

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

PCC STRUCTURALS, INC.

Employer,

And

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, DISTRICT LODGE W24

Petitioner.

CASE NO. 19-RC-202188

**PCC STRUCTURALS, INC.'S
REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S
SUPPLEMENTAL DECISION**

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I. INTRODUCTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, PCC Structural, Inc. ("Employer") requests that the Board review and set aside the Regional Director's Supplemental Decision. The Regional Director misstates his primary purpose in the opening sentence of the Supplemental Decision—the Board specifically directed him to “analyze the appropriateness of the unit under the [*PCC Structural*] standard.” *PCC Structural, Inc.*, slip op. at 13. The Regional Director is charged with finding an appropriate unit and is required to consider a wall-to-wall unit, which both parties have conceded is an appropriate unit. *See Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). Instead, the Regional Director wrongly conflates a craft unit analysis (and applies rejected Board law in the process) with the *PCC Structural* test he was directed to apply by the Board and minimizes or dismisses factors that do not support his conclusion. In doing so, the Regional Director has violated the Employer's due process.

The International Association of Machinists and Aerospace Workers, AFL-CIO ("Petitioner" or "Union") petitioned to represent all regular full time and regular part time rework welders, including specialists and the lone crucible repair welder, at the Employer's various sites in the Portland, Oregon area. After holding a hearing on July 20, 21, and 28, 2017, the Regional Director, applying *Specialty Healthcare and Rehabilitation Center of Mobile* (357 NLRB No. 83 (2011)), found that the petitioned-for unit was a readily identifiable group with a sufficient community of interest, and that the remaining production and maintenance employees did not share an overwhelming community of interest with the petitioned-for unit.

The Employer timely filed its Request for Review of the decision and stay of the election. The Board denied the Employer's request for a stay of the election pending the Employer's Request for Review. With the Request for Review pending, the Region moved forward with an

election for the smaller proposed unit on September 22, 2017. Following the election approving of the Union, the Region certified the election results on October 2, 2017.

Significantly, on December 15, 2017, the Board granted the Employer's Request for Review. The Board overturned *Specialty Healthcare* and reinstated the traditional community of interest standard articulated in *United Operations, Inc.*, 338 NLRB 123 (2002) as the applicable standard for evaluating the appropriate unit. See *PCC Structural*s, 365 NLRB No. 160 (2017). The Board remanded this case and directed the Regional Director to analyze the appropriateness of the unit consistent with the reinstated *United Operations, Inc.* standards set forth in the Order. *Id.*

On December 20, 2017, the Regional Director issued an Order to Show Cause requesting that the parties state their positions as to the adequacy of the factual record with regard to the reinstated standards set forth by the Board. On January 11, 2018, the Regional Director issued an Order reopening the record, noting that there was at least a possibility that the Regional Director might find an alternative unit to be the smallest appropriate unit. A second hearing was held February 7-8, 2018.

Despite ample evidence provided by the Employer establishing that the petitioned-for unit is not an appropriate unit and that the appropriate unit is, in fact, wall-to-wall, the Regional Director issued a Supplemental Decision on May 4, 2018, again finding the petitioned-for unit to be an appropriate unit. Contrary to the Board's explicit instructions to analyze the parties' positions under the community of interest test, the Regional Director deems the petitioned-for unit to be appropriate under an erroneous craft unit theory, wrongly conflating a craft unit analysis with the *PCC Structural*s test.

The Regional Director's determination that the petitioned-for unit is an appropriate craft unit is incorrect and runs afoul of established Board law. The petitioned-for unit should not be

analyzed under such framework,¹ but instead pursuant to the factors of *PCC Structural's*. When evaluating the case thereunder, it remains clear that a wall-to-wall unit of all Production and Maintenance Workers is the smallest appropriate unit.

II. ISSUES FOR REVIEW AND SUMMARY OF ARGUMENT

Section 102.67(d) of the Board's Rules and Regulations provides that the "Board will grant a request for review only where compelling reasons exist therefor." 29 CFR § 102.67(d). The Regulations go on to state that a request for review may be granted on one or more of the following grounds:

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

The Board should grant review here because, significantly, three of the four grounds for which review is appropriate are at issue. First, in deeming the petitioned-for unit of welders to be a craft unit, the Regional Director significantly departed from Board precedent. Second, this determination is clearly erroneous on the record in light of the substantial evidence provided by the Employer that was ignored by the Regional Director. Third, the hearing was prejudicial, as no evidence was taken related to significant craft unit factors.

¹ However, as analyzed herein, even under a craft unit theory, the Regional Director's conclusion is in error.

The following issues should therefore be considered by the Board:

- Whether the Regional Director inappropriately analyzed and certified the petitioned-for unit as a craft unit under Board law.
- Whether, when properly analyzed under the *PCC Structural's* test, the petitioned-for unit shares significantly distinct interests from the excluded employees.
- Whether the Region's conduct resulted in prejudicial error.

III. STATEMENT OF FACTS

A. The Organization

PCC Structural's manufactures steel superalloy and titanium investment castings for use in jet aircraft engines, airframes, industrial gas turbine ("IGT") engines, military armaments, medical prosthesis, and many other industrial markets. PCC Structural's utilizes the same highly integrated casting process at each of three profit and loss ("P&L") centers identified by site in the petition that comprise the Portland Operation.

1. The Portland Operation's Integrated Production Process

The Portland Operation production process is highly complex and fully integrated. As a result, Production and Maintenance Workers must work together across functional lines within their respective phase of production as well as with Production and Maintenance Workers in other phases to ensure that a quality casting product ("casting") with minimal defects is delivered to the customer. (Tr. 25:16-21). PCC's customers are purchasing castings for use in airplanes, medical devices, and gas turbine engines; there is an extremely low tolerance for defects in the work, as a defect in the casting could result in one of these critical pieces of equipment or devices failing, creating a life-or-death situation. (Tr. 38:17-20).

The Portland Operation's highly integrated casting cycle consists of the following phases: wax, investing, casting, cleaning, hot isostatic pressing ("HIP") (if titanium), Chem Mill (if

titanium) inspection/rework, heat treat, final inspection and shipping. (Tr. 754:7-25; 755:1-17); (See Ex. E-57). Some of these phases and certain operations are repeated at various times during the production process (e.g., heat treat, CMM, X-ray, etc.). (Tr. 974:16-24) (See Ex. E-57). Production and Maintenance Workers from each phase, including welders, touch the *same* part from the very beginning of the process and through each phase until the part is shipped to the customer. (Tr. 764:16-20); (See Ex. E-51(a)-(v)).

The process begins with the receipt of a purchase order. (Tr. 752:13-14). A unique work order is then created for the particular piece and a router is created that defines the process. (Tr. 752:17-20). The router stays with the part through every phase of production. (Tr. 753:1-6); (See Ex. 54(a)).

The next phase, and the first phase of actual production, is wax. (Tr. 753:7). The mold is typically produced by wax welding smaller wax molds into a larger mold that is an exact replica of the casting that will ultimately ship to the customer. This wax welding assembly process is performed by wax assemblers (Tr. 85:18-86:8). After it is verified that the molded segment is correct, the wax assembler assembles the wax parts into a single component ring. (Tr. 760:11-14) (See Ex. E-51(f)); (Tr. 760:18-21). Upon completion, the ceramic cores must be verified using CMM and inspection by vis dim and x-ray, using the same methods, tools and operators later used to inspect the *same part* during the inspection/rework phase. (Tr. 755:14-17; 756:2-16; 758:20-22; 761:5-18). In the final step of the wax phase, there is dimensional CMM inspection of the wax. (Tr. 762:5-9). CMM, which stands for coordinate measuring machine, is an inspection process wherein the blueprint for the part gets loaded in the computer, and the CMM's probes tap the part on critical locations to determine whether the part dimensions match the blueprint is to print. (Tr. 209:25). This inspection is the same inspection—using the same equipment and performed by the

same operators—as CMM inspection on the same part in metal later in the process. (Tr. 762:8-11; Ex. E-51(g)).

Besides vis dim, x-ray and CMM, inspectors, each of whom perform their functions during various phases in the process, operators included in the wax phase are: core maker, core prep operator, framer, high volume wax operator, journey moldmaker, leach tank operator, mold machine operator A, mold machine operator B, mold machine operations specialist, pattern finisher, pattern maker, precision assembler, production pattern wax assembler, production gating wax assemble, production wax assembler, rapid prototype operator A, rapid prototype operator B, utility core maker, wax area inspector, wax cleaner, wax dimensional inspector, wax maker, wax outsource inspector, and wax process auditor. (*See* Ex. E-56).

The next phase is the investing phase, where the mold is dipped into a slurry, coated in sand, and dried to create a shell finish. (Tr. 762:14-18; 37:17-25; 38:1-11). This process is akin to making papier-mâché, ultimately creating a shell so that the wax can be melted out (like popping the balloon underneath the papier-mâché). (Tr. 37:17-25; 38:1-14). Once complete, the shell is ready for metal to be poured in. (Tr. 37:17-25; 38:1-14) (*See* Ex. E-51(i)). The job classifications included in investing are: investing helper, investing specialist, shell finishing processor, shell processor, and utility investor. (*See* Ex. E-56).

After investing, the next phase is the casting (or foundry). During this phase, the shell is loaded into the burnout, a large natural gas oven, and then cast, meaning the metal is poured into it. (Tr. 763:4-9; Ex. E-51(k)). The job classifications in casting include: air cast pour/gen operator, alloy planner, ASC ingot processor, ASC vacuum furnace operator, Deer Creek furnace operator, electrode fabricator, foundry person, foundry specialist, furnace operator, master caster furnace operator, MM vacuum furnace operator, pot packer, and pot packer/coil maintenance. (*See* Ex. E-

56). The crucible repair welder is also associated with this phase: his sole responsibility is to repair the crucible as further described below.

After the metal is poured, the part moves to the cleaning phase. (Tr. 763:15-18). In this phase, the shell is removed, production grinders grind the (metal) part to the final customer-required dimensions, and then the gate is removed (“gate removal”). (Tr. 763:15-17; Ex. E-54(k)). Job classifications primarily associated with the cleaning phase include: belt grinder, effluent filtration/waste management, first inspection, gate removal operator, gate removal specialist, metal processor, metal sorter, millwright, millwright-LME, millwright apprentice, and shell removal operator. (*See* Ex. E-56).

For titanium parts, the next phase is known as chemical milling, or “chem mill,” wherein the part rotates through a chem mill bath that removes a certain amount of thickness off the part. (Tr. 763:23-25; 764:1-2; Ex. E-51(l)). This phase includes the chem mill operator.

After the gates are removed from the metal part or casting, it moves to the inspection/rework phase. The casting is inspected, grinded, and welded in a repeating cycle until all defects are repaired to the customer specifications (Tr. 36:8-38:20). As in the wax phase, this again includes vis dim inspections, x-ray inspection and CMM along with an FPI inspection. (Tr. 763:1-8; 767:23-25; 768:1-18; 769:1-24; 771:1-18; Ex. E-51(m)-(u)). Other job classifications primarily associated with the inspection/rework phase but who perform their job functions in other phases as well include: cold etch operator A, penetrant inspector, penetrant line operator, penetrant specialist, penetrant/mag inspector, rework specialist, rework welder² and weld mapper. (*See* Ex. E-56; Tr. 873:1-25). The following job classifications also perform work in the inspection/rework

² The petitioned-for unit includes rework specialists and rework welders. As described more fully below, rework specialists, among other things, create rework plans for parts with a particularly high number of defects while rework welders do not. (Tr. 57:13-16).

phase: darkroom operator, digital radiographer, digital utility aide, dimensional analyst, dimensional evaluator, expeditor, film interpreter, LSBS specialist, vis/dim specialist, rad wrk permit specialist, radiographer A, radiographer B, radiologic evaluator, rework analyst, rework grinder, rework grinding inspector, visual dimensional inspector, walk-in sand/shotblaster, X-ray maintenance technician, and X-ray scheduler. (See Ex. E-56). However, operators also perform functions during other phases as well (e.g., just as dimensional evaluators and vis dim specialists perform their functions in the wax phase, so do x-ray and radiographic operators). (Tr.758:20-25; 759:1-10). Rework grinders regularly perform production grinding during the cleaning phase, alongside production grinders. (Tr. 734:4-15; 1010:10-25; 1011:1-9).

The inspection/rework phase can trigger a given part going back to prior phases depending on the defect. For example, x-ray defects can correlate to every single process. (Tr. 878:17-19). If a shell breaks or has significant amount of dirt inside, it may go back to casting for discussion. (Tr. 878:17-25). For example, after a part is sent to HIP, it is sent to heat treat. (Tr. 982:9-11). It then goes back into cleaning for further gate removal and belt grinding by grinders. (Tr. 982:13-17).

After a steel casting passes x-ray inspection, it goes to heat treatment, or “heat treat,” (titanium castings do not get heat treated) before moving to final inspection. (Tr.877:13-15; Ex. E-57). For some parts, heat treat occurs more than once during the production process. (Tr. 983:19-23).

The part then goes through final inspection. (Tr. 771:22-25). Upon passing final inspection, the part then goes to the final phase of the process, shipping. This final phase also includes an inspection of the paperwork against the part’s history identified through its serial number and the router to ensure the part is ready to go on the truck. (Tr. 772:11-16). Approximately twenty percent of parts are sent back for some type of additional work, whether it be reconciling

paperwork, additional rework, or another phase of the process. (Tr. 800:12-21; 877:9-13). Job classifications in the shipping phase includes CDL class A truck driver and chief receiving clerk. (See Ex. E-56).

In short, the *same part* passes through and is touched by workers in each phase of the process. There are numerous job classifications that work across more than one, or even all phases, including the following operators: AIE operator, calibration metrologist, CMM operator, CNC Machinist, CNC programmer, crucible repair and welding specialist, customer service planner, darkroom operator, digital radiographer, digital utility aide, dimensional analyst, dimensional evaluator, dispatcher, expeditor, film interpreter, flow coordinator, heat treat operator, helper, inbound material planner, inspection analyst, inventory auditor expeditor, jig & fixture machinist, layout inspector, LSBS specialist, manufacturing vending dispatch, materials storekeeper, metrology analyst, NDT evaluator, NDT vis/dim specialist, outside process facilitator, plant-LEAN Utility Worker JD, production coordinator, production grinder, production machinist, production planner, production scheduler, radiographer work permit specialist, radiographer A, radiographer B, radiologic evaluator, rework analyst, rework grinder, rework grinding inspector, robotic operator A, robotic operator B, scheduling area leader, senior planner, senior technician, shipping clerk, shipping marker, straightener, supply coordinator, surface finisher, technician II, technician III, technician IV, test bar/heat treat operator, toolroom attendant, toolroom attendant/cleaner, training and auditing coordinator, visual dimensional inspector, walk-in sand/shotblaster, Xray maintenance technician, and X-ray scheduler. (See Ex. E-56).

Similarly, maintenance operators are involved at every phase, as they have direct involvement with all other production workers. (Tr. 1042:15-16 (“Maintenance workers have direct involvement with all of our production workers.”)). All operators are trained on initiating a

maintenance work order. (Tr. 1042:18-19). Job classifications in maintenance include: electrician, electrician apprentice, instrumentation electrician, maintenance helper, maintenance mechanic I, maintenance mechanic II, and senior HVAC technician. (*See* Ex. E-56).

No single phase of this process stands alone and none exist without the rest of the process. Without a wax mold, there can be no investing, and without investing there can be no casting. Without a casting, there is nothing to weld and without post-weld operations, the casting cannot ship to customers. (Tr. 212:1-213:11).

The Portland Operation has multi-year contracts with customers that require the on-going production of up to 200 of the exact same castings each month. Some parts take as long as 18 weeks to produce. (Tr. 758:14-17). Therefore, communication throughout the cycle about casting defects is essential to improve manufacturing techniques earlier in the process in order to avoid producing the same defects again and again in subsequent castings. (Tr. 40:7-41:23). No Production and Maintenance Workers – in any phase of the cycle – perform independent functions. Rather, all Production and Maintenance Workers are part of the continuous improvement cycle designed to produce highly complex castings that meet precise customer specifications. (Tr. 38:25-39:22).

Accordingly, the Employer has a “team” management system for monitoring the progress of the different types of parts through the facility. (Tr. 784:10-15). Teams are based on product groupings and include operators from all phases from receipt to shipping. (Tr. 784:10-15; 786:5). There are different welders on different teams depending on which part they work. (Tr. 784:16-17).

Given the highly integrated nature of the Employer’s production process, Production and Maintenance Workers have regular contact with one another, both job-related and otherwise. Such

contact begins at the very beginning of the production process in the wax phase. For example, as described above, wax segments are visually inspected by vis dim employees from the metal vis dim inspection team. (Tr. 756:4-9). That is, from the inspection/rework phase. Similarly, radiographers from the inspection/rework phase also shoot x-rays of wax in the wax phase. (Tr. 758:20-25).

Furthermore, operators in wax have daily contact with operators in the investing phase, as they must discuss potential quality, backlog and inventory issues with the shell processor in investing. (Tr. 1007:18-25). This chain of contact travels through each phase, including investing interacting with casting, cleaning interacting with inspection/rework, inspection/rework interacting with casting and wax, all variations of inspection interacting with one another, inspection/rework interacting with final inspection and CMM, final inspection interacting with shipping, and shipping interacting with all phases. (Tr. 1009:3-15; 1010:21-25; 1012:19-20; 1015:4-12; 1017:1-13; 1017:19-25; 1018:14-25; 1019:1; 1019:7-13; 840:9-18; 1021:7-21; 1022:11-15; 1022:21-25; 1023:9-15; 1024:1-18; 877:15-22; 877:23-25; 878:1-6; 878:17-25; 879:3-24; 1038:14-25; 1040:11-19).

In terms of other work-related contact, all Production and Maintenance Workers participate in the same meetings, such as coffee talks, weekly standups, and cardinal rules of quality training. (Tr. 843:25; 844:1; 742:6-17; 743:14-18). Additionally, the grievance committee and policy review committee are made up of Production and Maintenance Workers from various phases, including welders. (Tr. 270:4-8; 272:1-25; 665:8-10; Ex.s E-46, 47).

With regard to incidental contact, Production and Maintenance Workers mingle at their lockers and in shared cafeterias. (Tr. 746:19-24; 748:7-25). Additionally, all Production and Maintenance Workers are invited with their families to attend the Portland Operation annual

summer picnic. (Tr. 274:7-12). Based on their years of service, Production and Maintenance Workers are invited with their families to the annual Service Awards Banquet in recognition of their commitment to the company. (Tr. 274:12-22).

The highly integrated nature of the Employer's production process also lends itself to significant interchange. For example, the Employer maintains a practice for documenting temporary assignments in higher-paying job classifications called Job Classification Adjustment ("JCA") forms. (Tr. 683:15-19) (Ex. E-48). This captures all hours an employee works outside their usual job classification that would require higher compensation. (Tr. 683:15-19). In 2017, 3,002 JCAs were processed for temporary assignments to higher paying job classifications. (Tr. 688:12-21); (Ex. E-48). These temporary assignment cross departments and even supervisors. (Tr. 684:24-25; 685:1-5). If a production or maintenance worker moves between job titles that are the same or a lower pay grade, the temporary change would not be captured by a JCA, or any document. Brian Kemp provided multiple examples of regularly occurring interchange that happens outside of the JCA process. (Tr. 1049:1-25). For example, he testified that rework grinders regularly transfer to the cleaning phase to work alongside production grinders while straighteners and penetrant inspectors move to vis dim on a regular basis. (Tr. 1010:16-25; 1011:1-9; 1049:1-25). Thus, the 3,002 JCA transfers is a mere sampling of temporary interchange. (Tr. 686:3- 15).

2. Lack of Departmental Lines

There simply are no clean department lines across the Employer's production process. There are approximately 160 departments that include approximately 120 job classifications. None are specific to one job classification. In fact, any job title that *any department* or phase of the business finds necessary to support their production is allowed to hire for those job titles. (Tr. 1066:14-17).

It is undisputed that there is no separate “welding” department, nor are all welders in the same department. (Tr. 43:7-17). On the contrary, welders span across 18 departments, all of which include job classifications *other than welders*. (See Ex. E-44). In fact, these departments also include: belt grinder, cold etch operator A, darkroom operator, digital radiographer, digital utility aide, dimensional analyst, dimensional evaluator, dispatcher, electrode fabricator, expeditor, film interpreter, first inspection, flow coordinator, LSBS specialist, NDT vis/dim specialist, penetrant inspector, penetrant specialist, plant-LEAN utility worker JD, production coordinator, production grinder, production machinist, production scheduler, radiographer A, radiographer B, radiologic evaluator, rework analyst, rework grinder, rework grinding inspector, robotic operator A, robotic operator B, straightener, supply coordinator, surface finisher, toolroom attendant/cleaner, utility aide, visual dimensional inspector, walk-in sand/shotblaster, and weld mapper. (See Ex. E-44).

The crucible repair welder is in an entirely separate department from all other welders. This department only includes electrode fabricators, which are not part of the inspection/rework phase. (Tr. 813:5-6).

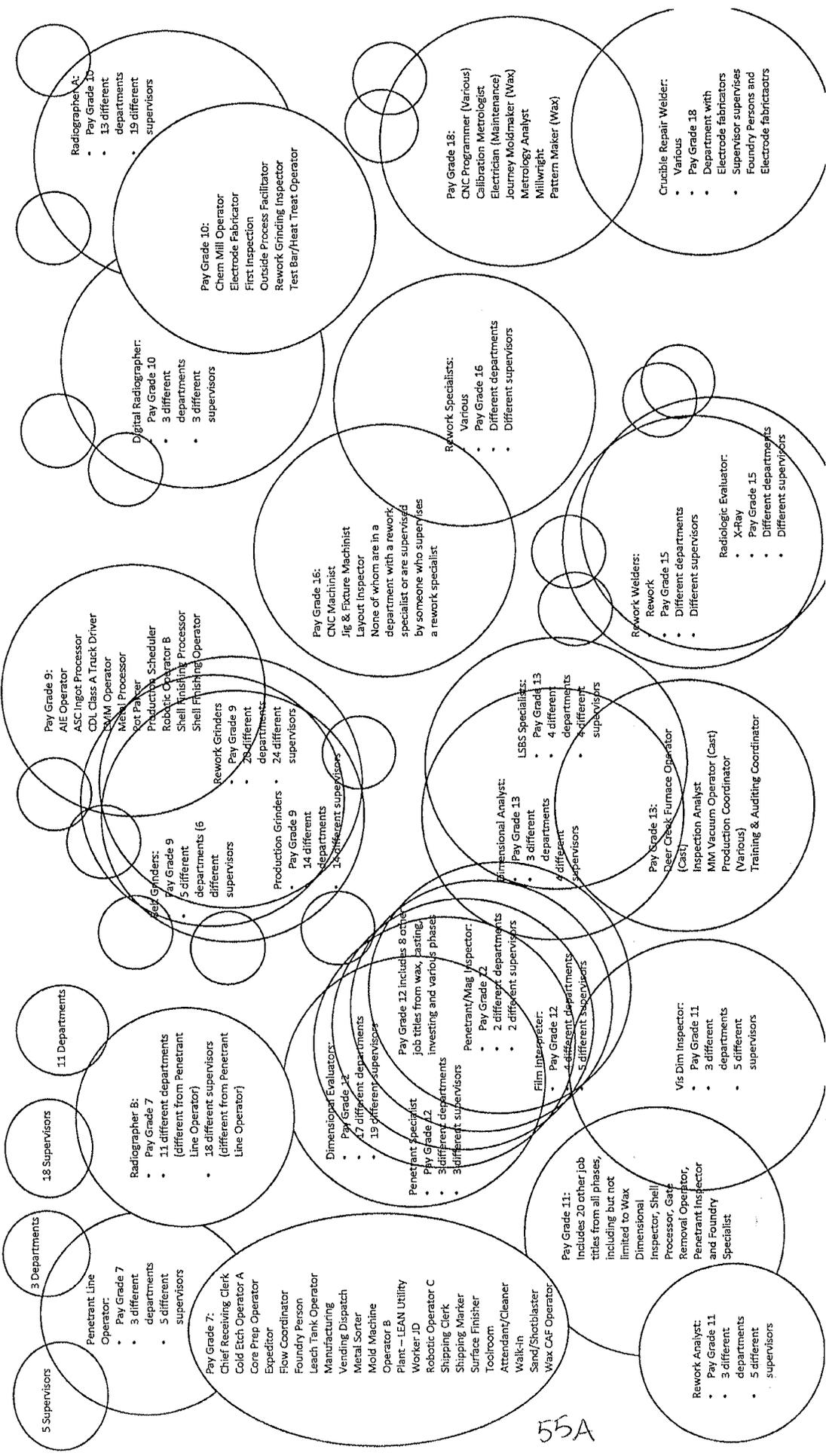
3. Supervisors

There are no clean lines of demarcation with regard to supervisors. On the contrary, supervisors supervise a wide variety of Production and Maintenance Workers. Those supervising the petitioned-for unit also supervise a number of excluded Production and Maintenance Workers. (See Ex. E-44). The welders do not have independent supervisors that only supervise other welders. (Tr. 43:7-17). Instead, the supervisors manage the highly integrated process, supervising various departments responsible for various operations, sometimes across phases, in the production process. (Tr. 52:14-19). The welders are disbursed throughout eight buildings in the Portland

Operation where they are supervised by 28 different supervisors, each of whom supervises a variety of job titles. (Ex. E-44).

4. Terms and Conditions of Employment

As the Board has already acknowledged, all Production and Maintenance Workers, including the petitioned-for employees, work similar hours, are paid on the same wage scale, receive the same benefits, are subject to the same employee handbook and work rules, wear similar attire and protective gear work under the same safety requirements and participate in ongoing training regarding harassment, safety and other matters. *PCC Structurals*, slip op. at 2. In terms of wages, all Production and Maintenance Workers are paid pursuant to the same wage grade scale. The petitioned-for unit of welders includes three different pay grades (15, 16 and 18). Numerous other job classifications share the same wages: radiologic evaluator, CNC machinist, jig & fixture machinist, layout inspector, CNC programmer, calibration metrologist, electrician, journey moldmaker, metrology analyst, millwright and pattern maker. (*See* Ex. E-44.) Thus, not only do the welders themselves not share the same wages—they include three separate wage levels—but they do, in fact, earn the same wages as non-welders. (*See* chart below, based on Ex. E-44.)



5 Supervisors

Penetrant Line Operator:

- Pay Grade 7
- 3 different departments
- 5 different supervisors

Pay Grade 7:

- Chief Receiving Clerk
- Cold Etch Operator A
- Core Prep Operator
- Expeditor
- Flow Coordinator
- Foundry Person
- Leach Tank Operator
- Manufacturing
- Vending Dispatch
- Metal Sorter
- Mold Machine Operator B
- Plant – LEAN Utility Worker JD
- Robotic Operator C
- Shipping Clerk
- Shipping Worker
- Surface Finisher
- Toolroom
- Attendant/Cleaner
- Walk-in
- Sand/Shotblaster
- Wax C&F Operator

3 Departments

18 Supervisors

11 Departments

Radiographer B:

- Pay Grade 7
- 11 different departments (different from Penetrant Line Operator)
- 18 different supervisors (different from Penetrant Line Operator)

Dimensional Evaluators:

- Pay Grade 22
- 17 different departments
- 19 different supervisors

Penetrant Specialist:

- Pay Grade 12 includes 8 other job titles from wax, casting, investing and various phases
- 3 different departments
- 3 different supervisors

Penetrant/Mag Inspector:

- Pay Grade 22
- 2 different departments
- 2 different supervisors

Film Interpreter:

- Pay Grade 12
- 4 different departments
- 5 different supervisors

Pay Grade 11:

Includes 20 other job titles from all phases, including but not limited to Wax

- Dimensional Inspector, Shell Processor, G&F Removal Operator, Penetrant Inspector and Foundry Specialist

Vis Dim Inspector:

- Pay Grade 11
- 3 different departments
- 5 different supervisors

ReWork Analyst:

- Pay Grade 11
- 3 different departments
- 5 different supervisors

Pay Grade 9:

- AIE Operator
- ASC Ingot Processor
- CDL Class A Truck Driver
- SWM Operator
- Metal Processor
- Pot Packer
- Production Scheduler
- Robotic Operator B
- Shell Finishing Processor
- Shell Finishing Operator

ReWork Grinders:

- Pay Grade 9
- 28 different departments
- 28 different supervisors

Production Grinders:

- 24 different departments
- Pay Grade 9
- 14 different departments
- 18 different supervisors

Pay Grade 16:

- CNC Machinist
- Jig & Fixture Machinist
- Layout Inspector
- None of whom are in a department with a rework specialist or are supervised by someone who supervises a rework specialist

Pay Grade 10:

- Chem Mill Operator
- Electrode Fabricator
- First Inspection
- Outside Process Facilitator
- Rework Grinding Inspector
- Test Bar/Heat Treat Operator

Digital Radiographer:

- Pay Grade 10
- 3 different departments
- 3 different supervisors

Pay Grade 18:

- CNC Programmer (Various)
- Calibration Metrologist
- Electrician (Maintenance)
- Journey Moldmaker (Wax)
- Metrology Analyst
- Millwright
- Pattern Maker (Wax)

Crucible Repair Welder:

- Various
- Pay Grade 18
- Department with Electrode fabricators
- Supervisor supervises Foundry Persons and Electrode fabricators

ReWork Welders:

- Rework
- Pay Grade 15
- Different departments
- Different supervisors

Radiologic Evaluator:

- X-Ray
- Pay Grade 15
- Different departments
- Different supervisors

ReWork Specialists:

- Various
- Pay Grade 16
- Different departments
- Different supervisors

LSBS Specialists:

- Pay Grade 13
- 3 different departments
- 4 different departments
- 8 different supervisors

Dimensional Analyst:

- Pay Grade 13
- 3 different departments
- 7 different supervisors

Pay Grade 13:

- Deer Creek Furnace Operator (Cast)
- Inspection Analyst
- MM Vacuum Operator (Cast)
- Production Coordinator (Various)
- Training & Auditing Coordinator

55A

IV. THE PETITIONED-FOR UNIT IS NOT AN APPROPRIATE CRAFT UNIT

In certifying the petitioned-for unit of welders as a craft unit, the Regional Director ignored the Board's instruction to analyze the appropriateness of the unit pursuant to the test set forth in *PCC Structurals*. Instead, the Regional Director applied a craft unit theory using rejected Board law.

A craft unit is defined as:

one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment.

Burns & Roe Servs. Corp. & Int'l Union of Operating Engineers, 313 NLRB 1307, 1308 (1994).

According to the Regional Director, when determining whether a group of employees constitutes a craft unit, the Board looks at:

whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

Id. However, the Regional Director incorrectly applies this standard to the petitioned-for unit and also ignores important precedent.

A. The Regional Director Relies on Rejected Craft Severance Cases.

In finding that the petitioned-for unit of welders is an appropriate craft unit, the Regional Director cites two craft severance decisions involving welders, *Hughes Aircraft Co.*, 117 NLRB 98 (1957) and *Lockheed Aircraft Corp.*, 121 NLRB 1541 (1958), (*see* Supp. Dec. at 24-25), both of which were rejected by the Board in *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966). In *Mallinckrodt*, the Board expressly required the analysis of whether a unit

should be severed as a craft unit to include additional considerations than the limited considerations provided by *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954), upon which *Hughes Aircraft* and *Lockheed* are based. *Mallinckrodt Chem. Works*, 162 NLRB 387, 396 (1966) (“[The considerations set forth in *American Potash*] do not consider the interests of the other employees and thus do not permit a weighing of the craft group against the competing interests favoring continuance of the established relationship. Thus, by confining consideration solely to the interests favoring severance, the *American Potash* tests preclude the Board from discharging its statutory responsibility to make its unit determinations on the basis of all relevant factors, including those factors which weigh against severance.”).

In rejecting the prior limited analysis, the Board set forth additional areas of inquiry that must be considered:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Mallinckrodt Chem. Works, 162 NLRB at, 397.

The cases relied on by the Regional Director in finding the petitioned-for unit to be an appropriate craft unit precede *Mallinckrodt* and do not apply the above-referenced considerations. If the Regional Director is going to rely on craft severance precedent to make his decision, he must also apply the proper analysis required in those cases.

B. The Petitioned-For Unit Fails to Meet the Criteria for A Craft Unit.

Post-*Mallinckrodt* cases have deemed welders to be inappropriate for craft severance. Further, the Board has instructed that the *Mallinckrodt* factors are also relevant and must be applied in non-severance cases such as this. *E.I. DuPont de Nemours and Company*, 162 NLRB 413 (1966). Accordingly, *North American Aviation*, 162 NLRB 1267 (1967), is instructive.

In *North American Aviation*, the Board, after considering all relevant factors pursuant to *Mallinckrodt*, held that it would disrupt the production and maintenance employees at issue by permitting the union to carve out welders. 162 NLRB 1267, 1270 (1967). Further, the Board noted that "though craftsmen, [welders] do not in the traditional sense possess strong craft identity," and that their skills are generally regarded as nonapprenticeable.³ *Id.* Thus, the Board rejected that the first and third factors outlined in *Mallinckrodt* weighed in favor of a craft unit of welders.

³ Though the *North American Aviation* decision notes that the Board has recognized welders as a distinct group of craftsman in the aerospace industry, here the employees do not share the same level of skill and experience upon hire as those in other cases, as discussed in more detail below.

Further, the employer's operation in *North American Aviation* was a continuous flow process with the work of welders being performed in conjunction with that of other operators and "intimately related to the overall production effort." *Id.* at 1271. Accordingly, the fifth factor likewise weighed against finding a craft unit appropriate. This is analogous to PCC Structurals' operation, because, as the Regional Director points out, "the record is clear that rework welders and rework specialists would not be able to perform their duties without the work of the other classifications before them in the production process." (Supp. Dec. at 32) (emphasis added). In so finding, the Regional Director agreed that functional integration exists in this case and weighs against finding that the petitioned-for welders constitute a craft unit that shares a community of interests sufficiently distinct from excluded employees. *Id.*

In *North American Aviation*, the Board found the above-referenced functional integration, together with frequent contacts between and interdependence of welders and nonwelders in performance of their duties, common supervision of welders and nonwelders, and the fact that the welders are themselves separated from each other both on a geographic and supervisory basis, sufficient to find that the welders shared common interests with the other employees and were thus inappropriate for a craft unit. 162 NLRB at 1271. Such is the case here. The petitioned-for unit is commonly supervised with other production workers. No supervisor supervises only welders. (Tr. 43:7-17). The welders are supervised by 28 different supervisors, each of whom supervises a variety of job titles. (*See* Ex. E-44). Welders are combined with up to fifteen (15) other job titles in any given department. (Tr. 43:7-17). Additionally, welders are disbursed throughout eight buildings in the Portland Operation and are themselves separated into booths and welding stations

Moreover, the welders in the petitioned-for unit do not all work on aerospace products. On the contrary, some only work on medical device parts, industrial gas turbine parts or military armaments.

with other operators in between. (Tr. 183:16-21). Accordingly, when considered under post-*Mallinckrodt* precedent such as *North American Aviation*, it must be determined that the petitioned-for unit shares significant common interests with the excluded employees and are not an appropriate craft unit.

In his application of pre-*Mallinckrodt* precedent, the Regional Director ignored other factors such as the history of collective bargaining of the employees sought and at the plant involved or other plants of the employer. Had the Regional Director inquired, he would have learned that where the Machinists represent employees at other plants of the Employer, welders are represented with other production and maintenance workers and not in separate craft units. Further, he should have considered that the Machinists included welders as part of a wall-to-wall unit in the prior stipulated election at the Portland Operations.

Similarly, the Regional Director failed to analyze the history and pattern of collective bargaining in the industry. In this case, the Regional Director must look to the manufacturing industry, and specifically those with highly integrated production processes, which historically favor wall-to-wall units of production and maintenance employees. *See, e.g., Avon Products*, 250 NLRB No. 141 (1980) (agreeing with the employer's contention that a wall-to-wall unit was appropriate and that, specifically, a production and maintenance unit must include those employees who make up the order flow process (i.e. receipt, filling, and shipment of orders) as those processes make up a portion of the production process); *Chromalloy Photographic Industries*, 234 NLRB No. 159 (1978) (rejecting the Regional Director's conclusion that camera repair and maintenance employees possess a community of interest separate and apart from those of other production and maintenance employees sufficient to warrant a finding that they constitute a separate unit and instead found a unit of all production and maintenance employees appropriate given that the

employer was engaged in a single highly integrated process); *Check Printers, Inc.*, 205 NLRB 33, 34 (1973) (rejecting the Regional Director's conclusion that letterpress and offset pressmen were an appropriate unit and instead finding that the only appropriate unit was all production and maintenance employees); *Newington Children's Hospital*, 217 NLRB 793, 794 (1975) (The Board reiterated that "a service and maintenance unit in a service industry is the analogue to the plant-wide production and maintenance unit in the industrial sector, and as such is the classic appropriate unit.") (emphasis added); *Temco Aircraft Corp.*, 121 NLRB 1085 (1958) (holding that in manufacturing industries, single plant production and maintenance units are presumptively appropriate).

Nor did the Regional Director address the qualifications of the Union in carving out a separate craft unit, further illustrating his disregard for the appropriate legal standard. The record is devoid of any reference to how the Union is qualified to represent a craft unit of welders, nor does it include any information related to the Union's experience representing same. Without such evidence, these factors must weigh against finding a craft unit.

The Regional Director's application of craft severance cases that do not consider all relevant factors such as the level of integration in the Employer's production process and relevant bargaining history in the manufacturing industry must be disregarded. Indeed, the Board noted its rejection of *Hughes Aircraft Co.*, cited by the Regional Director, when reiterating the *Mallinckrodt* decision. *North American Aviation* at 1270 (noting that the regional director improperly relied upon *Hughes Aircraft Co.* and *American Potash* in finding the welders at issue to be appropriate for a craft-severance election). Accordingly, the Regional Director's departure from clearly established Board precedent must be corrected by the Board.

C. The Decision Contains Factual Errors with Respect to Those Factors the Regional Director Applied.

The factors the Regional Director did analyze actually establish that the petitioned-for unit of welders here is not appropriate for a craft unit. The Regional Director's conclusion to the contrary is based upon factual error that must be addressed and corrected

1. There is no formal training or apprenticeship program.

It is undisputed that the petitioned-for unit of welders do not participate in an apprenticeship program. Nor do they participate in any formal training program rising to the level of apprenticeship. On the contrary, there is no requirement by the Employer that a welder obtain outside training or certification prior to being hired into a welding position. (Tr. 257:1-5; 312:13-313:3). As witness Don Stevenson (Welding Training Coordinator) testified, "my responsibility is to train welders from brand new welders off the street to welders that have been trained for multiple years and also to train other operators that have never welded but bid in, have a successful job bid into the welding program. So I'll take them through their class and then we'll certify them and then progress them as a welder." (Tr. 312:14-19). In other words, there is no significant skill requirement prior to bidding into a welding position. This is distinguishable from the cases cited in the Supplemental Decision.

The Regional Director relies upon *Anheuser-Busch, Inc.*, 170 NLRB 46 (1968), for the proposition that lack of a formal apprenticeship and the existence of a highly integrated production process is insufficient to defeat a craft unit. Such reliance is flawed. First, while the employer in *Anheuser-Busch* did not have a formal apprenticeship program, the electricians in the petitioned-for craft unit had *at least* 3 to 4 years' experience before working for the employer. 170 NLRB at 47. Further, all four electricians who testified, testified that they had in fact served formal

apprenticeships. *Id.* Finally, all electricians were required to secure a license from the city as maintenance electricians, for which they were tested. *Id.*

The training and experience requirements noted in *Anheuser-Busch* are far more stringent than those of the Employer here. The Employer's Welding Training Coordinator himself testified that he trains "welders off the street" with no experience as well as operators "that have never welded." (Tr. 312:13-19). This is much different than a minimum of three to four years of experience. Similarly, welders are not required to have any license prior to beginning training with the Employer, unlike the electricians in *Anheuser-Busch, Inc.* who were required to have city licenses prior to employment. Thus, the Regional Director's reliance on *Anheuser-Busch* is flawed.

Likewise, the Regional Director's reliance on *MGM Mirage*, 338 NLRB 64 (2002), regarding a lack of apprenticeship program being insufficient to rebut craft unit status is similarly misplaced. In that case, the Board specifically stated that this is so "*when the carpenters are hired with significant experience.*" 338 NLRB at 532. Again, the welders at issue here are not necessarily hired with significant experience. On the contrary, non-welding operators can bid into the position without *any* prior training, and some welders are hired without any experience. (Tr. 312:13-19). Again, the Supplemental Decision is based on inapplicable, distinguishable precedent.

Moreover, while the Employer's welders do hold certifications, there are other excluded job classifications that also require specific certifications through training courses. The welders are not distinct in this regard. For example, all non-destructive testing ("NDT") require certifications. (Tr. 171:16-25). This includes, but is not limited to, vis dim inspectors, dimensional evaluators, LSP specialists, dimensional analysts, dimensional evaluators, radiological evaluators, film interpreters, and florescent penetrant inspectors. (Tr. 171:16-25; 194:3-7). In fact, certifications are not even distinct to the inspection/rework phase. On the contrary, wax

dimensional inspectors, who are production employees in the wax phase, must have proper certifications. (Tr. 193:18-25). Similarly, dispatchers and forklift drivers—who work in all phases of operation—also require certification. (Tr. 133:19-25; 134:1-5).

Each of the job classifications that require certification (except dispatchers and forklift drivers) come with a stamp, sometimes referred to as a “bug”, that allows the employee to verify that they have completed their task related to the part by stamping the router. (Tr. 193:18-25; 194:1-9). The purpose is to verify that the individual that did the work was in fact trained and passed required criteria to certify the part to move forward. (Tr. 1000:25; 1001:1-5). Accordingly, welders have stamps, as do most of the above-named job classifications. (Tr. 193:18-25; 194:1-9).

Specifically, radiologic evaluators have bugs that allow them to accept or reject digital images. (Tr. 875:18-20). Production coordinators require certifications and also have a bug that establishes they are certified to rework casting and to do the paperwork to set up rework plans to fix the parts. (Tr. 15-19). Straighteners, responsible for morphing the casting into the correct dimensions, usually have bugs that allow them to perform visual and dimensional inspection (i.e., they are certified in both). (Tr. 1048:5-9). A rework grinding inspector is a rework grinding certified individual that holds a visual stamp. (Tr.1015:4-5). Additionally, a source inspector performs visual and dimensional inspection at the shipping phase. (Tr. 1041:12-14). Notably, despite ample testimony regarding the significance of bugs, they are not mentioned in the Supplemental Decision.

Certifications therefore do not distinguish welders as a sufficiently distinct unit worthy of apprenticeship status. The Regional Director’s elevation of the welders’ certifications in comparison to others is baseless. On the contrary, certifications are required throughout the Employer’s production process.

2. The petitioned-for unit's work is functionally integrated with the work of excluded employees.

As previously noted, the Regional Director agrees that functional integration exists in this case and weighs against finding that the petitioned-for welders constitute an appropriate craft unit. (Supp. Dec. at 32). However, the Regional Director diminishes this factor.

The Regional Director cites *Anheuser-Busch* because that case, like this one, included a highly integrated production process. However, that case is again easily distinguishable from the case at hand. The Regional Director analogizes the case by noting that “the only factor weighing against the separate craft group unit [in *Anheuser-Busch*] was the highly integrated nature of the employer’s production process.” (Supp. Dec. at 23). Perhaps that is true for that case, but it is certainly not true here. For example, in *Anheuser-Busch*, the electricians had their own separate department and work area and all were supervised by the same supervisor. *Id.* at 47.

Department and supervision are significant factors in the determination of an appropriate unit. These factors weigh against finding a unit of welders in this case. As the Regional Director concedes, the factors of department and supervision weigh in favor of a wall-to-wall unit, not a unit of welders. (Supp. Dec. at 29, 35). It is undisputed that there is no separate “welding” department, nor are all welders in the same department. (Tr. 43:7-17). On the contrary, welders span across 18 departments, all of which include job classifications *other than* welders. (See Ex. E-44). Further, welders are supervised by 28 different supervisors and are combined with up to 15 other job titles in any given department. (Tr. 43:7-17).

Furthermore, the electricians at issue in *Anheuser-Busch* had no interchange with other job classifications, either temporary or permanent. *Anheuser-Busch* at 47. Conversely, it is undisputed that the petitioned-for unit of welders routinely perform grinding (non-welding) work on a near daily basis. (Tr. 713:1-12).

Consequently, *Anheuser-Busch* is wholly distinguishable from the case at hand: here, not only does functional integration weigh in favor of including the excluded employees, but so do factors such as department, supervision, and interchange. Thus, *Anheuser-Busch* is not persuasive and should be disregarded.

3. The petitioned-for unit's duties overlap with the duties of excluded employees.

The petitioned-for unit of welders most certainly overlap with excluded operators. In fact, the Board noted this very fact in its original *PCC Structurals* Opinion upon the Employer's first request for review: "functional integration weights in favor of finding an overwhelming community of interest between the petitioned-for employees and the rest of the production employees; rework welders and rework specialists function as part of an integrated production process, repairing defects identified by other employees and working 'rework teams' that include employees in other job classifications." *PCC Structurals, Inc.*, slip op. at 2.

The overlap does not end here. Other job classifications repair metal castings, such as rework grinders. Further, though not technically included in the rework phase, production and belt grinders also perform rework grinding in an effort to repair defects, as the part must often be hand grinded (hand grinder is another term for production grinder) following welding and/or inspection. (Tr. 416:14-23).⁴ This occurs on a daily basis. (Tr. 717:1-3). Similarly, welders perform grinding work on a near daily basis. (Tr. 713:1-12).

Moreover, grinders and welders cannot repair defects if the defects are not identified. Vis dim, x-ray and FPI are tasked with identifying defects prior to welders and grinders being tasked with repair. The success of the welders' job is highly dependent on the grinder and inspectors. (Tr.

⁴ Likewise, rework grinders regularly perform grinding work in the cleaning phase alongside production grinders. (Tr. 734:4-15; 1010:10-25; 1011:1-9.)

1024:19-25). Therefore, welders and grinders are functionally integrated and overlap with all aspects of the inspection phase of production, which include vis dim, x-ray, FPI (who, in turn overlap with the wax and other phases), and, at the very least, all other job classifications within the inspection/rework phase. (*See* Ex. E-56).

The record is clear that the petitioned-for unit has significant overlap with excluded employees. As already noted by the Board and the Regional Director, this weighs against a unit of welders. As was the case in *North American Aviation*, any separate community of interest of the welders is “largely submerged by the more encompassing community of interest shared with all other employees,” thus making a craft unit inappropriate. *North American Aviation, NLRB* at 1271.

4. The Employer assigns work to the petitioned-for unit based on need.

This factor, too, weighs against finding the petitioned-for unit to be an appropriate craft unit. Welders are assigned what and when to weld based on need. If there is a need other than welding, they are assigned non-welding work. For example, on a near *daily* basis, welders are assigned grinding work based on need. (Tr. 713:1-12). Welder Brett Clevidence testified at the first hearing that he has been asked to perform non-welding work because of lack of welding work and that he knew of other welders who had similar experiences. (Tr. 580:20-24; 582:20-21).

5. The petitioned-for unit share common interests with excluded employees.

Common interests in terms of wages, benefits, and cross-training is another factor on which the Regional Director significantly errs. In the Supplemental Decision, the Regional Director agrees that “the petitioned-for welders have the same or substantially similar terms and conditions of employment as excluded employees with regard to work rules and policies, benefits, and

schedules” and that these “all weigh against finding that the petitioned-for welders share a community of interest sufficiently distinct from excluded employees.” (Supp. Dec. at 34).

However, the Regional Director then goes on to say that because of the “overall similarities” of the “other” terms and conditions of employment, he “finds the questions of wages to be significant.” (Supp. Dec. at 34). In other words, he goes out of his way to over-value one of many conditions of employment (the remainder of which he concedes are shared among all employees) in order to have this factor weigh in favor of a craft unit. Such a conclusion disregards Board law and, specifically, this Board’s directive in its *PCC Structuralists* decision.

As the Board pointed out in its opinion, “The Regional Director also based his community-of-interest finding on evidence that the petitioned-for employees share many of the same terms and conditions of employment, even though all production employees share the same terms and conditions.” *PCC Structuralists*, slip op. at 2 (emphasis added). The Board further noted that all production employees, including the petitioned-for employees, work similar hours, are paid on the same wage scale, receive the same benefits, are subject to the same employee handbook and work rules, wear similar attire and protective gear work under the same safety requirements and participate in ongoing training regarding harassment, safety and other matters. *Id.* This illustrates that terms and conditions of employment simply must weigh in favor of finding a community of interest among all Production and Maintenance Workers.

Despite this finding by the Board, the Regional Director now feigns ignorance of the employees’ wages, somehow concluding that this makes wages more significant. The Regional Director’s conclusion is wrong. The Employer provided ample evidence of its wage scale and what positions are paid according to each. Though not given the exact wage for each job classification and labor grade therein, the Employer provided the pay structure, including all steps and grades,

and the dollar difference between each. Therefore, the Regional Director knows the pay difference between each position and how each job classification is paid in relation to another. Put simply, the Regional Director had all of the information he needed to determine whether the petitioned-for unit has wages in common with excluded employees. This information permits only one conclusion: wages weigh *against* a craft unit. It is, therefore, not surprising why the Regional Director ignores this information.

The evidence in the record shows that the petitioned-for unit of welders unit includes three different pay grades (15, 16 and 18). Numerous other job classifications share the same wages: radiologic evaluator, CNC machinist, jig & fixture machinist, layout inspector, CNC programmer, calibration metrologist, electrician, journey moldmaker, metrology analyst, millwright and pattern maker. (*See Wage Chart, p. 15, supra*). Thus, not only do the welders themselves not share the same wages—they include three separate wage levels—but they do in fact earn the same wages as non-welders. It therefore cannot be concluded that wages weigh in favor of a craft unit.

The Regional Director's determination that the petitioned-for unit of welders is an appropriate craft unit is based on rejected and distinguishable precedent that must be reviewed and corrected by the Board.

V. THE PETITIONED-FOR UNIT IS NOT APPROPRIATE UNDER *PCC STRUCTURALS*

The Regional Director's reliance on craft unit precedent was in error. As the Board originally ordered in its *PCC Structurals* decision, the Regional Director was required to apply the revived community of interest standard to determine⁵:

- 1) whether the employees are organized into a separate department;
- 2) have distinct skills and training;
- 3) have distinct job functions and perform distinct work,
- 4)

⁵ In fact, in the Regional Director's Order to Show Cause, he explicitly acknowledged that the Board had directed him to analyze the appropriateness of the unit pursuant to the eight-factor community of interest test set forth in the Board's decision.

including inquiry into the amount and type of job overlap between classifications; 5) are functionally integrated with the Employer's other employees; 6) have frequent contact with other employees; interchange with other employees; 7) have distinct terms and conditions of employment; 8) and are separately supervised.

*PCC Structural*s slip op. at 11.

In performing the analysis, the Board must determine whether the petitioned-for unit has sufficiently distinct interests from the larger proposed unit. *Id.* Likewise, “the Board must determine whether excluded employees have meaningfully distinct interests that outweigh similarities with unit members.” *Id.* However, much like the original decision, the Regional Director fails to properly analyze the interests of the excluded unit members. Additionally, and as noticed previously, the Regional Director failed to consider guidelines that the Board has established for specific industries with regard to unit configuration as ordered. *Id.*

The record is clear in this case that the only appropriate unit is a wall-to-wall unit of production and maintenance employees. The Regional Director's disregard for undisputed facts must be addressed and corrected by the Board.

A. Department

“A particularly important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation.” *Gustave Fisher, Inc.*, 265 NLRB No. 130, n. 5 (1981). The Union's petitioned-for unit does not have such a conformity, as acknowledged by the Regional Director: the petitioned-for unit is “included in departments *throughout* the Employer's operation, with numerous other classifications of employees sought by the Employer, and do not conform to any administrative grouping.” (Supp. Dec. at 29) (emphasis added). However, the Regional Director contradicts himself by then saying that, “most of the classifications sought by the Employer are not part of the same departmental organization as the rework welders and rework specialists.” *Id.* Despite his earlier concession that

there is no administrative grouping, the Regional Director finds that departmental organization weighs in favor of a finding of a shared community of interest with those excluded employees within the same departments as the petitioned-for unit, but not those who do not share a department with the petitioned-for unit. *Id.*

This conclusion is not supported by the record. As previously noted, it is undisputed that there is no separate “welding” department; welders span across 18 departments, all of which include job classifications *other than* welders. (Tr. 43:7-17); (*See* Ex. E-44). In fact, these departments also include various other job titles. (*See* Section III.A.2.; Ex. E-44).

A review of any of these job titles further illustrates the lack of clear departmental lines. For example, there are 240 rework grinders across 19 departments. There are 84 production grinders across 14 departments and 27 belt grinders across five departments. Further, the majority of the departments that include welders also include numerous operators in x-ray, radiologic workers, and inspectors and evaluators (*vis dim*, penetrant inspectors and specialists, etc.), who perform work and have regular contact with workers in the wax and other phases, as well as job classifications in the cleaning phase, such as walk-in sand/shotblasters and straighteners, and even in the final shipping phase, such as shipping clerks, and job classifications that work throughout all phases, such as production coordinators, production schedulers, flow coordinators, dispatchers and expeditors. (Exs. E-44, E-56.)

Inquiry into additional job classifications sharing a department with the petitioned-for unit yields the same result. Radiologic evaluators, radiographer A and B, film interpreter, dimensional evaluators, *vis dim*, dimension analysts, LSBS specialists, fluorescent penetrant inspectors, penetrant line operators, penetrant specialists, penetrant mag inspector, and digital radiographer, many of which share departments with the petitioned-for unit, are disbursed among 37

departments. These departments in turn include production workers in nearly all other phases: wax (framer), casting (electrode fabricator) inspection/rework phase (first inspection, cold etch operator A, darkroom operator, digital utility aide, NDT evaluator, NDT vis/dim specialist, rework grinding inspector, weld mapper, and x-ray scheduler), shipping (CDL class A truck driver, and shipping clerk), those across all phases (dispatcher, expeditor, flow coordinator, helper, outside process facilitator, plant-LEAN utility worker, production coordinator, production machinist, production scheduler, robotic operator A and B, scheduling area leader, straightener, surface finisher, toolroom attendant, toolroom attendant/cleaner, training and auditing coordinator, utility aide and walk-in sand/shotblaster), and maintenance (maintenance mechanic I). (*See Ex. E-44*).

The Regional Director wrongly suggests that because each department does not include every job title, this factor does not weigh in favor of a wall-to-wall unit. What he ignores is that, in considering that each department includes various different job titles, when those job titles are then assessed under the other community-of-interest factors (*e.g.*, supervisors, terms and conditions including wages, etc.) in the context of this highly functionally integrated workplace, there is no way to carve out a unit based on department. (*See chart, p. 16, supra*). When analyzing the department factor, it becomes readily apparent that the proposed unit is not appropriate and must be expanded to include all of the job titles.

B. Skills and Training

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. *Casino Aztar*, 349 NLRB 603 (2007). If they cannot be distinguished, this factor weights in favor of including the disputed employees in one unit. *Id.*

The Regional Director conflates this factor by turning back to craft unit theory for his analysis. (*See Supp. Dec. at 30 citing Hughes Aircraft Co. and Lockheed Aircraft Corp, both of*

which were decided before and repudiated by *Mallinckrodt*). As discussed previously, the Regional Director is incorrect regarding the level of experience required to enter a welding position, as *any* operator can bid into such a position without any outside training or certification prior to beginning training with the Employer. (Tr. Tr. 257:1-5; 312:13-313:3). As discussed below in Job Duties, the welders at this Employer are easily distinguishable in terms of training from those in *Lockheed Aircraft Corp.*

Additionally, the Regional Director discounts the significant *differences* among the welders in terms of certifications and skills, which simply cannot support craft status, nor do they illustrate a sufficiently distinct community of interest. Though the supplemental decision states that welders are “able to obtain the necessary certification to change metals or alloys by undergoing additional training or certification,” there is nothing in the record to support the contention that this is often done. On the contrary, welders simply are not interchangeable. They each require separate skills, training, and certifications depending on the type of alloy they weld and the type of products on which they work. (Tr. 703:12-16; 997:4-17).

For example, the certifications for steel and titanium welders are different. (Tr. 703:12-14). Consequently, if a welder does not have a steel certification, he or she cannot weld on steel, even if there is a need at the plant. (Tr. 703:22-25; 704:1-2). Likewise, if a welder has a steel certification but not a titanium certification, they can never weld on titanium. (Tr. 704:6-11). With regard to the crucible welder, he is required to have a copper certification. (Tr. 820:14-21). He cannot weld on anything except copper. (Tr. 820:14-24).

Further, there are separate and distinct certifications within each alloy that limit a welder to a specific product, such as medical equipment versus aerospace. (Tr. 997:4-17). For example, within steel, there are nickel-based, iron-based, and cobalt-based alloys. (Tr. 707:18-19). Each

requires a certification. Additionally, a welder may have a certification for the type of steel used in medical equipment that does not allow him to weld on the type of steel used for aerospace, limiting him or her to the non -aerospace business. (Tr. 997:4-17). Similarly, industrial gas products produced at Deer Creek require a specific welding certification different from the steel upon which a welder may weld at LPC. (Tr. 703:12-21). Finally, specific welding techniques require their own certifications, such as patch welding, for example. (Tr. 995:17-25). Each welder is trained on-the-job and achieves a certification very specific to the work he or she is performing.

Such certifications, however, do not distinguish the welders from other workers who, as discussed previously with regard to the lack of apprenticeship, also require specific certifications and bugs distinct to their position. Together, these bugs are used throughout the Employer's highly integrated production process. One certification simply cannot be carved out to be deemed more distinctive than another. *See PCC Structural's*.

C. Job Functions

The Regional Director found that, because the petitioned-for unit weld metal, they have sufficiently distinct interests in terms of job functions. This conclusion is also in error.

As an initial matter, the Regional Director disregards all of the job classifications that also weld on metal and/or use welding equipment as discussed above that span the entirety of the Employer's production process. If welding is a factor, it must be applied in favor of finding a community of interest among all excluded employees, as welding is found in every phase of production.

The Regional Director bases his rejection of this argument on *Lockheed Aircraft Corp*, a

craft-severance case decided prior to *Mallinckrodt*.⁶ As previously discussed, this case does not apply all relevant factors as is required and should be disregarded by the Board. Nonetheless, it is certainly distinguishable. The welders at issue in *Lockheed Aircraft Corp.* were highly trained and specialized in military aircraft work. 121 NLRB at 1542. Unlike the three-week training provided by the Employer here, Lockheed required its aircraft welders to demonstrate their proficiency over two to three years before they were permitted to progress to more difficult jobs. *Id.* Additionally, the welders included in the craft unit were required to hold Army-Navy certificates through tests which must be repeated every six months. *Id.* Furthermore, the Lockheed welders were required to have significant welding experience before being certified to do aircraft welding for the employer. *Id.*

The experience, training, and certification requirements in *Lockheed Aircraft Corp.* are entirely distinguishable from this case. Again, production workers are able to bid into welding positions without *any* experience, unlike the “extensive” experience required by in *Lockheed Aircraft Corp.* The welders in the petitioned-for unit are welding on the Employer’s parts within three weeks—not two to three years. Further, not all of the welders in the petitioned-for unit weld on aerospace parts. On the contrary, some are limited to medical equipment, and the crucible repair welder does not weld on a part at all. (Tr. 997:4-17). The welders in the petitioned-for unit simply do not share the high-level skill and job duties at issue in *Lockheed Aircraft Corp.* Therefore, even if it was controlling, which it is not, it must still be disregarded.

The fact that the petitioned-for unit’s job duties are dissimilar to one another further illustrates that they do not share a sufficiently distinct community of interest. Like their

⁶ Again, the Regional Director does not use precedent applicable to the community of interest test directed in *PCC Structural*s.

certifications, the welders' job functions also vary. That is, some weld steel (and within those that weld steel, some weld nickel while others weld copper, etc.), others weld titanium; some weld on aerospace parts, others weld on medical device parts, industrial gas turbine parts and/or land-based military parts. These are different job functions. Moreover, depending on the type of alloy, the physical way in which welding is performed is different. When welding on a steel product, welding can be done in open air. (Tr. 185:19-20). Welders sit in open air on a chair with the part in front of them and weld. (Tr. 185:19-25). Conversely, a titanium alloy cannot be welded in open air, so it goes in a chamber. (Tr. 186:1-3). Welders sit in a chair and the part is inside the chamber. (Tr. 186:1-5). They put their hands and arms through gloves and weld through the glass of the chamber. (Tr. 186:1-6).

Further, the three types of welders in the petitioned-for unit have distinct job functions, cutting against a distinct community of interest. A rework welder welds casting to customer and Employer specifications. (*See* Ex. E-13). That is, he or she repairs defects identified in metal castings through welding.

A rework specialist, on the other hand, is required to be able to develop a rework plan for a part that has a particularly large number of defects. (Tr. 57:13-15). They do not just perform the regular welding function. (Tr. 57:13-16). On the contrary, rework specialists prepare a specific plan, including use of specific grinders, as well as inspectors and rework analysts to route the part for repair and engineers to help determine where the problem happened, which may go as far back as the foundry or even wax. (Tr. 57:13-23). Additionally, they are responsible for training welders and must be able to go to any shift to conduct training or work on project parts. (Tr. 58:1-4). Conversely, a rework welder stays on a regular shift and only welds product. (Tr. 58:1-4).

As previously explained, the crucible welder does not weld product; rather, he maintains the crucible, without which the steel/titanium could not be poured, further demonstrating the interconnectivity of the entire operation and the workers within it. (Tr. 997:4-17). His job duties are therefore wholly distinguishable from the rework welders and rework specialists. His role is much more analogous to the electrofabricator, whose job is to “adequately weld alloy bar to Stub, creating a titanium electrode.” (Ex. E-16). Welding is an essential function of the role, yet they are not included in the petitioned-for unit.

In sum, the petitioned-for unit does not share a sufficiently distinct community of interest from the excluded employees. On the contrary, numerous other positions weld, and there are significant difference in terms of the welding performed in the petitioned-for unit.

D. Functional Integration

Section III.A.1., *infra*, illustrates the Employer’s integrated production process. Even in his initial DDE, the Regional Director acknowledged that functional integration exists (DDE p. 29.), as noted by the Board in its original *PCC Structural*s Opinion upon the Employer’s first request for review. *PCC Structural*s, Inc., slip op. at 2. In his Supplemental Decision, the Regional Director writes, “I find that functional integration exists in this case, and weighs against finding that the petitioned-for welders constitute a craft unit that shares a community of interest sufficiently distinct from excluded employees.” (Supp. Dec. at 32.)

The magnitude of the Employer’s highly integrated process should carry more weight in the overall analysis. Indeed, such a “highly integrated operation with the function of each [phase] being integrally dependent upon the functions of other [phases]” is precisely the type of operation that requires a wall-to-wall unit. *See Avon Products*, 250 NLRB No. 141 (1980) (rejecting the Regional Director’s acceptance of only certain classifications of production and maintenance

employees and instead accepting the Employer's position that the appropriate unit must be a wall-to-wall unit including all production and maintenance employees). Accordingly, the Regional Director erred in failing to certify a unit comprised of all Production and Maintenance Workers.

E. Contact

In his Supplemental Decision, the Regional Director found that contact weighs "slightly" in favor of finding the petitioned-for unit to be an appropriate craft unit. This conclusion flies in the face of the ample evidence provided by the Employer at the hearing on remand and pointed out by the Regional Director. (Supp. Dec. at 12-15). Tellingly, the Regional Director does not mention any reference to contact among the petitioned-for unit itself. Because there is no such contract to suggest that the petitioned-for unit interact with each other any more than they do other Production and Maintenance Workers. This is not surprising since the welders are distributed among [four] physical locations in the Portland operations where they are co-located with counterpart Production and Maintenance workers assigned to those locations. Given that there is no evidence of their own contact, but significant evidence of their contact with other job classifications, logic dictates that this factor must weigh in favor of a wall-to-wall unit.

It would not be possible for welders to do their job without working with grinders, vis dim inspectors, straighteners, or x-ray operators. (Tr. 1024: 19-25). All of these individuals must describe the terms of the defect, the dimensions of the defect, the severity, and, among other things, whether an otherwise acceptable defect is close to another defect that could cause further problems. (Tr. 1025:1-6). It is not uncommon for a welder to sit with an x-ray film interpreter and a grinder to discuss strategy in repairing a defect, which would often require the input of a vis dim inspector. (Tr.14-23). The conversation could even include a gate removal operator from the cleaning phase. (Tr. 1027:14-18).

Corey Bolen, a vis dim specialist lead,⁷ testified—pursuant to subpoena—that when he was a production grinder, he had daily interaction with welders. (Tr. 835:12-22; 838:3-11). This is because welders weld the production grinder’s extensions. (Tr. 838:8-13). Additionally, the welders interact with the grinders on breaks and during lunch on a daily basis. (Tr. 714:23-25; 715:1-3). Additionally, Welders and grinders have regular interaction with production coordinators in order to come up with rework plans. (Tr. 874:13-25). This can include a rework welder, a rework specialist, grinder, vis dim inspector, and someone from x-ray. (Tr. 874:13-25; 875:1-12).

In terms of contact across all job classifications, such contact begins at the very beginning of the production process in the wax phase when cores are inspected, as previously described.

Furthermore, operators in wax such as framers, wax dimensional inspectors, and wax assemblers have daily contact with operators in the investing phase. (Tr. 1007:18-25). They must discuss potential quality, backlog and inventory issues with the shell processor in investing. (Tr. 1007:18-25). Whether investing is backlogged on inventory or low on inventory affects how wax will prioritize their work. (Tr. 1008:1-4). Additionally, they must discuss quality and whether the assembly is correct for the investing line. (Tr. 1008:7-9).

Likewise, investing operators have regular interaction with casting. (Tr. 1009:3-12). Shell finish operators would have contact with furnace operators and operators that load the burnouts. (Tr. 1009:3-12). This is because the equipment that is used in casting is transferable back and forth between investing and casting. (Tr. 1009:3-15). The burnouts can be used as a flash fire for the

⁷ Leads are working leads, not supervisors. (Tr. 835:23-24). They are paid hourly and do not have authority to hire, fire, discipline, or recommend discipline to another employee, nor do they provide performance reviews or input into a performance review or setting of wages. (Tr. 836:1-17).

investing team. (Tr. 1009:3-15). Thus, investing operators discuss whether they can use the equipment for a specific period of time. (Tr. 1009:20-24). This contact occurs several times a week, if not daily. (Tr. 1009:25; 1010:1-2).

Production grinders in the cleaning phase have regular contact with rework grinders. (Tr. 1010:21-25). They also have regular contact with vis dim inspectors. Vis dim operators review the production grinder's work with them and discuss anything they might have missed. (Tr. 1011:19-25). Production grinders and belt grinders also have regular contact with gate removal operators in the cleaning phase. (Tr. 1012: 19-20). The production grinder will determine if the gate is too high or too low after the gate removal operator has arced it off or cut it off. (Tr. 1012: 19-25). Or there may be splatter left on the casting and the belt grinder will have to blend it off. (Tr. 1013:1-5). This requires a discussion of quality. (Tr. 1013:1-5). It would not be possible to complete the production process without this communication. (Tr. 1013:17-25).

Rework grinding inspectors, which are rework grinding certified individuals that also hold a visual stamp or bug, interact regularly with vis dim inspectors. (Tr. 1015:4-10). Visual and dimensional inspectors will communicate back and forth on the way that they interpret specs. (Tr. 1015:10-12). They would also interact with welders to analyze what welding (which adds heat) in a certain area will do to the dimensions. (Tr. 1015:14-17). They will also work with grinders, film interpreters and radiographer interpreters to discuss whether a defect is only visual or will require further rework. (Tr. 1015:17-21). This type of interaction occurs hourly, as it would be nearly impossible to run x-ray, welding, and vis dim without this interaction. (Tr. 1016:8-11).

Rework analysts, though designated as "rework," are involved at every phase, as they are responsible for rerouting the part as necessary, meaning changing course from what is on the

router, to wax, casting or any other phase. (Tr. 1017:1-13). They, therefore, interact with all phases regularly. (Tr. 1017:1-13).

Rework grinders have contact that transcends the inspection/rework phase as well. They grind on ceramic cores in the wax phase quite regularly. (Tr. 1017:19-25). Consequently, they have contact with the mold operator to discuss scheduling and when the core is needed for the molding. (Tr. 1018:14-25). This also would involve the framer. (Tr. 1019:1). Every operation affects another one, and there must be communication that explains how grinding or blending might affect the rest of the process. (Tr. 1019:7-13). For example, rework welders have regular contact with film interpreters, vis dim inspectors, grinders, and gate removal operators to discuss strategy in repairing a defect. (Tr. 1025:14-25).

Vis dim specialists have daily contact with grinders, inspectors, welders, x-ray shooters, readers, CMM layout, cleaning, belt grind, and wax. (Tr. 840:9-18). They also regularly interact with x-ray interpreters and CMM operators from the final inspection phase. (Tr. 1021:7-21). When the CMM operator runs the CMM machine for final inspection, they must take the report to the vis dim person to verify that the discrepancies found are acceptable or not. (Tr. 1022:11-15). If not, they will discuss whether it can be blended to correct the problem. (Tr. 1022:21-25). CMM operators also have contact with wax dimensional inspector in the wax phase when inspecting moldings. (Tr. 1023:9-15). Further, the CMM operator has regular contact with shipping. (Tr. 1024:1-18). If a part is nonconforming at the final phase, it will get a particular stamp to demonstrate this. The person in shipping will then contact the CMM operator to determine next steps. (Tr. 1024:9-18).

Similarly, x-ray is a hub, of sorts, for the production process and has regular contact with nearly every phase. They have contact with heat treat because heat treat must be scheduled. (Tr.

877:15-22). In turn, x-ray must notify other operators that they have until a specific time to get their part in for treating. (Tr. 877:15-22). X-ray also is in regular contact with the chem mill process on the titanium side, which in turn requires x-ray to take parts back to cleaning. (Tr. 877:23-25; 878:1-6).

X-ray also has contact with casting. This is because inspections reveal there are breaks in the shell or dirt in the parts, and discussions with those involved in casting the part must be had to determine the cause. (Tr. 878:17-25). Likewise, x-ray is in regular contact with wax. (Tr. 879:3-24). Such a “hub” in the production process must be included in the unit. *See Avon Products*, 250 NLRB No. 141 at 10 (finding the employer’s data processing department a “hub” of the production process because it served as an integral part of the manufacturing operation and had daily contact with other unit employees.)

Shipping also has contact with all operators in every phase. (Tr. 14-20). If something is missing in the paperwork from any phase, such as wax, the shipping operator would have to contact the appropriate operator who failed to provide their stamp, for example. (Tr. 16-25). If information is missing related to casting, they would speak with the furnace operator. (Tr. 1040:11-19).

Shipping is also regularly involved in test bars. This is a separate action wherein casting creates test bars of the same alloy that was poured to make the casting. (Tr. 1039:6-16). These test bars are sent to a third party for testing of the metallurgical structure of the alloy. (Tr. 1039:6-16). Shipping’s goal is to make sure the test bars are sent out and received back prior to the part made from the same alloy pour. (Tr. 1039:6-16). This requires communication with all phases to determine where in the process the part is that is still awaiting test strips. (Tr. 1039:17-24). Additionally, sometimes the test bars must travel through all heat treat phases, which requires shipping to have contact with heat treat. (Tr. 1039:17-24). Communications regarding this issue is

a daily occurrence, and involves the chief receiving clerk, expediter, float coordinator, production scheduler, production coordinator, shipping marker, shipping clerk, wax dimensional inspector, furnace operator, shell processor, and heat treat operator. (Tr. 1040:2-19).

A final source inspection occurs at the shipping phase by the source inspector. (Tr. 1041:3-14). She is certified in visual and dimensional inspection. (Tr. 1041:12-14). She interacts with any operator who missed something, including vis dim operators, welders, and grinders. (Tr.19-21).

Additionally, dispatchers expedite castings and wax throughout the facilities. (Tr. 870:23-25). Consequently, they have contact with employees in all phases of the Employer's operations. (Tr. 871:2-4). Operators in wax will request that things be moved from building to building, just as castings will be moved. (Tr. 871:4-15). This requires actual communication among operators because, otherwise, the process would fail. (Tr. 871:4-15-25; 872:1-1). Dispatchers also have regular interaction with maintenance employees, as they fix everything across all phases. (Tr. 872:2-9). In order to request that maintenance repair something, a phone call is required, necessitating an actual dialogue. (Tr. 872:10-14). Maintenance employees are responsible for repairing across all phases of the Employer's operations such as dock doors, icers, trucks, batteries, and tools. (Tr. 872:6-9).

Maintenance workers have direct involvement with all production workers. (Tr. 1042:15-16). All operators are trained on initiating a maintenance work order. (Tr. 1042:18-19). Upon arrival of the maintenance individual, the operator will walk them through the operation of the piece of equipment at issue and they may troubleshoot together. (Tr. 1042:19-24). This is an everyday occurrence. (Tr. 1043:7-9).

While this contact alone is sufficient to establish a community of interest among all Production and Maintenance Workers, the Regional Director goes on to reject the weight of

evidence of contact “in the cafeteria, break areas, trainings, meetings, and other special events,” without providing any basis for same. (Supp. Dec. at 32). Incidental contact is indeed relevant to the analysis and must be considered. *See e.g., Presbyterian Univ. Hosp. & Int'l Union of Operating Engineers, Local 95*, 313 NLRB 1341, 1344 (1994) (including location of lockers as relevant factor in analysis).

As previously mentioned, all Production and Maintenance Workers use the same lunch room at their location, mingle in the cafeteria, or eat their lunches at their lockers while intermingling with Production and Maintenance Workers from any job classification. (Tr. 463:3-4; 748:2-17; 749:13-19). Additionally, the petitioned-for unit has regular interaction with many other job classifications through their participation on the policy review committee and grievance committee. (*See Ex. E-46-47*).

Finally, the petitioned-for unit of welders interact with all job classifications during coffee talks, weekly standup meetings, and training including most recently training on the new Cardinal Rules of Quality in meetings where all employees were advised of the initiative. (Tr. 139:2-3; 139:6-15; 743:14-25; 744:1-25; 745: 1-2). Such evidence cannot be ignored.

F. Interchange

The Regional Director significantly discounts relevant evidence provided in support of interchange, while embellishing the amount of interchange among the petitioned-for unit. As previously noted, welders are not interchangeable among themselves in light of their specific certifications. Nor can the three job classifications in the proposed unit perform each other's job. Thus, they do not share a sufficiently distinct community of interests.

Despite this necessary conclusion, the Regional Director inaccurately states that “not all rework welders and rework specialists may temporarily interchange with one another...” (Supp.

Dec. at 33). There is no evidence to support that they ever interchange with one another, and in fact it is undisputed that a rework welder cannot perform a rework specialist's job duties. Moreover, as previously noted, welders often perform non-welding work such as grinding on a near daily basis. (Tr. 713:1-12).

Furthermore, the Regional Director erred when he rejected the JCA data. Regardless of specific details, the JCA information shows that production and maintenance workers worked in different positions 3,002 times in one year, and this only provides for those working in a higher paying position. Rather than discounting the information based on that fact, it should be used to bolster the argument for interchange, as it means it is possible there were double the amount of temporary transfers, if the transfer was to the same or lower paying position.

Despite the Regional Director's statements to the contrary, the Employer provided ample evidence of permanent interchange. For example, Corey Bolen testified about the consistent interchange that has occurred in his 17-year career, moving from production grinder, rework grinder, rework grinding inspector, dimensional evaluator, straightener, and NDT specialist. (Tr. 837:9-14). Similarly, Steve Merritt testified that prior to being a radiologic evaluator x-ray lead, he was a dispatcher, radiographer B, radiographer A, production coordinator, film interpreter, radiologic evaluator, x-ray lead, and a rework analyst over his 10 years with the Employer. (Tr. 869:24-25; 870:6-17).

The Employer's documentary evidence was similarly probative. (*See* Ex. E-45A, providing 10-year data in response to Union's request). For example, it shows that John Abbott transitioned from a dispatcher to a helper in 2013 and then to a radiographer B in 2014. (*See* Ex. E-45A). Likewise, Jeremy Adams began his career as a utility aide and moved to toolroom attendant/cleaner, inventory auditor expeditor, radiographer A and, ultimately, to production grinder. *Id.* Toribio

Aguilar was hired as a core maker in the wax phase and moved to rework grinder in the inspection/rework phase. (*See* Ex. E-45A). Regardless, “[T]he existence of permanent transfers is not as important as evidence of temporary interchange.” *Hilton Hotel Corp*, 287 NLRB 359.

G. Terms and Conditions of Employment

As previously discussed as part of the craft unit analysis, the Regional Director’s utter disregard of all terms and conditions except for wages is contrary to the law and must be corrected. Further, the evidence in the record demonstrates that at least eleven other job titles are paid the same wage rates as the proposed-unit.

H. Supervision

The Regional Director appropriately concludes that supervision weighs against finding the petitioned-for unit of welders to be an appropriate craft unit. However, because of this conclusion, he again discounts this factor without any basis. The petitioned-for unit is supervised by twenty-one (21) different supervisors, each of whom supervises a variety of job titles. Welders are combined with up to fifteen (15) other job titles in any given department. (Tr. 43:7-17). These facts, in light of the other dissimilarities among the petitioned-for unit, requires a finding that the petitioned-for unit is inappropriate. *See Monsanto Co.*, 172 NLRB 1461 (1968) (dismissing the petition for a craft unit of mechanic-electricians on the basis that there was no apprenticeship program and no specific department or supervision of the petitioned-for unit).

VI. THE EMPLOYER HAS BEEN DEPRIVED OF DUE PROCESS

Congress imposed the burden on the Board of determining an appropriate unit; it need not determine “the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit.” 29 U.S.C. §§151–169 (1998); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (emphasis in original), enforced, 190 F.2d 576 (7th Cir. 1951). Both parties have acknowledged that a wall to wall is an

appropriate unit. The Union has repeatedly stated, however, that its position is that a unit of welders is also an appropriate unit and the only unit they are seeking. Despite that both parties concede that a wall-to-wall unit is an appropriate unit, the Regional Director has insisted on certifying a unit that is, in fact, inappropriate. This time, he does so by deeming it to be a craft unit. He erred in doing so. The Board specifically directed, as the Regional Director acknowledged in his Order to Show Cause, that he apply the eight factor community of interest test to determine the appropriate unit. However, the Regional Director identified the appropriate unit under a different standard—a craft unit standard—without taking evidence on key factors. This was significantly prejudicial to the Employer.

The Due Process Clause of the Fifth Amendment states no person shall be “deprived of life, liberty, or property without due process of law.” *U.S. Const. Amend. V*. Further, the Fourteenth Amendment, which applies to the federal government in addition to private institutions, is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Due process and equal protection must be granted where decisions of how to operate affect the liberty and property rights of an employer.

Additionally, standards and tests developed by the Board cannot be based on rationales that are “so unreasonable as to be arbitrary and capricious.” *West Coast Media, Inc. v. F.C.C.*, 695 F.2d 617, 620-621 (D.C. Cir. 1982). Therefore, an employer must be provided with the “meaningful notice...and...full and fair opportunity to litigate” that are the fundamental requirements of procedural due process. *Lamar Advertising of Hartford*, 343 NLRB 261, 266 (2004).

The appropriateness of the bargaining unit is directly related to the Employer’s liberty and property rights in determining how to operate its business. These rights cannot be withheld without due process of law. That is, a full and fair hearing. *Id.*

The Regional Director has deemed the petitioned-for unit to be an appropriate craft unit. In making this determination, however, he did not take evidence regarding key factors including the history of collective bargaining of the employees sought at the plant involved and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation; and the qualifications of the union seeking to “carve out” a separate unit, including that union’s experience in representing employees like those involved in the severance action. *See Mallinckrodt*, at 397.

Nor was the Employer provided the opportunity to present evidence related to craft unit factors. As mentioned, the Regional Director requested that the parties advise as to their positions on the adequacy of the record under the Board’s eight factor community of interest standard set forth in *PCC Structurals*. The Rule to Show Cause does not seek either party’s position as to the adequacy of the record with regard to the craft unit standard.

Further, although the Regional Director indicated that he was considering other units, there was no indication that he was considering the same unit under a different standard. For example, he directed the Hearing Office to gather evidence related to a specifically sized unit:

“We’re back on the record, and in the time that we were off the record, I have received instructions from the regional director. Given that neither side wants to address the back-end group, that under 300-person group, he is instructing me as the Hearing Officer to solicit details about that group...” (Tr. 670:12-14).

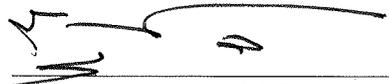
The Hearing Officer’s inquiries into other, less than wall-to-wall unit configurations, similarly runs afoul of the Board’s directive to analyze the parties’ positions under the appropriate standard, and no evidence was gathered through the Hearing Officer related to a wall-to-wall unit. Rather, the Hearing Officer continued to limit her inquiries to a smaller unit and failed to seek

information from both within and outside the proposed unit. (*See, e.g.*, Tr. 1093:12-25; 1094:1, 1116:4-16.)

The Regional Director’s application of craft unit theory at the eleventh hour, and disregard for the Board’s directive, has significantly prejudiced the Employer.

VII. CONCLUSION

This matter requires swift review and correction from the Board. The Regional Director’s application of craft unit theory to this case—with cases that fail to apply the appropriate standard—is a significant departure from officially reported Board precedent. Additionally, whether applying craft unit precedent or the community of interest analysis, the Regional Director’s decision is clearly erroneous in light of the undisputed facts on the record. Finally, using the craft unit standard without taking all of the evidence required resulted in significant prejudicial error to the Employer. The facts of this case illustrate that the only appropriate unit is a wall-to-wall unit. Allowing a supposed craft unit to be parsed out from the larger population with which it is so intertwined will wreak havoc on the Employer’s labor relations and production processes. Accordingly, the Employer respectfully requests that the Board grant its Request for Review, reverse the Supplemental Decision in accordance with the appropriate legal standards as they should be applied to this case, and remand the case to the Regional Director to certify an appropriate unit consisting of all PCC Structurals Production and Maintenance Workers.



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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing Employer's Request for Review of the Regional Director's Supplemental Decision as indicated below:

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Dated this 17th day of May 2018



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