

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

ROGERS CORPORATION
Employer

And

01-UC-254546

TEAMSTERS LOCAL 251
Union/Petitioner

**UNION’S MEMORANDUM IN SUPPORT OF
PETITION FOR UNIT CLARIFICATION**

Introduction

This matter is before the Regional Director [“RD”] on a unit clarification [“UC”] petition filed by Teamsters Local 251 [“Union”] on January 13, 2020, seeking to add Quality Assurance Technicians [“QAT”] and the Engineering Assistant [“EA”] to the unit of “production, Maintenance and shipping/receiving employees employed by the employer at its Narragansett, Rhode Island facility.”

Background

On August 19, 2019, the Union filed a representation petition on behalf of “all full time and regular part-time production, maintenance, shipping/receiving *and quality assurance* employees employed by the employer at its Narragansett, Rhode Island facility.” Emphasis added. *Rogers Corporation*, 01-RC-246785. Pursuant to a stipulated election agreement dated August 26, 2019, QAT were permitted to vote subject to challenge. The election was conducted on September 12, 2019. Eligible voters selected the Union as bargaining agent by a margin of 100-27, with six (6) challenged ballots cast by QAT.¹ Tr. 45.

¹ Challenged ballots were cast by Anthony Spano, Beatrice Grillo, Maria Orellana, Sandy Smith, Kunthea Morm and Erik Dias.

The unit was certified on September 20, 2019. PX 13. The certified unit consists of “production, maintenance and shipping/receiving” employees,” who work in production, maintenance, administration and warehouse/shipping departments. The production employees are production associate I, II and III and production team leader. The warehouse/shipping employees are packer, shipping clerk and shipper packer associate. The maintenance employees are maintenance mechanic, senior maintenance machinist and senior maintenance technician. PX 1.²

Bargaining commenced on December 2, 2019. The parties have been unable to resolve whether QAT and EA should be included in the unit. Tr. 153.

Analysis

“If the parties cannot [after certification] resolve the status of [] nondeterminative challenged voters, the Board will process a unit clarification petition to determine the placement or status of the contested individuals.” *Kirkhill Rubber Co., Employer-Petitioner and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO*, 306 NLRB 559 (1992).

As this matter involves an initial unit determination rather than an accretion, the Board’s decision in *PCC Structural, Inc.*, 365 NLRB No. 160, 2017 WL 6507219 (2017), governs. See *Schuylkill Medical Center*, 2019 WL 995651, at n.11. See generally *New York Legal Assistance Group*, 02-UC-250710 (2020) (“sufficient community of interest” standard applied post-*PCC Structural*). The Regional Director must determine

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

² This exhibit includes the operations assistant, who is not in the bargaining unit. Tr. 49.

conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

*PCC Structural*s, 2017 WL 6507219, at *6. As explained in *The Boeing Company*, 2019 WL 4297642,³ the RD must examine shared interests of petitioned-for and excluded employees and conduct “a comparative analysis of excluded and included employees.”

[I]t is not enough to “focus[] on the interests shared among employees *within* the petitioned-for group.” Instead, the inquiry must also consider whether ““excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.”

Emphasis in original. *Boeing*, 2019 WL 4297642, at *1.

I. QAT and EA Share a Community of Interest with the Certified Unit

The UC petition should be granted because QAT and EA share a community of interest with the certified unit and do not have “*meaningfully distinct interests that outweigh similarities with unit members.*” In fact, the uncontradicted evidence established that QAT, EA and other employees in production, maintenance and warehouse/shipping are part of a single, integrated, self-contained operation. They have comparable skills, job functions, frequent interchange and interaction with unit employees, as well as comparable wages and terms and conditions of employment.

A. Whether the employees are organized into a separate department. QAT and EA are admittedly in a separate quality department, but the certified unit is already divided into separate departments. Employer Exhibit [“EX”] 10. The RD should therefore consider this factor inconsequential.

³ *Boeing* describes a three-step analysis. The first step - ‘identify[ing] shared interests among members of the petitioned-for unit,’ has been satisfied by the stipulation. The third step - special considerations of facility, industry, or employer precedent” is not applicable here

B. Whether the employees have distinct skills and training. QAT and production employees share similar job qualifications, including a high school diploma or equivalent, the ability to lift up to 50 pounds routinely and have comparable physical demands. *Compare* Petitioner’s Exhibit [“PX”] PX 10 *with* PX 11. All positions require good communication skills, English fluency and use of hand tools. EX 1, 2. There is no mandatory licensure or state certification for either department. Tr. 89. In fact, so far as the employer knew, all QAT became qualified based on their work in production. Tr. 88.⁴

C. Whether the employees have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications. The petitioned-for and unit employees have overlapping, integrated job functions. QAT “provide testing services to facilitate production and certification of products” manufactured in the facility, including “raw, [work in progress] and finished goods.” PX 10 (QAT job posting). Production employees “function as part of a team” to “set up, operate *and troubleshoot* complex equipment to assure safe, efficient production of materials” and “communicate production issues.” PX 11 (production associate III job posting).⁵ Production employees perform a “visual

⁴ The employer is expected to argue that skills and training are different because job postings are initially for QAT and internal and external for production. However, the employer offered no evidence that this procedure had any impact on actual hiring, and instead admitted that production employees were more likely to be hired internally in “seniority order.” Tr. 29.

⁵ To the extent that the RD wishes to consider written job descriptions, the RD should note that, unlike the job postings, the employer’s job descriptions are company-wide and do not necessarily reflect job duties at the Narragansett facility. Transcript [“Tr.”] 22. Postings are prepared by the hiring manager and are therefore more accurate. Tr. 76-7. Nonetheless, even the generic job descriptions tend to show overlapping responsibilities and interaction between the departments. For example, the QAT “notifies production” regarding compliance with specifications and “releases material to production” when it is compliant. Her “objective” is to “provide testing services used to facilitate production.” EX 2.

inspection/measurement/testing” of products and work in progress, EX 1, while QAT simply perform testing and measurement in a more formal way.

On the shipping side, employees confirm or verify paperwork and materials, EX 1, which is precisely what QAT do in a doc audit. Tr. 170.

D. Whether the employees are functionally integrated with the Employer's other employees. QAT and EA are completely integrated with the certified unit. The facility is “a self-contained operation for the most part.” The employer conceded that all of the departments “combine to produce from raw materials a finished product.”

Q. So we’ve got a single, integrated operation here, right?

A. Yes. TR. 114-5.

The departments also interact at the managerial level. Tr. 106-7. The quality department only tests materials used in or produced by the Narragansett facility. Tr. 113.

E. Whether the employees have frequent contact with other employees. QAT have daily contact with employees in all three departments of the certified unit. They “assist production with in-process testing.” Emphasis added. PX 10. Production employees produce samples of each machine’s run for examination by QAT. The employer claimed that “20 to 80” samples were produced each day. TR. 117 (Fargo). Anthony Spano [“Spano”] testified that he “easily” tests “10 to 30, 35” on his shift alone. Tr. 154. Up to 10 raw materials were also tested each day. Tr. 118. Fargo said a production employee or supervisor will notify QAT that a sample is ready, Tr. 120-1, while Spano testified that he “just knows” to obtain samples because they are constantly being produced. Tr. 155. Each sample is picked up by QAT or delivered to

the quality department by a production employee or supervisor. Tr. 119. ⁶ There is no pass card or security access between production and the quality department. Tr. 55, 138. Employees access each work area via a hall and stairway. This occurs multiple times each day. If the sample is “noncompliant” with production standards, QAT employees return to the production area(s) to “red X” the production run to ensure that the material does not travel further in the manufacturing process. TR. 163-4. QAT also notify other employees verbally and by email that a production problem has occurred, and QAT work with production employees to solve the issue. TR. 105; 123.

Q. So its fair to say that in trying to get to the problem – to the solution to the problem, there’s going to be communication between the quality department and the production department, right?

A. [By Fargo] Yes. That’s fair. Tr. 124-5.

See also Tr. 156-9 (Spano). Communication is in person “if it’s bad,” in order to limit the scope of the problem. Tr. 160. Production employees come to the quality department 2-3 times per day to deliver samples, usually for a rush order or if the production employee spots a problem that should be tested. Tr. 162.

QAT also perform “doc audits” in the warehouse/shipping area for at least one (1) or two (2) major customers. Tr. 129-30; PX 12. These customers insist that a quality employee examine each shipment before it leaves the facility. Doc audits occur several times per week. Tr. 131 (Fargo – 2-3 times per week); Tr. 168-9 (Spano - 2-3 time per day, for 2-8 hours.). The quality employee works directly with the warehouse employee to perform a doc audit. Tr. 170. In fact, the “essential functions” of the shipping clerk and receiving clerk include “communicat[ing] with various departments regarding product quality issues,” the shipper

⁶ Fargo did not know what the production employee did when he arrived at the quality department. Tr. 125-6

packer associate “verifies ... quality of orders,” and the packer “communicates with various departments such as quality ... relative to product quality issues and availability of material for further processing or shipping.” EX 1.

Maintenance employees work in the quality department to service utilities, and in the production area to service machinery. Tr. 101. Spano works with the maintenance department to help clean the oxidizer. Tr. 165.

This interaction among employees is admitted in the employer’s statement of the “essential functions” of production and warehouse/shipping employees. EX 1. Production associates I, II and III must “communicate with various departments regarding quality issues.” EX 1 at 1. Communication with other departments “regarding quality issues” is also reflected on the production associate III job posting. PX 11 at 1. Shipping clerks and receiving clerks must also “communicate with various departments regarding quality issues.” EX 1 at 1. Shipper packers and packers also participate in the dock audit process because they must “verif[y] quantity and quality of orders.” EX 1 at 2.

QAT also interact with other employees in non-work areas and non-work time. They have common lunch and break times and share the two (2) break rooms and vending machines, enter through a common area and park in a shared lot. Tr. 56-7. They jointly attend monthly plant production meetings, Tr. 58, 138, and safety committee meetings. Tr. 58-9, 139. There is also a ‘first responder team’ made up of employees from all department. Tr. 139-40. They share a common email system and email address, EMS RI Hourly@rogerscorporation.com. Tr. 59-60.

F. Whether there is interchange with other employees. There is regular interchange between QAT and production, maintenance and warehouse/shipping employees. Four (4) of the

five (5) current QAT started in production. Tr. 170-1; Tr. 81. One former QAT, Tom Morgan, started in production, then left his QAT position to return to production. Tr. 82; 109; 171-2.

In addition, QAT employees work in other departments as needed. QAT Spano worked in production and in maintenance. In the previous two years, Spano worked “a few times” in production and “as a backup for cleaning the oxidizers in warehouse/shipping. Tr. 132. The employer was short-staffed and “there was no other person in the entire facility who could run [the] machine. Tr. 133. Spano worked both jobs in a single workweek. Tr. 134. Spano cleaned the oxidizer, which was typically maintenance department work. Tr. 134-5. He has performed this job 6-12 times over the previous 2 years, usually on weekends. Tr. 166. Former QAT Thomas Morgan worked split shifts in quality and production for about two (2) months. Tr. 173-4

G. Whether there are distinct terms and conditions of employment. Petitioned-for employees have virtually identical terms and conditions of employment with the certified unit. Employees work in the same building and travel through each other’s work areas and departments to perform their usual duties or go on lunch or break. One production area (spooling) is immediately adjacent to the quality department, as is one of the break rooms. Tr. 116; EX 12. All employees work full time and are considered non-exempt hourly. Tr. 43. Wage rates are squarely within wage rates for employees in those departments. TR. 147-9; PX 1. Wage scales are also within the range of positions in the certified unit. PX 1. All positions are hourly and non-exempt. Salary range for QAT is about \$17.00 to about \$21.00; for production department employees about \$15.00 to about \$21.00, and for maintenance department employees about \$21.00 to \$33.00. PX 1. QAT and other unit employees are eligible for a

\$0.50 or \$1.00 shift premium. There is no discernable difference in the evaluation process. Tr. 29, 31-32; 62.

Employees share plant procedures, hours of work and overtime, vacation, bereavement, sick time, military leave, jury duty and holiday⁷ policies. PX 2-9. They work in the same facility and have a common work calendar, shift schedule and starting and stopping times. Tr. 53, 54, 136. They share a HR department. Tr. 60. QAT and other employees also participate in a recently negotiated “shutdown bank,” which allows hourly employees to donate unused personal, sick and vacation time to other employees during a plant shutdown regardless of department. Tr. 42-43.

Any differences in employment terms are minor. Production employees receive an automatic safety shoe payment of \$200 per year, while QAT receive up to \$200 per year reimbursement, but the employer offered no evidence that the actual amounts received were different. Tr. 71-3. EX 6. While employees are eligible to participate in different bonus programs, the employer failed to produce any evidence regarding the actual amounts paid. Tr. 37. Attendance programs appear to be different, but no evidence was offered regarding implementation of the program or disciplinary actions. Tr. 37; 61-2. Although QAT ‘punch in’ on a computer while other departments use a time clock, all timekeeping is recorded by the KRONOS time system which generates a similar time record. Tr. 55-6; EXS 5, 6.

H. Whether the employees are separately supervised. Although QAT and EA are supervised by the “quality supervisor,” their supervisory structure is comparable to the other departments in the certified unit, which also have their own supervisor. Tr. 93; EX 10. All departments ultimately report to Paul Samek, Director, Global Operations. Tr. 94; EX 10.

⁷ The holiday policy is subject to Rhode Island law identifying legal holidays. Tr. 67-70.

Conclusion

Quality assurance employees have often been included in a production unit. *See, e.g., Bendix Corp., Launch Support Div.*, 182 NLRB 430, 432 (1970); *Textron Lycoming Div., Avco Corp.*, 308 NLRB 1045, 1047 (1992).⁸ There is no reason to exclude them here.⁹ The petition should be granted.

Respectfully submitted,
Teamsters Local 251
By their attorney,

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I hereby certify that on the 3rd day of March, 2020, I e-filed this document through the Agency's website.

/s/ Janine Durand

⁸ The employer mistakenly contends that exclusion of quality department employees in other facilities is pertinent here. EX 8 and 9. Neither *PCC Structurals* nor *Boeing* suggest that the employer's practice in another facility is relevant to a unit determination. The employer presented no evidence that the issue had been litigated at other facilities, that relevant considerations at those facilities were comparable to those here or that there was some compelling reason for uniformity. Tr. 40-43. There are myriad reasons that parties may stipulate to a particular bargaining unit.

⁹ This is not a case in which *accretion* of was denied because quality control employees "had come into existence after the issuance of the certification and had been excluded from several subsequently negotiated contracts." *American Tempering*, 296 NLRB 699, 706 (1989). *See also SunarHauserman*, 273 NLRB 1176, 1177, 1984 WL 37134, at *2.