

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

NEW MEXICO GAS COMPANY, INC.

Employer

and

Case 28-RC-239902

**UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO, LOCAL 412**

Petitioner

DECISION AND ORDER

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 412 (the Petitioner) seeks to represent a unit of full-time and regular part-time utility workers, trainees A, B, and C, service technicians, general technicians, master technicians, coordinators, operations representatives, line spotting technicians, measurement technicians, construction crewmen, senior construction crewmen, foreman construction crewmen, construction inspectors, corrosion technicians, and meter readers employed by New Mexico Gas Company (the Employer) in its North Central Region.¹

The Employer asserts that the petitioned-for unit is not appropriate because: (1) the only appropriate unit is a systemwide unit consisting of all field operations employees; and (2) the petitioned-for unit is inappropriate because construction inspectors do not have the requisite community of interest to be included in a field operations unit.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant legal precedent, I find that the Petitioner has not rebutted a systemwide presumption that applies to employees of public utilities, and that, since Petitioner has indicated that it would not proceed to an election in a systemwide unit, the petition must be dismissed. However, if a unit limited to the Employer's North Central Region were appropriate, I would find that construction inspectors could properly be included in a unit including the other classifications of employees Petitioner seeks to represent.

¹ Petitioner initially also sought to represent design technicians and customer service dispatchers. However, at the hearing, the parties stipulated that customer service coordinators, senior customer service representatives, customer service representatives, designers, senior designers, and service dispatchers are not appropriately included in the petitioned-for unit.

I. FACTS

A. The Employer's Operations

The Employer is a public utility company engaged in the transmission, distribution, and retail sale of natural gas in 26 out of 33 counties in the State of New Mexico.² The Employer serves approximately 524,000 residential, commercial, and transportation customers. The Employer has a monopoly in the areas it serves. The Employer's rates are statewide. There are no area rates. The Employer is headquartered in Albuquerque, New Mexico, and employs approximately 691 employees, including about 290 field operations employees.³

The Employer has subdivided its operations into regions: the Metro Region encompassing the Albuquerque area; the Northwest Region encompassing the cities of Farmington, Gallup, Grants, and Chama and surrounding areas; the North Central Region consisting of the cities of Santa Fe, Española, and Taos and surrounding areas; the Eastern Region encompassing the cities of Clayton, Tucumcari, Clovis, and Portales; the Southeastern Region consisting of the cities of Roswell, Artesia, Carlsbad, and Lovington and surrounding areas; and the Southern Region consisting of the cities of Silver City, Truth or Consequences, Alamogordo, and Anthony and surrounding areas.

The Employer's transmission system has a connection to interstate pipelines operated by third parties. These interstate pipelines typically operate at a higher pressure than the Employer's pipelines. If the pressure is high enough or higher than the Employer's system, then the pressure is regulated, cutting it down to the Employer's pipeline pressure. If the pressure is not high enough to move the gas across the Employer's pipelines, the gas is compressed to increase the pressure. The Employer's transmission system carries gas to each of the distribution areas. At the distribution areas, the Employer has a city gate or border station where the Employer "cuts down" the pressure of the gas with regulators at regulator stations. Once the gas is in the distribution system, it travels to the customer's home. At the customer's home there is a regulator that cuts the pressure to serve the location.

The northwest transmission system is the Employer's largest system, serving Farmington, Gallup, Grants, Albuquerque, Rio Rancho, Belen, Los Lunas, Santa Fe, Los Alamos, Taos, Questa, and Red River. This system is fully integrated from Gallup to Grants to Albuquerque to

² "Transmission" refers to the transmission of gas through pipelines. The transmission pipelines are typically four to 24 inches in diameter with 12 inches as the typical size. "Distribution" refers to distributing the gas to customers. The distribution system consists of smaller diameter pipes typically two to six inches. Most of the pipes in the streets and alleyways are two to four inches.

³ Field operation employees primarily work in the construction, maintenance, and operations of the natural gas transmission and distribution system. Field operation employee job classifications consist of: craftsman, senior craftsman, corrosion tech, senior corrosion tech, foreman, gas system technician, senior gas system technician, leak survey technician, linespotter, senior linespotter, measurement control specialist, measurement control technician, senior measurement control technician, operations control coordinator, operations representative, senior operations representative, service technician, and senior service technician.

Taos. A “DOE” line⁴ transmits gas to serve Los Alamos and Taos. A majority of the gas for Santa Fe and Española comes from the bottom half of the system through a compressor yard called the Santa Fe junction and a compressor station named Espejo compressor station. The Employer serves between 350,000 to 400,000 customers in the Northwest Region.

The Employer supplies gas to Chama and Dulce from a source on the Jicarilla Reservation via a dedicated line called the Brazos. Clayton receives its gas through a direct connection with a West Texas interstate pipeline operated by a third party. The Employer has an interconnect with third-party interstate pipelines that supply Tucumcari, Clovis, and Portales. In the Southeastern Region, the Employer has a direct connection to some of the processing facilities in the Permian Basin, and interconnects with third-party interstate pipelines. In the Southern Region, the Employer has a connection with a third-party interstate pipeline.

In Albuquerque, the Employer operates a business center, gas service center, and a payment center. The Employer’s executive leadership, consisting of its president and officers, is housed in the Albuquerque business center. Also based out of the Albuquerque business center are the Employer’s human resources (HR), information technology (IT), legal, regulatory, external affairs, finance, customer service, billing, remittance, and call center departments. The Employer’s gas control and gas supply departments are also based out of the Albuquerque business center. Overall, the headcount at the Albuquerque business center is approximately 240 individuals. There are no field operations employees assigned to the Albuquerque business center. The gas service center houses field operations, including construction and maintenance (C&M), service, dispatch, cathodic protection (CP),⁵ measurement, linespotters, and inspectors, and serves as a companywide technical training location. The payment center houses customer service personnel and directly serves visiting customers.⁶

The Employer operates office locations in Chama, Farmington, Gallup, and Grants in the Northwest Region; in Taos, Española, and Santa Fe in the North Central Region; in Clayton, Tucumcari, Clovis, and Portales in the Eastern Region; in Alamogordo, Anthony, Truth or Consequences, and Silver City in the Southeast Region; and in Carlsbad, Roswell, Artesia, and Lovington in the Southern Region. The same types of employees work out of each office location.

The Employer is administratively divided into several departments and is organized by function at the officer level. The president is the highest-ranking officer. Directly reporting to the president are seven vice presidents: vice president of engineering, gas management, and technical services; vice president of external affairs and general counsel; vice president of

⁴ This line is named after the Department of Energy who built the line in the 1940s for the Manhattan Project to serve Los Alamos.

⁵ Cathodic protection is a system where the Employer adds very low voltage to a pipeline to prevent it from corroding.

⁶ The Employer also operates one payment center in Rio Rancho and one in Santa Fe.

finance; vice president of strategy and major projects; vice president of operations; vice president of customer support services; and vice president of human resources.

The vice president of engineering, gas management and technical services is responsible for engineering, gas management (including gas control and gas supply), technical services (including safety, GIS,⁷ and environment), and quality assessment.⁸ Reporting to him is a director of engineering. In turn, four managers report to the director.

One manager is responsible for transmission project engineering and reporting to him are three transmission engineers/project engineers, two measurement engineers, and two draftsmen. Another manager is responsible for integrity management (including transmission integrity management and distribution integrity management). The transmission integrity team works out of the Albuquerque business center and has statewide responsibility for replacement projects, new construction, and new regulator stations. Reporting to him are four engineers based out of the Albuquerque business center. This team has responsibility for a mandated program from the Pipeline and Hazardous Materials Safety Administration (PHMSA). The program consists of assessing systems and determining any risks associated with the systems, prioritizing those risks, mitigating those risks, gathering data related to the distribution system, putting the data into a risk matrix or risk algorithm, and then determining the highest risk assets or facilities and putting a plan in place to mitigate those risks.⁹ For transmission integrity the Employer runs in-line inspections tools in the transmission system. The plan could be a replacement or additional surveys. The Employer's engineers design the work. For the distribution system, Employer's in-house crews or contractors do the work. Contractors typically perform the work on the transmission system.

Another manager is responsible for pipeline safety management systems. Based out of Albuquerque business center, two compliance specialists and one compliance engineer report to the manager. The team administers the statewide operation qualification plan, participates in safety audits around the state conducted by the New Mexico Pipeline Safety Bureau (PSB), and performs statewide internal audits. The Employer's auditing team consists of the person responsible for that part of the system, one or two individuals from the Employer's internal pipeline safety management team, the local operations manager, and a local operations supervisor. If the auditing is related to regulator stations a measurement tech sits in on the audit.

Another manager, based out of the Employer's Albuquerque business center, is responsible for distribution engineering and technical training. Typically, the individuals reporting to him work at the Albuquerque business center, except for the regional district engineers. There are seven district engineers, one for each region except that the Eastern and

⁷ GIS is an electronic mapping system.

⁸ Quality assessment looks at the Employer's records, most of which must have approval from a supervisor. The records are generated by employees. Quality assessment assesses compliance with the Employer's procedures.

⁹ The Employer has a mitigation of risks in-house team consisting of a construction crew, a corrosion protection technician, and a leak survey technician. When risk mitigation is necessary, distribution integrity notifies the local supervisor, who in turns notifies the team.

Southeastern region share a district engineer. Three district engineers are based out of Albuquerque. There is one district engineer in each of the following: Santa Fe, Farmington, Alamogordo, and Roswell. The district engineers provide support to the regions and work to support operations with pipeline safety regulations, policy, and engineering and design. The district engineers must comport with statewide company standards and rely upon the Employer's companywide operations and engineering standards manual (O&E manual) and operations and maintenance standards manual (O&M manual).¹⁰ District engineers work within their assigned region. Nevertheless, the scope of their responsibilities does not differ from region to region. They have no local autonomy or authority to act independent from the Vice President and his management team's directions.

Additionally, there is a supervisor over technical training based out of the Employer's Albuquerque service center. The supervisor reports to the manager of district engineering. Five trainers report to the technical training supervisor. The technical training group trains the operations employees from across the state so that they are ready to work in the field and to ensure they are operationally qualified.

The gas management department consists of gas control, gas compression, and gas supply. It is based out of the Albuquerque business center. A manager heads gas control and reports to the vice president of engineering. Approximately seven or eight gas control operators report to the gas control manager. A control room in Albuquerque business center receives data from the transmission pipeline system. The gas control operators monitor gas pressure and flows from the control room and are on the lookout for alarms. If there is an issue they contact a gas control technician from whichever region the alarm is coming from. If there is an issue that cannot be rectified at the control center, gas control calls the local measurement technician and dispatch them to the location to assess what is going on. If it is a compressor station, gas control dispatches a compressor technician along with the measurement technician. Gas control also notifies local supervision. If there is a hit on the transmission system, the problem is likely seen first by gas control if it is not called in by the public. It is a team effort among gas control and operations. If there is a hit on the distribution system, gas control has no responsibility. The issue is typically called in by the public and operations has responsibility. Local operations respond unless the issue is large enough that help is needed from another region.

A gas compression supervisor reports to the gas control manager. The supervisor has an office in Albuquerque and at the Rio Rancho compressor station. Five compression technicians report to the supervisor of gas compression. The compression technicians report from their homes, work statewide, and are responsible for all the Employer's compressor stations. The Employer has compressor in every region except the Eastern Region.

A director of gas supply reports is responsible for gas supply. The director and the gas supply team are based out of the Employer's Albuquerque business center and report to the vice

¹⁰ The O&M manual is the procedural manual for field work and is what the Employer follows to ensure compliance with PSB and PHMSA regulations. The O&E manual contains the standards by which the Employer holds itself to and do not necessarily reflect regulations.

president of engineering. There is also a manager over gas supply who reports to the director. In turn, there is a supervisor who reports to the manager. Reporting to the supervisor are four schedulers, two planners, two traders, two contract representatives, and a system planner. Gas supply contracts for gas, forecasts gas demand, schedules for gas, nominates gas, and monitors whether nominated gas arrives and determines if more gas is needed for the system.¹¹

The technical services department is responsible for safety, GIS, right-of-way, and environmental. A director of safety and technical services heads the department and reports to the vice president of engineering. Reporting to the director is a safety manager and a safety auditor. Also, two safety specialists report to the safety manager. The team is based out of the Employer's Albuquerque business center. The safety team is responsible for the Employer's statewide safety program, some of the safety procedures, promulgating the Employer's safety message, visiting job sites statewide, and performing safety audits in the field. The GIS team, based out of the Employer's Albuquerque business center, is headed by a supervisor who has eight GIS specialists reporting to him.

The Employer has a right-of-way team based out of the Employer's Albuquerque business center. The right-of-way agents work with operations and engineering on obtaining easements for distribution and transmission pipeline projects statewide.

The environmental team, based out of out of the Employer's Albuquerque business center, has three environmental scientists. The scientists ensure the Employer is meeting statewide environmental regulations and is operating as an environmentally sustainable company. They work with operations to comply with environmental policies.

The Employer's legal department is headed by a vice president of external affairs and general counsel. Under that individual, there is a director of legal and regulatory, a claims administrator, a paralegal, an attorney, and an assistant. The legal department provides legal services company wide and addresses orders from the state regulatory agency (practices, acquisitions, rates). The legal department also conducts investigations statewide without regional differences in procedure. All of the legal department team works out of the Albuquerque business center. The Employer's finance department is headed by the vice president of finance. All of his team works out of the Albuquerque business center.

The Employer's HR department is headed by the vice president of HR. Reporting to the vice president are eight employees, a person over corporate security, and a person over customer relationship management. There is a HR manager, HR supervisors, HR generalist, and HR analyst. The HR manager is responsible for staffing and recruiting, employee relations, compensation and benefits, learning and performance, leave administration, HR Information System (HRIS), reporting, drug and alcohol compliance, and commercial driver's license (CDL) compliance. The HR supervisor has responsibility over employee relations and the HR information system and shares responsibility with the HR manager for benefits, leave administration, and short-term disability. The HR generalists support the HR manager and HR

¹¹ The Employer purchases gas from marketers, producers, and from tailgates (processing plants).

supervisor. They are cross-trained in most HR functions. Each are subject matter experts. One HR generalist primarily handles learning and experience while another handles HRIS.¹² HR is the custodian of records for all the Employer's employees. The HR team is based out of the Albuquerque business center.

Regarding staffing and recruiting for field operations positions, the Employer has statewide policies in place.¹³ All job openings are handled the same companywide. To fill a vacancy, management must follow the Employer's procedures. The first step is an operations supervisor releasing the vacancy through the HRIS. The request then goes an operations manager's inbox for approval. The operations manager has the discretion not to release a vacancy. If the operations manager approves, the request goes to the director of operations for approval. In turn, the requests are then escalated to first the vice president of operations and then the president for approval.

Once the vacancy approval process is successfully completed, the process moves to HR. One of two recruiters (HR generalists) meets with the operations supervisor to post the position. The position is always posted internally, and sometime externally, for a minimum of seven days. The job descriptions do not vary across regions. The Employer then receives applications and resumes from applicants. The recruiter sifts through the submissions, finds qualified applicants, develops a matrix, and determines whether the applicants meet the minimum qualifications for the position, rating applicants as "most competitive," "competitive," or "does not meet qualifications."

Subsequently, the recruiter works with the hiring manager to set up interviews with applicants. Applicants for non-exempt position undergo an interview with a panel of three operations supervisors including a supervisor from the region where the position will be located. The two other operations supervisors could be from another region. Applicants for exempt positions sit through a one-person interview. The interviews take place in the region where the position is open. Management, supervisors and above, are trained in the Employer's interview process. After the interviews, the Employer undertakes an interview process called "selection for excellence."¹⁴ The interviews and interview guides are scored, each question is scored (each question is based the Employer's leadership competencies). If the interviewing supervisors reach a consensus they then meet with the recruiter and the group must again reach a consensus.

HR then conducts a compensation analysis by looking at qualifications, experience, and internal equity.¹⁵ The Employer prices positions through a market review, which includes looking at positions inside and outside the company, to come up with a salary range. If the recommended salary is within normal guidelines, then the recruiter and HR manager must

¹² There is one vacancy in staffing and recruiting and leave administration.

¹³ The policies are located in the HRIS and the employee handbook.

¹⁴ This interview process has been effective since 2014 when TECO acquired the Employer. It is an electronic program that holds all leadership competencies and questions under each competency.

¹⁵ Internal equity means the Employer looks at how much its employees are earning.

approve. If the recommended salary is above normal guidelines, then the vice president of HR must approve. Compensation for the same job classifications is the same statewide except that positions in the Southeast Region get supplemental pay due to competition in the oil and gas industry. Once the Employer determines compensation, it makes an offer to the applicant (using a companywide offer letter), conducts a background check and pre-employment drug test if the applicant accepts, and then proceeds to on-boarding the new hire if the drug test and background checks are successfully completed. There is no variation across regions for this hiring process.

The HR department also processes and investigates violations of the Employer's policies. The Employer has a "positive discipline" system in place without regional variation. The steps start with an oral reminder, written reminder, decision-making leave (DML) (an agreement between the Employer and the employee where the employee takes the day off to decide whether they want to commit to improve their conduct or behavior), and termination. Operations supervisors typically bring disciplinary issues to HR. The supervisor collects the information that HR requests. When a supervisor initially brings forth a disciplinary issue to HR, they do not make any disciplinary recommendations. HR may also collect information from others. The HR supervisor then reviews the information and works with the operations director, the operations supervisor, and the operations manager. HR then typically conducts an investigation. The Employer creates an "investigation plan" to decide who is doing the investigation, and who is going to conduct interviews. The HR supervisors or the vice president of HR typically conduct investigations in HR. If the matter involves a serious violation of company policy then the legal department gets involved and works with HR.¹⁶ HR travels to the regional areas if the investigation is outside Albuquerque.

At the conclusion of the investigation, HR determines the level of discipline to issue. When a recommendation is made to issue discipline and a proposed disciplinary action is written up, whether it is an oral or written reminder or DML, it goes through a process involving an operations supervisor, an operations manager, the vice president of the business unit, and the legal department if above oral reminder. If the discipline above an oral reminder, the operations supervisor can weigh in on the written document to ensure that it is accurate. All individuals involved must concur with the written documentation. If there is no consensus, the team reconvenes, discusses precedent for similar cases, and aims to arrive at a consensus. Reminders and DMLs are prepared by HR but have an operations supervisor's name on them and are delivered by the operations supervisor. The only action operations supervisors can take independently is coaching employees.

Terminations result from group decision. The termination process involves putting together a case after an investigation is done and the recommendation is termination. There is a committee called the "employee status review committee" consisting of three directors or above: the Employer's vice president of HR and two directors from TECO Energy.¹⁷ The committee then reviews the information, typically at an hour long meeting. If the committee supports the

¹⁶ Legal takes the lead with respect to ethics complaints. HR is involved at the discretion of the legal department.

¹⁷ Typically, the two TECO directors work in human resources.

recommendation of the business unit, they can proceed with the termination. If the committee does not concur with the business unit's recommendation, they can either change their decision or they can appeal the committee's decision to the TSI president. Once a termination decision is made, HR meets with the manager or supervisor and come up with a "termination plan" that assesses risk. The Employer then holds a termination hearing with HR, the supervisor, the manager, and armed security.¹⁸ If the termination is in the regional areas, HR travels there. The employee is terminated in person, and no termination letter issues.

The vice president of customer support services is responsible for billing, remittance, the call center, IT, and business development. His team is based out of the Albuquerque business center, except that the business development group has an office location in Roswell, and some of the billing functions are performed out of a Santa Fe payment center. The team has about 100 employees, including approximately 60 call center employees. The vice president of strategy and finance is a "stand alone" vice president without anyone directly reporting to him.

The vice president of operations is responsible for the Employer's operations. Directly reporting to him is a director of operations. The vice president and director are responsible for establishing operations procedures and policies. The director spends a lot of time visiting field locations as much as he can. Eight operations managers report to the director. Operations managers are the management team that directs operations statewide, exchange ideas, cooperate in interregional relocation of employees, and respond to emergencies. There are no regional differences in the operations managers' scope of employment. Twenty-nine operations supervisors report to the eight operations managers. Operations supervisors coach field employees, assign work, have discretion to grant paid time off, monitor field employees' activities, frequently visits sites, and ensure compliance. Supervisors must also complete and assist employees with a lot of paperwork as the Employer is a regulated entity. There are no regional differences in the operations supervisors' scope of employment. Approximately 406 individuals fall under operations.

There are three operations managers in Albuquerque (Edith service center), one in Farmington responsible for the Northwest Region, one in Santa Fe over the North Central Region, one in Clovis over the Northeast Region, one in Roswell over the Southeast Region, and one in Alamogordo over the Southern Region. There is also one gas operations manager assigned to the Southeast Region. The operations managers report to the director of delivery in Albuquerque.

In Albuquerque, there is one operations manager over the service tech department, who is responsible for service, installation, linespotting, and dispatch. Three operations supervisors, a compliance specialist, and a senior administrative specialist report to him. One operations manager is responsible for 23 field employees: 10 senior linespotters, three linespotters, eight senior customer service dispatchers, and two customer service dispatchers. Another operations supervisor has 21 field employees under him: 13 senior service technicians and eight service

¹⁸ Armed security is present at every termination.

technicians. The third operations supervisors is responsible for 20 field employees: 13 senior service technicians and seven service technicians.

The second Albuquerque operations manager is over construction and maintenance, cathodic protection, and Belen operations. Reporting to him are four operations supervisors. One supervisor has 12 field employees working under him: four senior corrosion technicians, two corrosion technicians, four foremen, one senior crewman, and one crewman. Another supervisor has about 14 field employees working under him: four leak survey technicians, three senior crewmen, two crewmen, two foremen, two craftsmen, and an employee whose position is unclear in the record. The third operations supervisor has 14 employees under him: six foremen, three senior crewmen, four crewmen, and one inspector. The fourth operations supervisor has 19 field employees: six foremen, five senior crewmen, two project managers of gas operations, one field coordinator, one compliance specialist, and one admin specialist.

The third Albuquerque operations manager is responsible for new service. He has two operations supervisors, and five project managers of gas operations. One operations supervisor is responsible for eight field employees: five measurement control specialists and three senior measurement control specialists. The other operations supervisor has 13 field employees under him: seven inspectors, four designers, and two senior designers. Finally, there are no meter readers in Albuquerque because the meters are automated. But there is an automated meter representative position that handles meter reading in Albuquerque.

In the Northwest Region, there are four assigned supervisors reporting to the operations manager: three in Farmington and one supervisor in Gallup who supervises Gallup and Grants. Chama does not have assigned operations supervisors. Also reporting to the Farmington operations manager is a project manager of gas operations. The first Farmington operations supervisor has 14 field employees under him (all working in Grants or Gallup): two foremen, one crewman, two operations representatives, one senior operations representative, four customer service technicians, one customer representative, and three senior customer service representative. The second Farmington operations supervisor has 11 field employees (most based out of Farmington): one foreman of operations systems, five gas system technicians, three senior service technicians, one senior operations representative, and one operations representative.¹⁹ The third Farmington operations supervisor has 13 field employees under him (based out of Farmington): three foremen, one senior linespotter, two senior designers, one designer, two operations representatives, two senior crewmen, one crewman, and one inspector. The fourth Farmington operations supervisor has 10 field employees (based out of Farmington): one senior operations representative, one operations representative, two senior customer service representatives, one customer service representative, three senior service technicians, one service technicians, and one collector.

In the North Central Region, there are three supervisors assigned to Santa Fe and one to Española. There is no assigned supervisor in Taos. One of the Santa Fe operations supervisors has 17 field employees: an inspector, a construction operations coordinator, a designer, five

¹⁹ A couple of these employees are based in Grants and Gallup.

foremen, three crewmen, and six senior crewmen. Another Santa Fe operations supervisor has 10 field employees: three service technicians, two senior linespotters, a linespotter, three senior service technicians, and a leak survey technician. The third Santa Fe Operations supervisor has 10 field employees: three senior designers, a corrosion technician, a senior corrosion technician, two senior measurement control technicians, a measurement control technician, and two foremen operations systems. The Española operations supervisor has 15 field employees: a designer, three senior operations representatives, three operations representatives, four service technicians, three senior customer service representatives, and a coordinator customer service.

In the Southern Region, there are two operations supervisors based out of Alamogordo, and one each in Silver City, Truth or Consequences, and Anthony. There are no operations supervisors based out of Artesia or Lovington. One of the Alamogordo supervisors is responsible for customer service and has 12 field employees: seven customer service representatives, two operations representatives, and two senior operations representatives. The other Alamogordo supervisor is responsible for 11 employees: two foremen, one crewman, two senior service technicians, one designer, one senior linespotter, a construction operations coordinator, two senior gas systems technicians, and a senior operations representative. The Anthony operations supervisor has eight employees: two foremen, two senior crewmen, a construction operations coordinator, a senior operations representative, a senior gas systems technician, and a senior service technician. The Truth or Consequences operations supervisor has six field employees: a foreman, a gas service technician, two operations representatives, a senior service technician, and a senior operations representative. Finally, the Silver City operations supervisor has seven field employees: two foremen, a senior linespotter, two senior service technician, a senior gas system technician, and a senior operations representative.

In the Southeast Region, there are four assigned operations supervisors. Three are based out of Roswell and one out of Carlsbad. One of the Roswell supervisors has responsibility over customer service. He has 12 field employees under him: six senior customer service representatives, two operations representatives, two senior operations representatives, and two customer service coordinators. Another Roswell operations supervisor, who is also responsible for Artesia, has 11 field employees: three foremen, three senior crewman, a crewman, a leak survey technician, a senior linespotter, a senior designer, and a senior operations representative. Another Roswell operations supervisor has eight field employees reporting to him: three senior gas service technicians, two service technicians, and three senior service technicians. The Carlsbad operations supervisor has eight field employees reporting to him: a gas systems technician, a field operations representative, two service technicians, two senior service technicians, a gas systems technician, and a senior gas system technician. The Carlsbad supervisor is also responsible for Lovington.

In the Eastern Region, there are three operations supervisors based out of Clovis. There are no supervisors based out of Portales, Tucumcari, or Clayton. One operations supervisor has eight field employees under him: two gas systems technicians, a senior gas system technician, three senior service technicians, a operations representative, and a senior operations representative. Another operations supervisor has seven field employees: five senior customer service representatives, an operations representative, and a senior operations representative. The

third operations supervisor has nine employees: two crewmen, a foreman, a linespotter, a senior designer, a construction operations coordinator, an operations representative, and two senior operations representatives.

The Employer maintains statewide policies without regional variations. The Employer maintains a code of conduct, leadership competencies guidelines, drug and alcohol abuse, overtime compensation, FMLA compliance, workplace safety, equal employment opportunity and affirmative action, nepotism, positive discipline, information security, workplace violence and firearms, automotive, adoption assistance, ADA, critical infrastructure information disclosure, smoke-free work environment, problem resolution, military leave of absence, substance abuse, harassment, and tuition assistance policies.

Moreover, an Employer committee is responsible for adding and updating standards in the O&M manual. The committee is composed of engineering and operations managers who review changes to the standards, propose changes, and decide whether the proposed changes are incorporated into the O&M manual. The vice president of operations and the director of operations have oversight responsibility. While the committee receives input from the local level, ultimately the director of engineering approves changes to the O&M manual. The Employer also maintains a statewide emergency response time policy with a goal of averaging 30-minutes for a first-responder to respond to an emergency.²⁰ The vice president of operations is responsible for enforcing this policy. The Employer is also subject to statewide rules of service with no regional variations.²¹

The benefits the Employer offers to its employees are the same statewide. Medical, vision, 401(k), leave of absence, short-term disability, long term disability, life insurance, and paid time off benefits are shared with TECO. Dental is also statewide but not shared with TECO. If employees have a question about benefits, those questions must be directed to HR. Managers/supervisors at the regional level have no autonomy or authority to act independent of the policies and procedures that senior leadership establishes.

Field employees' scope of employment are the same from region to region. They are subject to the same job requirements. Field employees must possess occupational qualifications (OQs) in order to meet regulatory requirements. OQs are tasks field employees must be able to complete. Field employees must to be able to complete up to 110 to 120 different tasks. OQ requirements are the same for the same task across regions. That is, there is no regional variance regarding showing competence in completing the tasks. The Employer trains field employees the same statewide and classes are open to employees from all regions. OQs are good for three years. The pipeline safety management systems team keeps track of field employees' OQs and when they are due for recertification.

²⁰ PHMSA imposes a 60-minute response requirement.

²¹ Rules of service dictate how the Employer interacts with customers.

The Employer only employs craftsmen job classification in the Metro Albuquerque Region. Craftsmen are responsible for taking tools to employees in the field and maintaining equipment, and one operates a dump truck. Craftsmen also maintain tool cribs.

Crewman is an entry level position requiring “minimal skill.” Crewmen excavate, fuse polyethylene pipes, and open trenches. Crewmen use wrenches, hammers, shovels, tractors, and backhoes. They work in alleys or streets in rural areas. Crewmen receive their work assignments through a statewide “plan of the week” (POW). Regional operations, through operations supervisors, establish a plan for the week. Since the Metro Albuquerque Region has a larger work volume, the planner creates a plan which the operations supervisor then reviews. An operations manager oversees the plan. Crewmen drive from their assigned office or yard to the job site in the morning. They interact with linespotters and customers. In the afternoon, they return the company vehicle to the yard or office. Their work week is typically 8 hours a day (with 30 to 60 minute lunch), 5 days week. They wear the same uniforms statewide. Senior crewmen have more time and training in the position and more OQs. They can fuse plastic pipe (arc or acetylene), are good at excavation, and may progress to foremen.

Corrosion technicians impress currents on pipes to prevent corrosion. They also do compliance work. They use shovels, small hand tools, and electronic instrumentation to collect pipeline or rectifier readings. They also operate specialty equipment. Corrosion technicians typically work alone. They report to their assigned facility and drive pickup assigned pickup truck. The POW dictates their work assignments. They interact with a construction crew that may be installing anodes for them, vendors helping to diagnose pipeline issues, or customers. They work five days a week, eight hours a day. They wear the same uniforms statewide. A senior corrosion technician has a certification from the National Society of Corrosion Engineers.

A foreman is the lead for a field construction crew. Typically, a crew consists of a foreman and a crewman or senior crewman. Operations supervisors determine the crew size. The Employer must designate a lead, who sometimes is a senior crewman, for regulatory purposes. Foremen use the same tools and equipment as crewmen, but foremen have additional specialized skills such as high-pressure, large diameter stopple work or directional boring and drilling. They get to and from work the same way as crewmen and have the same contact with other employees and customers as crewmen. They work eight hours a day, five days a week, with a potential hour or half hour variation in start times (which may vary across regions).

Gas systems technicians do cathodic protection work and measure gas. They are typically regional jobs; that is, they travel around their assigned region. They use a truck mounted machine, run off a laptop. They have the same small tools and equipment that crewmen have, but also use specialized instruments to gauge gas pressure very accurately. They frequently work alone. Typically, gas systems technicians report to their yard. In the winter, they may report from home for a quicker response time. They receive their work assignments through the POW. They are in communication with gas control often, who may call them directly or send them a note. They interact with other gas systems technicians and customers. Their work settings include towns, rural areas, somewhere way out in the mainline, or right in the middle of town. They work eight

hours a day, five days a week, with some variation in their working hours. Senior gas systems technicians have more time in service and must demonstrate a certain level of competency.

Leak survey technicians use laser or flame ionization equipment to detect leaks. They go out daily and use truck mounted mobile survey devices. The Employer must do a leak survey on its entire system within a five-year period due to compliance requirements. Leak survey technicians work in urban or rural environments. They use a map to locate lines and go over the line and check for leaks up to a customer's home. Most of the time they drive UTV mounted systems. Leak survey technicians typically work alone, but they interact with customers and the occasional dog. They report from their assigned locations to the job site, but if an early response time is needed they may report from home. They work eight hours a day, five days a week.

Linespotters work alone locating lines throughout their work day. They receive requests from people excavating, such as calls from internal crews or from 811 call tickets. They use spray paint to mark lines, and put up temporary road closure signs, flags, and whisks. They report to their assigned facility and drive a company pickup truck with flashing lights. Equipment is locked in the trunk. Linespotters interact with excavators, including third parties. They work in rural and urban settings. Senior linespotters have a better track record of not missing locaters, have more in-depth mapping knowledge, and understand line-spotting techniques.

Measurement control specialists work only out of the Metro Albuquerque region. They are specialists for the Metro operations. They respond to control calls, potentially 24 hours a day. They provide meter proofing to businesses, and ensure signs are up. The position is limited to Albuquerque because the volume of work allows for specialization. They do the same work and use the same tools as gas system technicians but have a deeper understanding of measurement work due to their work location. Measurement control technicians are only assigned to the Metro Albuquerque region, but they have deployed from Albuquerque to Carlsbad due to labor shortages.

Operations construction coordinators coordinate with the Employers construction crews and contractors. They typically work in rural settings. They make sure the job runs smoothly, everything is aligned, and materials gathered. Construction crews look at the coordinators as a resource. In contrast with a foreman's work scope, construction coordinators work with contractors, generally at a larger job site or multiple jobs, and have a large span of control. They travel from region to region. They use specialized tools such as tapping and tapping stopple. The coordinators report to their assigned office and use a company pickup truck to reach job sites. They interact with construction crews, contractors' crews, and linespotters.

Operations representative is an entry level generalist position exclusive to regional operations. There are none assigned to the Albuquerque Metro area. They receive technical and on the job training. All regions have them. They use the same tools as crewmen or service technicians. They work in urban and rural settings, customers' homes, alleys, streets, and wherever there is gas. They drive half-ton pickup trucks. The representatives read meters, do collections, linespot, and assist with construction. They interact with customers, the general

public, and the construction and service departments. They work eight hours a day, five days a week. Senior operations representatives are equal in grade to senior service technicians, carry a journeyman license, and can fuse pipes.

Service technician is generally an unlicensed entry level position, but some have a journeyman gasfitter license. Regional service technicians may carry a few more OQs due to the area setup requiring interpreting a chart, recording or line spotting for emergencies as they are typically the first responders.²² In regional areas, service technicians carry a linespotting apparatus. They work in urban and rural environments, customer homes, alleys, and streets. They also respond to service or demand orders such as responding to a blowing line, or a car hitting a meter. Some are also in standby service, including forty in the Albuquerque Metro area. In the Metro area it is a long practice to report from home. Others, if not on call, park their POVs at a service yard. Senior service technicians have a journeyman gas fitter license. The technicians work eight hours a day, five days a week.

The Employer also has specialty crews. In the Metro Region, there is a large diameter tapping team led by a construction coordinator. The crew includes volunteer senior crewmen and foremen. The team deploys outside Metro to all regions. They interact with the construction employees from the given region. Moreover, there is directional drilling crew based in Farmington. The crew consists of a foreman in Farmington and a crewman from the jobsite region. They haul the boring equipment across the state on an as available basis.

There is also a compressed natural gas hauling crew based out of Metro, with capabilities in Santa Fe, Farmington, and Carlsbad. There is a CNG compressor facility and tanker trailer in Albuquerque. The Employer has deployed the Albuquerque crew to Chama. The Employer also has trailers in the Southeast, North Central, and Southern regions. The crew consists of volunteers holding a CDL with HAZMAT. The crew could include service technicians, senior service technicians or other job titles. Bubble City (Farmington) has Eunice vendors to fill up the tankers.

The Employer's equipment is used across regions. For example, pickup trucks, backhoes, two-ton trucks, trailers, tapping equipment are shared frequently. There is also pre-tested pipe kept in Albuquerque that could be used in any region.

For field employees to permanently transfer to another region, there must be a vacancy and they must apply for the position. A team of three supervisors interviews applicants, including the supervisor under whom the employee will be working and two other Employer supervisors (depending on availability). The record shows about 40 permanent transfers of field operations employees from region to region since 2010. Field operations employees also frequently interchange across regions on a temporary basis. For example, there may be emergency, compliance work, or scheduled routine work. The record shows dozens of temporary transfers

²² This is not the case in Metro because linespotters are also on call so service technicians typically do not have that duty in Metro.

within regions and from region to region since 2016, ranging from days to several weeks at a time.

When the Employer commenced operations in January 2009 it inherited three bargaining units. The Petitioner represented two of the units in Metro and the Employer assumed both collective bargaining agreements. One of the Metro units consisted of utility workers, service trainee C, service trainee B, service trainee A, service technicians, general service technicians, master service technicians, and service coordinators (Service Tech Unit). In October 2011, the Employer withdrew recognition of the Service Tech Unit.²³ The other Metro unit was represented by another union and consisted of customer service dispatchers I and customer service dispatchers II (Gas Tech Unit). In August 2012, the Employer withdrew recognition of the Gas Tech Unit. The third unit consisted of field operations employees and were represented by another union.²⁴ Negotiations did not result in a collective bargaining agreement. In June 2010, employees voted to decertify the union as their representative.

B. Construction Inspectors

Inspectors are field employees and responsible for quality control, loss control, and construction contractor field work oversight. They usually work alone, but sometimes work in groups if it's a large job. They are the Employer's representative looking at the field work in a construction job. They typically only carry general OQs. They do not get down in a ditch and do the work but are knowledgeable about the work because they have experience in the craft. The largest group of inspectors is based out of the Metro Region and report to an operations supervisor who in turn reports to an operations manager who also supervises other field employees. There is one inspector in the North Central Region who reports to an operations supervisor who in turn reports to an operations manager who also supervises other field employees. Not every region has inspectors assigned, but foremen and construction coordinators can also do inspection work. Moreover, the Employer has an inspection school where its employees can learn inspection skills. The Employer contends that the inspectors are like administrative designers but presented no evidence as to the administrative designers' terms and

²³ Petitioner filed an unfair labor practice charge which was dismissed.

²⁴ The Certification of Representatives reads: All construction, operations and maintenance employees who work principally in the field in the Employer's New Mexico gas operations, to include crewmen, foremen I and II, measurement control technicians, measurement control specialists, gas system technicians, service technicians, linespotters, craftsmen, craft specialists, meter repairers, operations representatives and gas-only meter readers; excluding all other employees, employees presently represented in any existing bargaining unit, compressor technicians and operators, customer service representatives, designers, planners, foremen III, GIS technicians, coordinators (all types), project leaders, technical services foremen, operations supervisors, expeditors, engineers, engineering technicians, technical trainers, collectors, other meter readers, business support analysts, product support specialists, administrators, contract and regulatory administrators, gas supply administrators, system administrators, database administrators, measurement assistants, acquisitions representatives, transportation representatives, on-system gas representatives, analysts, gas residential control operators, right-of-way agents, other administrative and managerial employees, office employees, office clerical employees, guards, watchmen and supervisors as defined in the Act.

conditions of employment. The Employer does not contend the inspectors are managers or supervisors.

II. ANALYSIS

A. A Unit Limited to the Employer's North Central Region Is Not Appropriate

1. Relevant Legal Standard

The Board has long held the view that a systemwide unit is optimal in the public utility industry. *Alyeska Pipeline Serv. Co.*, 348 NLRB 808, 809 (2006). The systemwide unit is the optimum bargaining unit in public utilities industries. *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Deposit Telephone Co.*, 328 NLRB 1029 (1999); *Louisiana Gas Service Co.*, 126 NLRB 147 (1960); *Montana-Dakota Utilities Co.*, 115 NLRB 1396 (1956). The reason for this general principle lies in “the essential service rendered to their customers and the integrated and interdependent nature of their operations.” *Colorado Interstate Gas Co.*, above at 848. However, the Board noted in *Deposit Telephone*, above at 1030, “this policy has not required multi-departmental units in all instances.”

The Board's preference for a systemwide public utility unit as a rebuttable presumption, which does not foreclose the possibility of finding a smaller unit to be appropriate. *Alyeska Pipeline Serv. Co.*, above at 811, fn. 4. The Board finds less than system-wide units appropriate where “compelling evidence” shows that collective bargaining would be a “feasible undertaking.” *Id.* at 809. That is, the Board looks at whether (1) employees in the petitioned-for smaller unit share a substantial community of interest; (2) the boundaries of the requested unit conform to a well-defined administrative segment *and* could be established without undue disturbance to the company's ability to perform its necessary functions, and (3) there is no opposing bargaining history on a broader basis. *Id.* at 809-810 (citations omitted).

In determining whether a union has rebutted the Board's public utility presumption, the Board applies the traditional community of interest factors: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any exists. *Id.* at 811 citing *Trane*, 339 NLRB 866, 867 (2003), *J & L Plate, Inc.*, 310 NLRB 429 (1993), and *R & D Trucking, Inc.*, 327 NLRB 531 (1999)).

While public utilities, in comparison to other industries, may be more intimately interrelated and interdependent throughout a widespread system, each case must nonetheless be judged on its own merits in determining the appropriateness of bargaining units. *Idaho Power Co.*, 179 NLRB 22 (1969); *Pacific Northwest Telephone Co.*, 173 NLRB 1441 (1969). Where, on balance, all the relevant factors indicate that the administrative structure or geographic features of a public utility company's operations have created a separate community of interest for certain of the company's employees, a less than systemwide unit may be found appropriate. *PECO Energy*

Co., 322 NLRB 1074 (1997); *Monongahela Power Co.*, 176 NLRB 915 (1969); *Michigan Wisconsin Pipe Line Co.*, 164 NLRB 359 (1967); *Sanborn Telephone Co.*, 140 NLRB 512 (1963); *Mountain States Telephone Co.*, 126 NLRB 676 (1960); *Western Light Telephone Co.*, 129 NLRB 719 (1961); *Southern California Water Co.*, 220 NLRB 482 (1975).

As is true of other areas of unit determination, the history of collective bargaining and existing bargaining relationships and the fact that no labor organization seeks to represent a broader unit of the employees in question are relevant factors. *Deposit Telephone Co.*, above, and *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971). *Deposit Telephone* reversed *Red Hook Telephone*, 108 NLRB 260 (1967), and *Fidelity Telephone*, 221 NLRB 1335 (1976).

In the absence of a bargaining history on a more comprehensive basis, units have been found appropriate in the public utility industry which correspond to an administrative subdivision of the particular operation *PECO Energy Co.*, above; *Mountain States Telephone Co.*, above, reflecting geographical lines of demarcation (*Philadelphia Electric Co.*, 110 NLRB 320 (1955)), and reflecting operational integration of the subdivision as a separate administrative entity. *Montana-Dakota Utilities Co.*, above. See also *Connecticut Light & Power Co.*, 222 NLRB 1243 (1976); *Southern California Water Co.*, above; and *New England Telephone Co.*, 242 NLRB 793 (1979).

The fact that it was not shown by “satisfactory or documented evidence” that a work stoppage in one district would have a substantial impact on the operations of other districts within the division was taken in consideration. *United Gas*, 190 NLRB 618 (1971); and *Southwest Gas Corp.*, 199 NLRB 486 (1972); *Southern California Water Co.*, supra.

In *United Gas*, supra, the local distribution organization in question was likened to single-store units in retail operations and single district office units in the insurance industry. See *M. O’Neil Co.*, 175 NLRB 514 (1969); and *Metropolitan Life Insurance Co.*, 156 NLRB 1408 (1966).

In a case litigated in the Tenth Circuit, the unit certified by the Board consisted of 10 employees in one department of a single telephone exchange in one state. There was no history of bargaining. Although the court pointed out that in a number of cases involving integrated telephone companies the Board had concluded that systemwide units are normally the appropriate unit, the court found the Board’s action neither arbitrary nor capricious and that “the designated unit is a functioning, distinct and separate operation of a group of unrepresented employees who work in a single geographical location,” and, thus, appropriate for purposes of collective bargaining. *Mountain States Telephone Co. v. NLRB*, 310 F.2d 478 (10th Cir. 1962).

Illustrative of the type of situation encountered at times in public utility unit determinations is *Michigan Wisconsin Pipe Line Co.*, 194 NLRB 469 (1972), in which a unit found appropriate in a 1967 decision involving a district of the company’s system (164 NLRB 359) was held no longer appropriate due to administrative and operational changes which had since occurred. In arriving at this result, consideration was given to the facts that (1) the district encompassing the requested employees became one of three districts in a major administrative subdivision of the pipeline system; (2) to continue finding the initial unit appropriate would “fragmentize” the pipeline

employees; and (3) supervision of the district in question was closely coordinated with supervision in other districts in the area with the concomitant of a significant degree of employee interchange.

The opposite result follows, of course, when changes have no significant effect on the unit. Thus, where changes made since a merger had not materially affected the appropriateness of an existing unit, that unit remained appropriate and could not be absorbed into a systemwide unit unless the employees in it were accorded in a self-determination election. *Brooklyn Union Gas Co.*, 123 NLRB 441 (1959); *Houston Corp.*, 124 NLRB 810 (1959).

The reluctance of the Board to “fragmentize” in establishing units for natural gas pipeline systems was a focal point in *Colorado Interstate Gas Co.*, above at 848-849. The Board found that requested districtwide units were too narrow in scope to be appropriate, relying on: (1) the high degree of control exercised by the company’s headquarters management over the operational districts; (2) evidence of substantial temporary interchange among the districts; (3) the systemwide procedures applied in posting and bidding for openings in higher paying positions; (4) the lack of substantial autonomy in the district superintendents with respect to day-to-day personnel matters; and (5) the uniformity of wages, hours, and conditions of employment throughout the company’s system. See also *Tennessee Gas Pipeline*, 254 NLRB 1031 (1981); *Natural Gas Pipeline Co. of America*, 223 NLRB 1439 (1976).

By way of contrast, there was no problem of “fragmentization” in *Idaho Power Co.*, supra, in which a proposed divisionwide unit was found appropriate relying on (1) geographic coherence; (2) distinctiveness of functions; and (3) the relative autonomy of operation with which the divisional managing official had been entrusted. Similarly, in *PECO Energy Co.*, above, the Board found a less than systemwide unit, conforming its determination to the employer restructuring of its operations. This case contains a collection and discussion of the key utility unit cases.

2. Analysis

In this case, it is undisputed that the Employer is a public utility and the Board’s public utility presumption applies. Accordingly, “the unit should not be fragmented absent compelling evidence” that the petitioned-for unit would be feasible. *Alyeska Pipeline Serv. Co.*, above at 811. Turning to the traditional community-of-interest factors, the record shows that there is limited local autonomy in the regional areas. Regional operations supervisors may grant leave and adjust the field employees’ shift times. Nevertheless, there are significant areas to the regional field employees’ terms and conditions of employment and are not subject to local discretion. Statewide policies apply to field employees working anywhere in the state, human resources policies and employee relations matters are centralized in Albuquerque, and pay is centrally determined. Although regional supervisors interview applicants and make recommendations, the final hiring decision must be reached by consensus between local supervision, supervisors for other regions, and by HR. Moreover, while local supervisors can verbally coach employees, anything above that must undergo a process involving a vice president, HR, and sometimes legal.

Moreover, the other community of interests factors do not support finding the petitioned-for unit to be an appropriate unit. The skills and functions of field employees do not vary from region to region. There are constant temporary transfers within and across region and significant contact between employees across the regions. While the working areas may vary given the vast size of New Mexico, the remoteness of the work locations is not considered a compelling circumstance to justify fragmenting the field employees. See *Tennessee Gas Pipeline*, above at 1031.

As in *Colorado Interstate Gas Co.*, above at 848-848, the Employer's North Central Region is not major administrative subdivisions of the type which justify fragmenting the Employer's operations. The employees in the petitioned-for unit do not share a sufficient community of interest apart from other employees in the Employer's field operations to warrant establishing an appropriate unit for collective bargaining purposes.

This case is unlike cases where the Board has found less than systemwide units appropriate. In those cases, the Board placed significant emphasis on the substantial autonomy exercised by the regional units. See e.g. *Idaho Power Co.*, above (work requirements varied, significant amount of discretion exercised by division personnel written into the employer's rules, each division had its own accounting personnel and division accounting manager, job applicant could apply at division or general office and division personnel can fill vacancies, companywide and department seniority, local and headquarters training, and overall substantial divisional autonomy); *Southern California Water Co.*, above (divisional manager had substantial authority and autonomy including hiring, promotion, and discipline); *Central Power & Light Co.*, 195 NLRB No. 139 (1972) (company manual authorized deviations and discretion by local supervision, each division had its own accounting personnel and division accounting manager, job applicants could apply at division or home office, division supervisors could fill vacancies, decide whether to interview applicants and whether they had the proper attitude for the employer, local supervisors initiated the change from probationary to permanent employee status, local supervisors decided who and when to promote and transfer, discipline and grievances handled and settled at the local level, had full authority to fire, and the division kept timekeeping, work assignment, absenteeism, evaluation, copies of division employee personnel requisition forms and customer billing information); *Natural Gas Pipeline Co. of America*, above (district superintendents exercised considerable authority over interviewing applicants, hiring, firing, disciplining, and granting time off, and no systemwide procedures for posting and bidding for job openings). By contrast, in this case local supervision has limited autonomy (granting time off and varying start times by up to an hour) and no discretion to deviate from the Employer's companywide policies. Simply put, local management has no significant authority to deviate from centrally exercised control.

The Board has also highlighted the lack of employee interchange. See e.g., *Michigan Wisconsin Pipe Line Co.*, above (no record evidence of significant employee interchange); *Mass. Elec. Co.*, 137 NLRB 1230 (1962) (interunit transfers rare). Conversely, here there is ample evidence of temporary transfers across the Employer's regions so that employees across the state regularly work with employees from other regions. Finally, while there is no bargaining history

in a systemwide basis, this factor does not outweigh the fact that the petitioned-for unit lacks of a sufficient community of interest apart from other employees.

In sum, given the high degree of centralized control over the regions as evidenced by the systemwide procedures applicable to all field employees, the employer's statewide procedures for posting and bidding for openings, substantial interchange of employees between regions, and local supervision's lack of substantial autonomy, a less than systemwide unit is not appropriate.

B. Construction Inspectors Would Appropriately Be Included in the Unit

1. Relevant Legal Standard

Section 9(a) of the Act gives employees a right to be represented by a union "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." The unit need not be the only appropriate unit, or even the most appropriate unit. *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 3 (2017), citing *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991), and *Serramonte Oldsmobile, Inc. v. NLRB*, 86 F.3d 227, 236 (D.C. Cir. 1996).

In determining whether a unit is appropriate, the Board applies the traditional community-of-interest test, in which it assesses "whether the employees in the petitioned-for group share a community of interest sufficiently distinct from the employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit." *PCC Structural, Inc.*, above at 5. In making this determination, the Board considers the following factors:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id., citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

In considering whether a group of employees shares "a community of interest sufficiently distinct" from the interests of excluded employees, the Board determines whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." *PCC Structural, Inc.*, above at 11 (emphasis added), citing *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784 (2d Cir. 2016). This "analysis must consider guidelines that the Board has established for specific industries with regard to appropriate unit configurations." *PCC Structural, Inc.*, above at 11. The Board has found mixed units which included field employees and inspectors as appropriate. See *Johnson Controls, Inc.*, 322 NLRB 669, 670–672 (1996) (a unit of fitters, system representatives,

preventative maintenance inspectors, and service specialists). Moreover, quality control employees are generally included in a production and maintenance unit based on traditional community-of-interest standards. *Blue Grass Industries*, 287 NLRB 274, 299 (1987). See also *Lundy Packing Co.*, 314 NLRB 1042, 1043–1044 (1994).

2. Analysis

The record reflects that Inspectors are responsible for quality control, loss control, and construction contractor field work oversight. They are the Employer's representative overseeing the field work in a construction job. The Employer also trains other field employees for similar inspection duties and the Employer does not contend those other employees are inappropriate for the petitioned-for unit. Moreover, the inspector assigned to the North Central Region is supervised by an operations supervisor and an operations manager who also supervise other field employees. Based on the foregoing, I find that inspectors share a community of interest with the other field employees in the petitioned-for unit and would appropriately be included in the unit.

III. CONCLUSION

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²⁵
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The petition must be dismissed because a unit limited to the Employer's North Central Region is not appropriate, and Petitioner has indicated that it would not proceed to an election in a systemwide unit.
5. If a unit limited to the classifications Petitioner seeks to represent in Employer's North Central Region were appropriate, construction inspectors could appropriately be included in that unit.

²⁵ I find, based on the stipulations of the parties, that the Employer, New Mexico Gas Company, Inc., a Delaware corporation with offices and places of operation across the State of New Mexico, is engaged as a public utility in the distribution of gas, and, during the 12-month period ending April 18, 2019, in the course and conduct of its business operations as described above, purchased and received goods valued in excess of \$50,000 directly from points outside the State of New Mexico.

IV. ORDER

IT IS HEREBY ORDERED that the petition in this matter is dismissed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 24, 2019**.

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

Dated at Phoenix, Arizona, this 10th day of June, 2019.

/s/ *Cornele A. Overstreet*
Cornele A. Overstreet, Regional Director