline the proceedings. Stipulations of fact should be explored throughout the process so as to streamline evidence gathering and to avoid a lengthy hearing. Such stipulations, including those regarding community-of-interest factors, should be as detailed as possible so as to obviate the need for lengthy testimony. The Hearing Officer should make sure the record does not contain irrelevant, duplicative, or otherwise unnecessary evidence. In this regard, pursuant to Section 102.66(d) of the Board’s Rules and Regulations, a party is precluded from raising or litigating *any* issue that it failed to raise in its timely Statement of Position (SOP) or response, except that no party will be precluded from contesting or presenting evidence relevant to statutory jurisdiction.

Also as set forth in GC 15-06<sup>3</sup>, if a party contends as part of its SOP that the proposed unit is not appropriate, the party will be required to state the basis for its contention that the proposed unit is inappropriate, and state the classifications, locations, or employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Mere claims or rote citations to *PCC* will not be sufficient. Rather, parties should be strongly encouraged to provide in the SOP specific details in

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<sup>3</sup> Any directives in GC 15-06 applying *Specialty Healthcare* are rescinded.

order to warrant consideration for hearing. For example, where community-of-interest factors are at issue, such as in a *PCC* scenario, the Regional Director should advise the parties to include in their SOP a specific description of those factors, along with the evidence which will be provided in support. As part of their SOP, the parties must also identify any other individuals whose eligibility they intend to challenge at the pre-election hearing and the basis for such contention. It is equally imperative that the petitioner be prepared to respond at hearing with specificity to each issue that is raised in the SOP. Hearing Officers must elicit the petitioner's response to the issues raised in the SOP at the beginning of the hearing so as to determine areas for agreement and seek stipulations, where appropriate, at the outset of the hearing in order to streamline the proceedings.

If you have any questions about this memorandum, please contact AGC Aaron Karsh or DAGC Dolores Boda.

/s/  
B.T.

RESPONDENT CRISTAL USA, INC.  
CROSS-MOTION FOR SUMMARY JUDGMENT  
CASE 08-CA-200737

EXHIBIT C

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position  
**Cristal USA Inc.**

1c. Business Phone: **440.994.1617** 1e. Fax No.: **440.994.1777**

1b. Address (Street and number, city, state, and ZIP code)  
**2426 Middle Road, Ashtabula, OH 44004**

1d. Cell No.: 1f. e-Mail Address  
**misty.hejduk@cristal.com**

2. Do you agree that the NLRB has jurisdiction over the Employer in this case?  Yes  No  
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate?  Yes  No (If not, answer 3a and 3b.)

a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)  
**See Exhibit A**

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.

Added <b>See Exhibit A</b>	Excluded <b>See Exhibit A</b>
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4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.  
**See Exhibit A**

5. Is there a bar to conducting an election in this case?  Yes  No If yes, state the basis for your position.

6. Describe all other issues you intend to raise at the pre-election hearing.  
**See Exhibit A**

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>.

(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)

(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an

State your position with respect to the details of any election that may be conducted in this matter. 8a. Type:  Manual  Mail  Mixed Manual/Mail

8b. Date(s) <b>See Exhibit A</b>	8c. Time(s) <b>See Exhibit A</b>	8d. Location(s) <b>See Exhibit A</b>
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)

**9. Representative who will accept service of all papers for purposes of the representation proceeding**

9a. Full name and title of authorized representative <b>David A. Kadela</b>	9b. Signature of authorized representative <b>/s/ David A. Kadela</b>	9c. Date <b>11-29-2016</b>
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9d. Address (Street and number, city, state, and ZIP code) <b>Littler Mendelson, 21 E. State St., Columbus, OH 43215</b>	9e. e-Mail Address <b>dkadela@littler.com</b>
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9f. Business Phone No.: <b>614.463.4211</b>	9g. Fax No. <b>614.221.3301</b>	9h. Cell No. <b>614.746.1473</b>
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**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**CASE NO. 08-RC-188482**

**EXHIBIT A TO CRISTAL USA INC. STATEMENT OF POSITION**

**3(a): State the basis for your contention that the proposed unit is not appropriate.**

The Petitioner, the International Chemical Workers Union Council of the United Food & Commercial Workers International Union (the "Union"), has petitioned for an election in a proposed unit of employees who work for Cristal USA Inc. ("Cristal" or the "Company") in Ashtabula, Ohio at what is known as "Plant 2." The proposed unit consists of "[a]ll full and regular part-time warehouse employees(Warehouse Person)". Cristal submits the unit the Union has proposed is inappropriate because: (1) the employees the Union seeks to include in the unit do not share the requisite community of interest to constitute an appropriate unit; (2) the proposed unit is derived from a gerrymandered, fractured segment of the Company's workforce based upon the extent of the Union's organizing, in violation of Section 9(c)(5) of the Act; (3) the employees in the proposed unit share an overwhelming community of interest with other employees who must be included in any potential unit; and (4) the only acceptable unit is a plant-wide, wall-to-wall unit of production, maintenance, and warehouse employees. The discussion that follows addresses these contentions in detail.

**A. The Extent of Union Organizing at Cristal's Ashtabula Locations.**

Cristal is part of a family of companies that manufactures titanium dioxide products internationally on five continents. In Ashtabula, Ohio, the Company operates two plants, Plant 1 and Plant 2, on 140 acres just south of Lake Erie. Each plant produces purified titanium dioxide (TiO<sub>2</sub>) for sale to various markets. They do so through a system that uses chlorine to react with titanium-bearing ores, in a high temperature process, to create titanium tetrachloride (TiCl<sub>4</sub>), which is condensed and purified, and then oxidized to create TiO<sub>2</sub>. After that process is completed, the TiO<sub>2</sub> is finished, packaged, warehoused and shipped to customers.

Plant 1 employs approximately 250 employees, while Plant 2 employs around 220 employees. Local 7334 of the United Steelworkers Union represents a wall-to-wall unit of production, maintenance, and warehouse employees at Plant 1 – it has represented the employees in that unit since the 1960s, around the time Plant 1 was built.

In May 2008, this Region, on a petition filed by the Steelworkers, conducted an election in a stipulated wall-to-wall unit of production, maintenance, and warehouse employees – the employees voted against representation. Then, on September 13, 2016, the Union filed a petition for election in Case No. 08-RC-184028. The proposed unit in that case was also located out of Plant 2. It consisted of “[a]ll full time and regular part time TICL4 (North) plant production (chemical operators, CRO’s, step ups/relief operators), maintenance (mechanical, I&E, & planner), and South Plant warehouse employees,” a larger unit than the currently proposed unit, but not a wall-to-wall production, maintenance, and warehouse unit. The Union withdrew its petition in Case No. 08-RC-184028 on September 22, 2016 and, four days later, filed a petition for election in Case No. 08-RC-184947 seeking to represent a much smaller unit than originally sought - the TiCl4 Operators at Plant 2, only. After conducting a hearing on the appropriateness of the petitioned-for unit where the Company argued that the petitioned-for unit was inappropriate and that the only appropriate unit was a wall-to-wall unit of all production, maintenance, and warehouse employees at Plant 2, the Regional Director rejected the Company’s arguments and directed that an election be held to determine whether the petitioned-for unit wished to be represented by the Union. The election was held in November 2016. Shortly thereafter, the instant petition was filed.

**B. Pertinent Facts Relating to Cristal’s Ashtabula Plant 2 Operations**

Overall management responsibility for Plant 1 and Plant 2 rests with Scott Strayer, the

Ashtabula Complex General Manager. Strayer's direct reports include the operations manager for all of Plant 2, and the reliability and maintenance manager for Plant 1 and Plant 2. Two operations superintendents report to the operations manager and, in turn, eight frontline operations supervisors report to the superintendents. The reliability and maintenance manager's direct reports include the Plant 2 maintenance superintendent, whose responsibilities cover the entire plant. Three frontline maintenance supervisors report to the superintendent, as do the maintenance planners, maintenance coordinators, and maintenance specialists.

Unlike at Plant 1, which consists of contiguous facilities, the process by which  $TiO_2$  is produced at Plant 2 is separated by the public road on which Plant 2 is located. On the north side of the road is what is referred to as the North Plant or Plant 2 North. On the south side of the road, kitty-corner from the North Plant, is what is referred to as the South Plant or Plant 2 South.

The production process begins at Plant 2 at the North Plant with the use of chlorine to react with titanium-bearing ores, in an automated high temperature process, to create gaseous  $TiCl_4$ . The  $TiCl_4$  is then condensed to liquid form, and purified. Raw materials used in these phases of the production process are received and stored at the North Plant, and effluent from the process is removed there. A waste water treatment facility is also located on the north side of the road, behind the North Plant.

The Company employs four 7-person teams of operations department employees at the North Plant – process technicians (a/k/a  $TiCl_4$  operators) and step up operators – who work 12-hour rotating shifts, with one 7-person team working at a time. Each team has a supervisor who reports to the North Plant manufacturing superintendent. Sixteen maintenance mechanics (including one step up maintenance mechanic), and 12 instrument and electrical (“I&E”) technicians (including one step up I&E technician), work in the maintenance department at the

North Plant. Twelve of the maintenance mechanics work a 7:00 a.m. to 3:30 p.m. schedule. The other four work a 12-hour rotating shift, with one each assigned to work the same hours as one of the four rotating North Plant operations teams. The maintenance mechanics share the same supervisor, who reports to the maintenance superintendent. Eight of the I&E technicians work a 7:00 a.m. to 3:30 p.m. schedule, including the step up I&E technician, who works in both the North and the South Plant. The other four I&E technicians work a 12-hour rotating shift, with one assigned at a time consistent with the shifts worked by the operations teams. They are responsible for instrument and electrical work during their shifts in both the North and the South Plant. All of the I&E technicians who work in either the North Plant or South Plant report to the same supervisor.

Moving to the South Plant, the  $\text{TiO}_2$  manufacturing process seamlessly continues there with the transport by pipe of  $\text{TiCl}_4$  to the oxidation system, an automated process in which oxygen and other components are used to react with the  $\text{TiCl}_4$  to produce  $\text{TiO}_2$ , and the chlorine removed from the  $\text{TiCl}_4$  is reclaimed and recycled to the North Plant for use in the production process. The  $\text{TiO}_2$  produced in the oxidation system moves by pipe to the finishing system, an automated process in which the  $\text{TiO}_2$  is washed and dried and converted either to slurry for shipment in that state or moved in dry form to the packaging area. Raw materials used in these phases of the production process are received and stored at the South Plant. Waste water created by the South Plant is transported back to the waste water treatment facility located behind the North Plant.

The Company employs four 13 or 14 employee teams of operations department employees at the South Plant to complete the oxidation, finishing and packaging processes. Each team has one supervisor, who reports to the South Plant manufacturing superintendent. Like the

operations employees at the North Plant, the teams work 12-hour rotating shifts, with one team working at a time. In the maintenance department at the South Plant, the Company employs 21 maintenance mechanics, and eight I&E technicians (besides those noted earlier who work in both the North and South Plant). Seventeen of the maintenance mechanics work a 7:00 a.m. to 3:30 p.m. schedule. The other four work a 12-hour rotating shift, with one each assigned to work the same hours as one of the rotating South Plant operations teams. All the maintenance mechanics share the same supervisor, who reports to the maintenance superintendent. The eight I&E technicians work a 7:00 a.m. to 3:30 p.m. schedule. Again, there are four I&E technicians who work a 12-hour rotating shift, with one assigned at a time, in both the North and the South Plant. The South Plant and North Plant I&E technicians report to the same supervisor.

The last phase of the process occurs in the warehouse, where packaged TiO<sub>2</sub> that has been moved to the warehouse by finished product operators is sealed and staged for shipment. Six hourly employees work in the warehouse, five warehouse persons and one warehouse lead. They report to the warehouse superintendent, a position that is currently vacant, whose chain of command leads to North American distribution manager Lisa Powers.

As the foregoing description depicts, the production process is highly integrated. Each phase of the process is inextricably linked to the other phases. One phase cannot proceed unless the others do and a breakdown, stoppage or slowdown in one process has or will soon have the same effect on the other processes. In fact, employees regularly interact to ensure appropriate lockout/tagout procedures are completed and to ensure that the appropriate safety measures are taken when repairing machinery.

The workforce also is linked by employee interchange, both on a temporary and permanent basis, and cross-departmental interaction and contact on a daily basis. One example

of permanent interchange is the lines of progression between jobs. The most common progressions are from the packaging area at the South Plant (finished product operator) to North Plant operations (process technician) and from North Plant operations to South Plant operations (either oxide operator or WAT operator) to Warehouse Person. In fact, of the five individuals who are currently employed as Warehouse Persons, all of them were previously employed as a finished product operator and three of them were also previously employed as a Chemical Operator at either the North or South plant.

There is significant temporary interchange as well. For example, the I&E technicians who work rotating shifts have maintenance-related functions in both the North Plant and the South Plant. In addition, North Plant maintenance mechanics and I&E technicians frequently work overtime at the South Plant and vice versa. Additionally, operations employees at both the North and South Plant also regularly work overtime in the warehouse, a need that exists on an ongoing basis. Specifically, from January to October 2016, overtime hours were voluntarily worked in the warehouse by operations employees in each month. In fact, operations employees from the South plant worked more overtime hours in the warehouse than the warehouse employees themselves in six of the ten months. Additionally, operations employees from both the North Plant and South Plant travel to the lab, which is located at the South Plant, to drop off samples on a daily basis. Finished product operators regularly visit the warehouse to use equipment in the warehouse (e.g. the warehouse's pallet inverter which helps assist employees in replacing broken pallets). Moreover, selected employee volunteers from all positions at Plant 2 participate in plantwide committee and team meetings.

The terms and conditions under which the production, maintenance and warehouse employees at Plant 2 work are, in virtually all respects, the same. The employees work under the

same policies and procedures, including the same appraisal, promotion, disciplinary, transfer, layoff, leave of absence and seniority policies and procedures; are paid on an hourly basis on the same payday, under the same compensation system, and using the same timesheets to record their hours of work; receive the same fringe benefits, including group health insurance, retirement benefits, vacation, holidays and the like; wear the same uniforms; attend the same meetings and functions; and are members of the same committees. The Plant 2 human resources team administers the Company's personnel policies and procedures, and plays an active role in personnel decisions for the North and South Plants, including decisions relating to hiring, training, promotions, discipline, transfers, evaluations, and compensation and benefits.

Besides human resources, the North Plant and the South Plant are also supported by the same health and safety, engineering, procurement, information technology, and finance and accounting teams. Both plants also utilize the same computer system and the same lab.

**C. The Proposed Unit Is a Fractured Unit And Violates Section 9(c)(5) of the Act.**

Section 9(a) of the Act permits employees to form a bargaining unit "appropriate" for collective bargaining purposes. 29 U.S.C. § 159(a). The Act grants the Board discretion to determine whether a petitioned-for unit is appropriate. *Id.* § 9(b). The Board's seminal decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 N.L.R.B. 934 (2011), *enf'd sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), describes the steps for determining if a petitioned-for unit is appropriate. The first step is assessing whether the proposed unit (1) is readily identifiable as a group and (2) shares a sufficient community of interest to constitute an appropriate unit. Here, when considered in light of the Board's more recent decision in *Neiman Marcus*, 361 NLRB No. 11 (2014), the evidence will show that the unit the Union has proposed falls well short of satisfying either of these factors.

In *Neiman Marcus*, the union sought to organize employees working in the second floor salon shoe department of the company's multi-floor, Manhattan store and the contemporary footwear employees working on the fifth floor of the store who themselves were a subset of the larger contemporary sportswear department. 361 NLRB at \*3-7. The Board held that the petitioned-for unit was fractured in *Neiman Marcus* because it did not constitute a true "departmental unit" that included *the entire* group of employees who shared a community of interest. *Id.* at \*12.

The Union's proposed unit here must be rejected for similar reasons. Here, as an initial matter, the proposed unit carves out the Lead Warehouse Person. This individual works alongside the other warehouse employees with the same job skills, functions, working conditions and training. Further, the Lead is subject to the same policies and procedures, schedule, and overtime obligations as the other warehouse employees.

Additionally, the unit carves out part of a completely integrated team at Plant 2 creating a gerrymandered, fractured unit that the Company's evidence will show:

1. Excludes operations employees from both the North and South Plant who work in a functionally integrated operation; who interact regularly with warehouse employees and whose lines of progression intersect; who work alongside warehouse employees when working overtime in the warehouse; and who share the same terms and conditions of employment and work under the same policies and procedures; and
2. Arbitrarily excludes maintenance employees from the North and South Plants, who are equally integral to the production process; who regularly interact with operations employees from both the North and South Plants, and who share the same terms and conditions of employment and work under the same policies and procedures as each other and the warehouse employees.

The petitioned-for unit also must be rejected because it necessarily violates Section 9(c)(5) of the Act. While unit determinations fall within the Board's discretion, "the Board must operate within statutory parameters." *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1580 (4th Cir.

1995). Section 9(c)(5) provides that in determining whether a unit is appropriate for collective bargaining “the extent to which the employees have organized shall not be controlling.” 29 U.S.C. § 159(c)(5). In fact, “[t]he Board has long disfavored fractured units that may arbitrarily exclude certain groups of employees or could invite ‘gerrymandering’ of interests among employees.” *Constellation Broads v. NLRB*, 2016 U.S. App. LEXIS 20768, \*12 (2nd Cir. Nov. 21, 2016).

Here, the Union’s history of originally filing a petition seeking an election among a larger group of employees at Plant 2, only to withdraw the petition and file separate petitions for elections in two separate, smaller units leaves only one explanation for its action. The explanation is that the Union petitioned for these two specific units based on the extent of its organizing.

**D. The Proposed Unit is Not Appropriate Because the Employees in the Unit Share An Overwhelming Community of Interest With The Operations employees and Maintenance Employees.**

Under *Specialty Healthcare*, if a proposed unit to which an employer objects is found to be readily identifiable as a group and to share a community of interest, the burden shifts to the employer to show that other employees whom the employer seeks to include in the unit share an overwhelming community of interest with employees in the petitioned-for unit. 357 NLRB at 943. In determining whether employees share a community of interest, the Board examines whether the employees: (1) are organized into separate departments; (2) have distinct skills and training; (3) have distinct job functions; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact or interchange with other employees; (6) have distinct terms and conditions of employment; and (7) are separately supervised. *Id.* at 942, quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

Cristal's evidence will show that, upon application of these community of interest factors here, the conclusion is inescapable that Plant 2's maintenance, and operations employees share an overwhelming community of interest with the employees in the petitioned-for unit and that the only appropriate unit is a plant-wide, wall-to-wall unit of all Plant 2 production, maintenance and warehouse employees. The facts Cristal will present that lead to that conclusion include:

1. The North Plant and the South Plant operations employees are part of the same operations department, which is under the direction of the operations manager, and two superintendents who have day-to-day responsibilities for all operations functions.
2. The North Plant and the South Plant maintenance employees are part of the same maintenance department, which is under the direction of the reliability and maintenance manager for the Ashtabula complex and the Plant 2 maintenance superintendent, who has day-to-day responsibility for all maintenance functions.
3. The North Plant and South Plant operations employees and maintenance employees all report to the same General Manager.
4. With the exception of finished product operators, the North Plant and the South Plant operations employees receive the same or similar training, have many of the same basic skills, and perform similar job functions.
5. The North Plant operations and maintenance employees are functionally integrated with each other and with the South Plant operations, maintenance and warehouse employees based upon the connection of each phase of work at Plant 2 to, and the dependence of each phase of work at the plant on, the other phases.
6. The employees interchange between jobs at the North and the South Plant (including maintenance and warehouse positions) as part of their normal permanent career progression.
7. All Plant 2 employees frequently come into contact with each other when delivering samples to the lab, using tools located in the warehouse, or working overtime in the warehouse.
8. The North Plant operations and maintenance employees and the South Plant operations, maintenance and warehouse employees work under the same terms and conditions of employment.
9. The North Plant operations and maintenance employees and the South Plant operations, maintenance and warehouse employees participate in the same committees/teams regarding various workplace issues and concerns.

**3(b): State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.**

**Additions to the Unit:**

North Plant maintenance and operations employees and South Plant operations and maintenance employees must be included in the unit to make the unit appropriate, including the employees who work in the following classifications:

- North Plant: Chemical Operators; Relief Step/Up Operators; Maintenance Mechanic and I&E Technician; and
- South Plant: Step Up Operator; Lead Oxide Operator; Relief Oxide Operator; Oxide Operator; Lead WAT Operator; Relief WAT Operator; WAT Operator; Lead Finished Product Operator; Finished Product Operator; Maintenance Mechanic; I&E Technician.

The reasons these employees must be included in the unit are outlined in 3(a) above.

In addition, for the reasons outlined in section 3(a) above, in the event the petitioned-for unit is found to be appropriate, the Lead Warehouse Person must be included in the unit to make the unit appropriate.

**Exclusions from the Unit:**

The Company does not believe that any of the petitioned for employees should be excluded from the unit, rather it believes that the operations and maintenance employees from the North Plant and the operations and maintenance employees from the South Plant should be added.

**4. Other than the individuals in classifications listed in 3(b), list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.**

Cristal intends to contest the eligibility of any employee who is not eligible to vote in an

election among the employees in the Company's proposed unit.

**6. Describe all other issues you intend to raise at the pre-election hearing.**

Cristal incorporates by reference all issues identified in response to Items 3 through 5 and intends to raise all issues mentioned therein at the pre-election hearing.

**A. The NLRB's Representation Case Rule Violates the National Labor Relations Act and the Administrative Procedure Act.**

For decades, the Board has adhered to a balanced set of pre-election procedures that have allowed employers sufficient time and opportunity to raise issues affecting the conduct of elections in appropriate pre-election hearings. *See* 29 C.F.R. 102.60, *et seq.* Such issues have included questions regarding the appropriateness of the petitioned-for bargaining unit as well as the eligibility of certain categories of employees to vote in the election. *Id.* at 102.66. Following such hearings, employers have generally been allowed 25 days to request review of a Regional Director's decision by the Board prior to any tally of ballots in an election. *Id.* at 102.67.

The Representation Case Rule makes sweeping changes in pre-election and post-election procedures that depart from the plain language and legislative history of the Act and exceed the Board's statutory authority. The new Rule achieves this result by preventing employers in most cases from exercising their statutory right to an appropriate hearing regarding voting eligibility, and by shortening the election period so that employers have no meaningful opportunity to lawfully communicate with affected employees about their electoral rights.

The Board's failure to provide an adequate justification renders the new rule arbitrary and capricious and an abuse of discretion, all in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. Specific provisions of the new Rule violate the Act and/or the APA because they, among other things:

1. Shorten the time between the filing of a representation petition and the first day of

- a hearing. *See* Section 102.63(a).
2. Limit the purpose of a hearing conducted under Section 9(c) of the Act as being solely “to determine if a question of representation exists.” *See* Section 102.64(a).
  3. Assert that “disputes concerning individuals’ eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.” *Id.*
  4. Limit the right of parties in such 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. *See* Section 102.66(a).
  5. Require 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. *See* Section 102.66(c).
  6. Deny 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. *See* Section 102.66(h).
  7. Require employers to disclose to unions personal and private information pertaining to employees, including home phone numbers and personal email addresses. *See* Section 102.67(l). This is unprecedented.
  8. Eliminate 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. *See* Section 101.21(d).
  9. 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. *See* Sections 102.62(b) and 102.69.

Further, because the Act does not contain an express statement that the Board should hold elections at the earliest practicable date, but emphasizes other considerations, the Representation Case Rule’s primary purpose – to shorten the time to election – is contrary to Congressional intent.

In addition to violating the APA, the new Representation Case Rules and *Specialty Healthcare* improperly infringe upon employer's free speech and due process rights. Indeed, the *Specialty Healthcare* standard cannot be squared with 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." 29 U.S.C. § 159(b). The *Specialty Healthcare* standard also defies the statutory mandate that the Board assure the "fullest freedom," 29 U.S.C. § 159(b), in the exercise of all rights guaranteed by the Act, including the right to refrain from supporting a union, *id.* § 157.

The Rules also violate due process and infringe on employer free speech because they contain provisions that:

1. Emphasize 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. Such off the record consultations cannot be meaningfully challenged by Cristal or reviewed by the Board.
2. Allow the hearing officer to require offers of proof in lieu of actual evidence and thus violates the statutory guarantee of an appropriate hearing.
3. 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.
4. Deprive employers of sufficient time to investigate factual and legal issues relevant to the petition.
5. Vest 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.
6. Provide for no penalties for misuse of employee's confidential personal information.

- 7a. **A list containing the full names, work locations shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition.**

Full Employee Name (Last, First)	Job Classification	Work Location	Shift
Blankenship, Eddie	Warehouse Person	Plant 2 South	7:00 a.m. - 3:30 p.m.
Falke, Mark	Warehouse Person	Plant 2 South	7:00 a.m. - 3:30 p.m.
Lane, Aaron	Warehouse Person	Plant 2 South	7:00 a.m. - 3:30 p.m.
Paolillo, Anthony	Warehouse Person	Plant 2 South	7:00 a.m. - 3:30 p.m.
Wisnyai, Jr., Louis	Warehouse Person	Plant 2 South	7:00 a.m. - 3:30 p.m.

- 7b(1). **A list containing the full names, work locations, shifts and job classifications of all individuals that Cristal maintains must be added to the proposed unit to make it an appropriate unit.**

Full Employee Name (Last, First)	Job Classification	Work Location	Shift
Addair, Keith	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Allshouse, Daniel	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Barnes, Raymond	Operator-Lead Oxide	Plant 2 South	12-hour rotating
Best, Gene	Operator-Oxide	Plant 2 South	12-hour rotating
Blakeslee, Timothy	Operator-Finished Product	Plant 2 South	12-hour rotating
Boyd, Nathaniel	Technician-I&E	Plant 2 North & South	12-hour rotating
Brehl, Thomas	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Brown, Craig	Technician-I&E	Plant 2 North & South	12-hour rotating
Brown, Douglas	Mechanic-Maintenance	Plant 2 South	12-hour rotating
Carlton, David	Operator-WAT	Plant 2 South	12-hour rotating
Case, Isaac	Operator-Finished Product	Plant 2 South	12-hour rotating
Clark, Larry	Operator-Finished Product	Plant 2 South	12-hour rotating
Cleversy, Dana	Operator-Oxide	Plant 2 South	12-hour rotating
Cole, David	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Conel III, Otis	Operator-WAT	Plant 2 South	12-hour rotating
Davis, Richard	Mechanic-Maintenance	Plant 2 North	12-hour rotating
Decker, Daniel	Operator-Relief Finished Product	Plant 2 South	12-hour rotating
Deligianis, John	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Drake, Jr., Michael	Operator-Finished Product	Plant 2 South	12-hour rotating
Eldred, Rodney	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Ellis, David W.	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Ellis, David D.	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Ezzone, Jeffrey	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Francis, James	Operator-WAT	Plant 2 South	12-hour rotating

Full Employee Name (Last, First)	Job Classification	Work Location	Shift
Fronk, Frank	Operator-Lead Finished Product	Plant 2 South	12-hour rotating
Gegen, Steve	Operator-Lead Oxide	Plant 2 South	12-hour rotating
Gerren, Jr., Charles	Operator-Lead Oxide	Plant 2 South	12-hour rotating
Gonzalez, Felipe	Operator-Lead WAT	Plant 2 South	12-hour rotating
Griswold, Christopher	Operator-Lead Finished Product	Plant 2 South	12-hour rotating
Guglielmo, Charles	Operator-Finished Product	Plant 2 South	7:00 a.m. - 3:30 p.m.
Hahn, Carl	Operator-Oxide	Plant 2 South	12-hour rotating
Hake, Timothy	Operator-WAT	Plant 2 South	12-hour rotating
Hall, Scott	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Hamilton, Patrick	Operator-Lead WAT	Plant 2 South	12-hour rotating
Harrison, Lawrence	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Harryman, Edwin	Operator-Lead WAT	Plant 2 South	12-hour rotating
Hartman, Eric	Technician-I&E	Plant 2 North & South	12-hour rotating
Heasley, Jason	Operator-Lead WAT	Plant 2 South	12-hour rotating
Herter, Jeffrey	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Higley, Ronald	Operator-Step Up	Plant 2 South	12-hour rotating
Hochschild, Jeffrey	Step-Up Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Hunt, Terence	Operator-Finished Product	Plant 2 South	12-hour rotating
Imes, Robert	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Johnson, Randy	Operator-Step Up	Plant 2 South	12-hour rotating
Kalinowski, Richard	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Kobernik III, Glen	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Kornman, Mark	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Kosiba John	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Laugen, Joshua	Operator-Finished Product	Plant 2 South	12-hour rotating
Leonard, Thomas	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Lockwood, Brett	Operator-Finished Product	Plant 2 South	12-hour rotating
Loucks, Hugh	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Louth, Kirk	Technician-I&E	Plant 2 North & South	12-hour rotating
Lute, Charles	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Lute, Christopher	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Lute, Michael	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Maki, Jeffrey	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Marshall, Rory	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Mason, Jr., Nate	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Maydak, Jr., Daniel	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Meyer, Michael	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Mickle, Franklin	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Misinec, Ralph	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Mrva, Pete	Operator-Finished Product	Plant 2 South	12-hour rotating
Myers, Randy	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Naberezny, Richard	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Nagy, III, Stephen	Operator-Finished Product	Plant 2 South	12-hour rotating
Nerad, Edward	Operator-WAT	Plant 2 South	12-hour rotating

Full Employee Name (Last, First)	Job Classification	Work Location	Shift
Noland, Philip	Operator-Oxide	Plant 2 South	12-hour rotating
Nordquest, Charles	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Oboczky, Nicholas	Mechanic-Maintenance	Plant 2 South	12-hour rotating
Oliver, James	Operator-WAT	Plant 2 South	12-hour rotating
Osburn, Robin	Operator-WAT	Plant 2 South	12-hour rotating
Owen, Daniel	Mechanic-Maintenance	Plant 2 South	12-hour rotating
Painter, Glenn	Mechanic-Maintenance	Plant 2 South	12-hour rotating
Parker, Leslie	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Paxson, David	Operator-Oxide	Plant 2 South	12-hour rotating
Pelton, Wayne	Operator-Lead Oxide	Plant 2 South	12-hour rotating
Pildner, Jeremy	Warehouse Lead	Plant 2 South	7:00 a.m. - 3:30 p.m.
Post, Joshua	Mechanic-Maintenance	Plant 2 South	12-hour rotating
Randolph, James	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Rivera, James	Operator-WAT	Plant 2 South	12-hour rotating
Rodriguez, Justin	Operator-Finished Product	Plant 2 South	12-hour rotating
Rogers, Lawrence	Operator-Finished Product	Plant 2 South	12-hour rotating
Sherretts, Matthew	Mechanic-Maintenance	Plant 2 North	12-hour rotating
Showalter, Eric	Operator-Finished Product	Plant 2 South	12-hour rotating
Smith, Christopher	Operator-Finished Product	Plant 2 South	12-hour rotating
Smith, George	Step Up Maintenance	Plant 2 North & South	7:00 a.m. - 3:30 p.m.
Smith, George	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Sneck, Gary	Operator-Finished Product	Plant 2 South	12-hour rotating
Sternberg, Zachary	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Stofan, Todd	Operator-Oxide	Plant 2 South	12-hour rotating
Summers, Brandon	Mechanic-Maintenance	Plant 2 North	12-hour rotating
Summers, Nathan	Mechanic-Maintenance	Plant 2 North	12-hour rotating
Tackett, Elvis	Operator-WAT	Plant 2 South	12-hour rotating
Taylor, Raymond	Operator-WAT	Plant 2 South	12-hour rotating
Terry, Joseph	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Tucker, Jr., Raymond	Operator-Lead Finished Product	Plant 2 South	12-hour rotating
Tuttle, David	Operator-Step Up	Plant 2 South	12-hour rotating
Walker, Kenneth	Step Up I/E	Plant 2 North & South	7:00 a.m. - 3:30 p.m.
Warner, Kyle	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Weaver II, Shawn	Operator-Finished Product	Plant 2 South	12-hour rotating
Wight Thomas	Mechanic-Maintenance	Plant 2 North	7:00 a.m. - 3:30 p.m.
Wight, Robert	Technician-I&E	Plant 2 North	7:00 a.m. - 3:30 p.m.
Williams, Kevin	Technician-I&E	Plant 2 South	7:00 a.m. - 3:30 p.m.
Willis, Donald	Operator-WAT	Plant 2 South	12-hour rotating
Wilson, James	Operator-WAT	Plant 2 South	12-hour rotating
Wolfe, Randy	Operator-Lead Finished Product	Plant 2 South	12-hour rotating
Zall, William	Mechanic-Maintenance	Plant 2 South	7:00 a.m. - 3:30 p.m.
Zetlaw, Douglas	Operator-Step Up	Plant 2 South	12-hour rotating
Balascio, Michael	Technician-Process	Plant 2 North	12-hour rotating
Best, Gregory	Technician-Process	Plant 2 North	12-hour rotating

Full Employee Name (Last, First)	Job Classification	Work Location	Shift
Bihlajama, Kyle	Technician-Process	Plant 2 North	12-hour rotating
Brown, John	Technician-Process	Plant 2 North	12-hour rotating
Colby, Gena	Technician-Process	Plant 2 North	12-hour rotating
Cumpston, Julie	Technician-Process	Plant 2 North	12-hour rotating
Decker, Jonathan	Step Up Operator	Plant 2 North	12-hour rotating
Fedele, William	Technician-Process	Plant 2 North	12-hour rotating
Hall, Robert	Technician-Process	Plant 2 North	12-hour rotating
Joslin, Tiffany	Technician-Process	Plant 2 North	12-hour rotating
Laveck, Kenneth	Technician-Process	Plant 2 North	12-hour rotating
Love, George	Technician-Process	Plant 2 North	12-hour rotating
Miller, Azchary	Technician-Process	Plant 2 North	12-hour rotating
Newbold, Robert	Technician-Process	Plant 2 North	12-hour rotating
Painter, Adam	Technician-Process	Plant 2 North	12-hour rotating
Park, Clifford	Technician-Process	Plant 2 North	12-hour rotating
Patterson, Scott	Step Up Operator	Plant 2 North	12-hour rotating
Rembacki, Ryan	Technician-Process	Plant 2 North	12-hour rotating
Rice, Brian	Technician-Process	Plant 2 North	12-hour rotating
Shinault, Bryan	Technician-Process	Plant 2 North	12-hour rotating
Stitt, Jeffery	Step Up Operator	Plant 2 North	12-hour rotating
Summers, Michael	Technician-Process	Plant 2 North	12-hour rotating
Tackett, II, Larry	Technician-Process	Plant 2 North	12-hour rotating
Vance, Jason	Step Up Operator	Plant 2 North	12-hour rotating
Vance, Robert	Technician-Process	Plant 2 North	12-hour rotating
Vaughan, Edward	Technician-Process	Plant 2 North	12-hour rotating
Welton, David	Technician-Process	Plant 2 North	12-hour rotating
White, Joseph	Technician-Process	Plant 2 North	12-hour rotating

7b(2). **A list containing the full names of all individuals that Cristal maintains must be excluded from the proposed unit to make it an appropriate unit.**

None.

**8b. Dates**

Cristal requests a sufficient number of days after the date of any Decision and Direction of Election for the Company and its employees to have an adequate opportunity to communicate regarding the issues at stake in the vote, consistent with Congressional intent as expressed in Section 8(c) of the Act and legislative history. Because of the nature of the rotating 12-hour shifts many employees work, Cristal also submits that the only logistically feasible days of the week to conduct an election, if the Board directs an election of a unit consisting of all

production, maintenance, and warehouse employees, are Thursday (a morning and early evening session), and Friday (a morning session), the same days that voting sessions were held in the 2008 election and the 2016 election of TiCl4 employees.

If, however, the Board were to decide that the petitioned-for unit is appropriate, Cristal submits that Wednesday is the most appropriate date for an election.

**8(c) Times**

In the 2008 election, the voting sessions on Thursday ran from 5:00 a.m. to 8:00 a.m. and from 5:00 p.m. to 7:00 p.m., and on Friday the voting session was from 5:00 a.m. to 8:00 a.m. Sessions at those times remain appropriate if the Board directs an election of a unit consisting of all production, maintenance, and warehouse employees.

If, however, the Board were to decide that the petitioned-for unit is appropriate, Cristal submits that a session time from 6 – 8:00 a.m. is appropriate.

**8(d). Location(s)**

A regular manual secret ballot election is the only appropriate election procedure in this case. The most appropriate location for the election is Cristal's training center, located at 2870 Middle Road, Ashtabula, Ohio 44004, which is where the 2008 election was conducted.

RESPONDENT CRISTAL USA, INC.  
CROSS-MOTION FOR SUMMARY JUDGMENT  
CASE 08-CA-200737

EXHIBIT D

CRISTAL Ahtabula Plant 2  
 2016 Salary Schedule  
 Effective April 1, 2016

CONFIDENTIAL

Applies to all Plant 2 Chemical Operators, I&E/Maintenance Mechanics, Finished Product Operators, and Warehouse Employees.

Job Classification	Step 1 Under 12 mos.	Step 2 12-23 mos.	Step 3 24-35 mos.	Top Rate 36+ mos.	Lead	Relief/Step-Up
I&E Maintenance Mechanic	\$58,709 \$28.23	\$61,642 \$29.64	\$64,723 \$31.12	\$67,962 \$32.67		\$72,360 \$34.79
Chemical Operator	\$58,424 \$28.09	\$61,355 \$29.50	\$64,412 \$30.97	\$67,635 \$32.52	\$71,306 \$34.28	\$72,360 \$34.79
Finished Product Operator	\$54,433 \$26.17	\$56,613 \$27.22	\$58,877 \$28.31	\$61,231 \$29.44	\$66,392 \$31.92	\$67,338 \$32.37
Warehouse Person	\$50,638 \$24.35	\$52,664 \$25.32	\$54,771 \$26.33	\$56,961 \$27.39	\$62,229 \$29.92	

April 5, 2016

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