

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

**AIRGAS SPECIALTY PRODUCTS INC.**

**Employer**

**and**

**Case 09-RC-256424**

**GENERAL DRIVERS, WAREHOUSEMEN AND  
HELPERS, LOCAL UNION NO. 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**Petitioner**

**DECISION AND ORDER**

**I. INTRODUCTION**

Airgas Specialty Products Inc. (the Employer) provides anhydrous and aqua ammonia distribution to its customers from its base in Jeffersonville, Indiana (“facility”). The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the Employer’s delivery drivers. Contrary to the Petitioner, the Employer contends that a unit comprised solely of delivery drivers would be inappropriate because those employees share a community of interest with the Employer’s lead plant operator and field service technicians. The Petitioner takes the position that the lead plant operator should be separately excluded on the basis that he is a supervisor within the meaning of Section 2(11) of the Act. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

A hearing officer of the Board held a hearing in this matter on February 26, 2020, at which the parties were given the opportunity to present evidence and to orally argue their respective positions on the record prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that the Petitioner has not met its burden of showing that the lead plant operator should be excluded from the unit as a supervisor within the meaning of Section 2(11) of the Act. I further find that the record fails to establish that the petitioned-for unit constitutes a unit possessing a community of interest sufficiently distinct from the excluded lead plant operator and field service technicians under the standard set forth in *PCC Structurals*, 365 NLRB No. 160 (2017). The Petitioner has indicated that it does not wish to proceed to an election if I find that the only appropriate unit is one which includes all three job classifications. I will, therefore, dismiss the petition.

## II. FACTS

### a. Overview of the Employer's Operations

The Employer delivers bulk ammonia and provides field services to customers from its eight facilities located throughout the United States. Delivery services involve delivering ammonia to the Employer's customers. Field services refers to off-site work done at the customers' refrigeration and storage facilities. Field services include tasks such as setting up tanks, performing maintenance and rebuilding pumps, and pumping out existing ammonia and vapor from customers' tanks.

The facility herein (Jeffersonville, Indiana) is located in the Employer's North Region. It was built about 6 or 7 years ago and is overseen by Area Manager Jason Joslin, who is also responsible for a second North Region facility in Riverdale, Illinois. Joslin is based in Riverdale but typically visits the Jeffersonville facility at least twice per month. He is responsible for hiring new delivery drivers at Jeffersonville and is also in charge of discipline and terminations. There are currently five delivery drivers, three field service technicians, and one lead operator at Jeffersonville. Prior to 2018, the Employer only provided delivery services from its Jeffersonville facility and no field service technicians were employed there. Beginning in 2018, however, the Employer added field services to the Jeffersonville facility. Aside from Joslin, the lead plant operator, the delivery drivers and the field service technicians, no other employees regularly work in this facility. Jeffersonville's normal operating week is Monday through Friday, although deliveries and field services may occur over the weekend. The facility stores and provides anhydrous ammonia and aqua ammonia to customers. The aqua ammonia is produced on site (by the lead operator) by mixing anhydrous ammonia with ionized water. The lead plant operator is also responsible for purifying, i.e. ionizing, the water and loading both of the ammonia products onto trailers for delivery by the five drivers. Delivery drivers pick up and bring any raw materials that are needed at the facility unless there is a special arrangement with a third-party vendor to supply and deliver such material.

Operations at the Jeffersonville and Riverdale facilities are similar with the exception that Riverdale also fills cylinders with anhydrous ammonia for delivery to customers, whereas Jeffersonville does not deliver ammonia-filled cylinders. The Riverdale facility employs about 20 employees. Delivery drivers, plant operators, the lead plant operator, and field service technicians at the Riverdale facility all are represented by Teamsters Local 710 and covered by the same collective-bargaining agreement. Two of the Employer's other facilities also have union contracts: Denora, Pennsylvania and Delphos, Ohio. At each of these locations, drivers, operators, and field service technicians are covered under the same contract. Unlike Riverdale, Denora and Delphos, the Jeffersonville facility has no history of collective bargaining.

Delivery drivers, field service technicians, and the lead plant operator at Jeffersonville all park in the same area and have the same access to the facility, including office space, computers, restrooms and break rooms. All use the same electronic timekeeping system to record their hours. All wear the same uniform and are required to have the same personal protective

AIRGAS SPECIALTY PRODUCTS INC.

Case 09-RC-256424

equipment. The two computers at the Jeffersonville facility are used by all for filling out expense reports, checking email, logging hours, attending online classes, and other functions as needed. The lead plant operator exclusively uses one computer for the purpose of maintaining files, but the delivery drivers and field service technicians may access either computer. All are required to have a Class A commercial driver’s license with tanker and hazmat endorsements, and additionally must maintain a medical card per DOT regulations. When driving, all are required to perform the same pre- and post-trip inspections of their vehicles. All company vehicles have signs with the Employer name and logo. When transporting product, vehicles are required to display placards reflecting the trailers’ contents.

All three classifications at issue are bound by the same employee handbook, get the same holidays, and receive the same vacation and sick leave benefits. Delivery drivers are paid on a different scale than both the lead plant operator and the field service technicians. Delivery drivers earn between \$23.00 and \$24.00 per hour. The lead plant operator earns about \$26.00 per hour. Field service technicians earn between \$25.00 and \$31.00 per hour.

Delivery drivers, field service technicians, and the lead plant operator are each required to be able to perform the following critical tasks pursuant to a critical task training module and sign-off sheet:

| <b>Driver</b>                                     | <b>Operator</b>                                   | <b>Field Service Technician</b>                   |
|---|---|---|
| Anhydrous Cold Flo Testing                        | Anhydrous Cold Flo Testing                        | Anhydrous Cold Flo Testing                        |
|   | Aqua Conversion Process and Anton Par Testing     | Aqua Conversion Process and Anton Par Testing     |
| Load/Unload Anhydrous & Aqua Tank Wagon with Pump | Load/Unload Anhydrous & Aqua Tank Wagon with Pump | Load/Unload Anhydrous & Aqua Tank Wagon with Pump |
| Load/Unload Anhydrous Tank Wagon with Compressor  | Load/Unload Anhydrous Tank Wagon with Compressor  | Load/Unload Anhydrous Tank Wagon with Compressor  |
| Initial Fill (both Anhydrous & Aqua)              |   | Initial Fill (both Anhydrous & Aqua)              |
|   | Unload Anhydrous & Aqua Railcar                   | Unload Anhydrous & Aqua Railcar                   |
|   |   | System Line Break                                 |
|   |   | Pump-Out (Anhydrous & Aqua)                       |

Delivery drivers may also be trained on other tasks over the course of their employment.

**a. Lead Plant Operator**

The lead plant operator is responsible for ensuring the trucks and units are kept up to code with applicable Department of Transportation regulations. He assists the area manager with day-to-day operations. In this capacity, the lead plant operator regularly communicates with the area manager several times each day. He dispatches assignments to the delivery drivers by relaying customer orders that have been either generated through an automated computer system or placed with customer service representatives at the Riverdale facility. The automated system, referred to as telemetry, allows system users to check the customers' usage. Based on those readings, the Employer determines whether deliveries are necessary. The lead plant operator may also perform maintenance functions at the facility, from repairing gaskets to rebuilding pumps. Delivery drivers have also assisted with rebuilding pumps.

The lead plant operator relieves delivery drivers in their absence about 3 to 4 days per month. He was a delivery driver prior to becoming lead plant operator. On the other hand, neither the lead plant operator nor the drivers fill in for field service technicians, and vice versa. A delivery driver is currently in training to take over the position as lead plant operator. Training for the lead plant operator position does not involve an increase in wage rate.

While the lead plant operator dispatches delivery drivers to their assignments, he does not dispatch the field service technicians. They report to the Employer's national field service coordinators – one of whom is located in Riverdale and the other in another location not definitively identified.

The lead plant operator has not disciplined delivery drivers and has no authority to do so. Although there is record evidence that he has been present for interviews of drivers, there is no evidence that he was otherwise involved in the hiring of new delivery drivers or made any recommendations. When delivery drivers plan to arrive late, depart early, or call off, they contact the lead plant operator. The record does not clearly disclose what action, if any, that he takes in response to such calls.

**b. Delivery Drivers**

Delivery drivers load and deliver ammonia to customers in the region and also pick up and bring raw materials to the facility when needed. In doing so, they perform the critical tasks listed on the chart above. Delivery drivers "pump in" or "pump off" ammonia from the trailers attached to their tractors, but they do not "pump out" ammonia from costumers' tanks like the field service technicians. When delivering ammonia, delivery drivers inspect the hook-ups as part of their safety procedures and may perform simple repairs such as changing a flange or gasket on the customer's tanks.

Delivery drivers exclusively drive "day-cab" tractors and are not permitted to sleep overnight in these vehicles. There are five such "day cabs" at the facility – corresponding to the number of drivers – and two "sleeper cabs," which are used exclusively by the field service

technicians. The delivery drivers spend about 2 or 3 nights per month on overnight assignments. They generally have “minimal” interaction with field service technicians, which is not more specifically quantified in the record. However, they may be dispatched to assist a field service technician and would work together with the field service technician in those instances. On such occasions — the record does not disclose how often this occurs at Jeffersonville - the delivery drivers’ role is to drive a gas wagon or an aqua trailer to the site and to transport the pumped-out product back to the facility. The driver may also assist by monitoring the compressor while the field service technician does the “pump out.” When assisting field service technicians, delivery drivers are given a \$2.00 per hour premium.

The Employer explained that it pulls delivery drivers to assist the field service technicians with pumping out because the field services are consistently understaffed. If a field service coordinator needs a second driver to transport a trailer or to assist with a pump-out, that coordinator contacts the area manager over the respective facility to see if a delivery driver is available to assist with transportation. The area manager then will contact the lead plant operator to determine whether a delivery driver is available to assist.

### **c. Field Service Technicians**

While delivery drivers “pump in” ammonia to customer and facility tanks, field service technicians “pump out” ammonia from customer tanks to the trailers attached to their tractors. This work involves drawing out existing ammonia and vapors from tanks. When performing this work, field service technicians may drive sleeper-cab trailers, which permit them to sleep overnight when they are on assignment, or they may drive day-cabs like the delivery drivers – although it is unclear how often they use day cabs as there are only five. Field service technicians also perform maintenance and structural work, which includes setting up new tanks for customers and the Employer and repairing their existing tanks. In this capacity, field service technicians drive pick-up trucks, which store the necessary parts and tools. Delivery drivers do not drive the pick-up trucks or perform any set up or repair work.

Field service technicians report to one of two national field service coordinators: one is in Riverdale, Illinois and another is at a different plant. (Joslin believed it to be the Carbondale, Illinois plant but was unsure.) Unlike delivery drivers, field service technicians do not report to the facility every day. Field service technicians may spend as many as 30 nights on overnight assignments and may work in different parts of the country. The record does not disclose what, if any, additional compensation they receive while in such travel or overnight status.

Field service technicians are required to pass an Employer-administered exam to be accepted into the position. All of the field service technicians working at the Jeffersonville facility were previously employed as delivery drivers at that facility. The record does not reflect how or when they came to be field service technicians. Joslin testified that the driver’s job is not necessarily in the line of progression to the field service technician job.

## BOARD LAW

### III. LEGAL STANDARD

#### a. Community of Interest Standard

When examining the appropriateness of a unit, the Board must determine not whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is “*an* appropriate unit.” *Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 2 (2010) (emphasis in original) (citing *Overnite Transp. Co.*, 322 NLRB 723 (1996)). In determining whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. See, *Wheeling Island Gaming*, supra.

Additionally, the Board analyzes “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from that unit to warrant a separate bargaining unit.” *PCC Structural*s, 365 NLRB No. 160, slip op. at 11 (2017). See also, *Wheeling Island Gaming*, 355 NLRB at 642 fn. 2 (the Board’s inquiry “necessarily proceeds to a further determination of whether the interests of the group sought are sufficiently distinct from those of other employees to warrant establishment of a separate unit”).

In weighing the “shared and distinct interests of petitioned-for and excluded employees [...] the Board must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *PCC Structural*s, Inc., supra at slip op. 13, quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)(emphasis in original). Once this determination is made – by applying the Board’s traditional community of interest test - “the appropriate-unit analysis is at an end.” *Ibid.* In other words, “at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned-for unit.” *Ibid.* Rather, “parties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group will [...] introduce evidence in support of their position.” *Ibid.*

The Board’s traditional community-of-interest test examines:

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.

*PCC Structural*s, supra at slip op. 13, citing *United Operations*, 338 NLRB 123 (2002).

**b. Section 2(11) Supervisor Standard**

Section 2(11) of the Act defines a “supervisor” as:

any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of a supervisor, a person needs to possess only 1 of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1334 (2000). Thus, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997); *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB 646, 649 at fn. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, *Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000); *Chevron U.S.A.*, 308 NLRB 59, 61 (1992). The authority to effectively recommend “generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children's Farm Home*, 324 NLRB 61, 64 (1997).

In enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Thus, the ability to give “some instructions or minor orders to other employees” does not confer supervisory status. *Id.* at 1689. Such “minor supervisory duties” do not deprive such individuals of the benefits of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974), quoting Sen. Rep. No. 105, 80th Cong. 1st Sess., at 4. In this regard, the Board has frequently warned against construing supervisory status too broadly because an individual deemed to be a supervisor loses the protection of the Act. See, e.g., *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006); *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

Finally, proving supervisory status is the burden of the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Arlington Masonry Supply*, 339 NLRB 817, 818 (2003); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Any lack of evidence in the record is construed against the party asserting supervisory status. See, *Williamette Industries, Inc.*, 336 NLRB 743, 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409. Moreover, mere inferences or conclusionary statements without detailed specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

#### IV. ANALYSIS

##### a. The Lead Plant Operator Is Not a Supervisor Within the Meaning of Section 2(11) of the Act

A threshold issue in this case is whether the lead plant operator should be excluded from consideration in the petitioned-for unit because he is a supervisor within the meaning of the Act. The Union argues that the lead plant operator “functions as a facilitator and supervisor of the home yard and facility.” In support of its position, the Union asserts that the lead plant operator functions as dispatcher and recommends discipline but otherwise did not proffer specific indicia in support of its claim. Initially, I note that the Petitioner did not present any evidence purporting to show that the lead plant operator has the authority to transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend any of such actions. Insofar as there is record evidence that the lead plant operator has been present during the interview of applicants for hire, such evidence is insufficient to establish any sort of supervisory authority to hire or to effectively recommend hire. There is no evidence that he makes any decisions or recommendations related to such interviews.

A slightly closer question, but one that ultimately results in the same conclusion as with other indicia, is whether the lead plant operator has any authority to assign or to responsibly direct employees by virtue of his role as the dispatcher for the Jeffersonville facility. To the extent that dispatching the delivery drivers may constitute assigning or directing work, the record fails to demonstrate that the lead plant operator exercises the requisite independent judgment when performing such duties. In this regard, the record does not disclose what, if anything, he takes into consideration when dispatching drivers. Furthermore, it is the area manager who ultimately receives customer requests for deliveries and relays that information to the lead plant operator for dissemination to the drivers. Finally, the need for deliveries is primarily determined by either the automated telemetry system or orders placed with the Employer’s customer service representatives at its Riverdale facility. Assignment or responsible direction will, as set forth in the statute, produce a finding of supervisory status only if the exercise of independent judgment is involved. *Oakwood Healthcare, Inc.*, 348 NLRB at 687-688. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Id.* at 690-691. Independent judgment requires that the decision “rise above



the merely routine or clerical.” *Ibid.* Here, the lead plant operator’s authority associated with dispatching delivery drivers is nothing more than routine or clerical in its nature.

Because the Petitioner has not met its burden of showing that the lead plant operator exercises any of the aforementioned supervisory indicia, or recommends any of those actions, with the requisite independent judgment, I find that the lead plant operator is not a supervisor within the meaning of Section 2(11) of the Act.

**b. Delivery Drivers Do Not Share a Community of Interest that is Sufficiently Distinct from the Lead Plant Operator and Field Service Technicians to Constitute a Separate Unit**

Applying the Board’s community-of-interest test, I find that the five delivery drivers do not share a community of interest that is sufficiently distinct from the lead plant operator and field service technicians. *PCC Structurals, Inc.*, supra at slip op. 13.

**i. Department Organization**

The record does not clearly disclose whether there is any sort of operational or departmental division within the Employer’s organization, aside from general testimony that the Employer provides two separate services: delivery of ammonia to its customers, which is accomplished by the lead plant operator and delivery driver, and field services, which is accomplished by the field service technicians. On the one hand, I note, that the field service operates on a nationwide basis, and that field service customers are not necessarily delivery customers, and vice versa. Additionally, for most of its existence, up until 2018, the Jeffersonville facility offered only delivery service; it was not until 2018 that the Employer began offering field services from the Jeffersonville facility. However, there is no record evidence necessarily showing that the two services are organized into separate operational divisions. Moreover, the record is unclear as to the extent that the area manager may exercise supervisory authority over both delivery drivers and the field service technicians. Given the uncertainties in the record as to the contours of the Employer’s departmental organization, I find that this factor neither weighs in favor of, nor against finding appropriate a separate unit of delivery drivers.

**ii. Skills and Training**

This factor examines whether disputed employees can be distinguished from one another based on duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that disputed employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same employer training programs, or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Serv.*, 313 NLRB 657 (1994).

All delivery drivers, field service technicians, and the lead plant operator are required to maintain the same CDL licensing and endorsements. Moreover, as demonstrated by the chart above summarizing the critical tasks that they are required to perform there is significant overlap between the three positions. While field service technicians are required to complete additional training and to pass an examination to perform their functions, the record discloses that some field service training may be completed by delivery drivers while they are on the job.

Thus, in this factor, delivery drivers, the lead plant operator, and field service technicians possess a skill sets that are not sufficiently distinct to warrant the exclusion of the lead plant operator and field technicians.

### **iii. Job Duties**

This factor examines whether the disputed employees can be distinguished from one another based on job functions. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, 349 NLRB 603.

Although the delivery drivers and the lead plant operator perform distinct functions, there is a considerable degree of overlap in their functions insofar as it is the lead operator who prepares and loads product into the trailers so that it can be delivered by the drivers. As well, he is the one who relays customer orders to the drivers so that they can make their deliveries. Thus, they work together to accomplish deliveries (see below for further discussion regarding their functional integration). Moreover, the lead plant operator fills in for drivers to do deliveries 3 to 4 times a month and both classifications are required to come to the facility daily as part of performing their jobs. By contrast, the essential job function of the field service technicians is to provide field services to the Employer's customers at the customer's site. While delivery drivers are primarily responsible for delivering and pumping product into the customer's tanks, field service technicians are primarily responsible for setting up new tanks and providing maintenance and other repair functions, during which they may need to pump product out of the customers' tanks. In performing their duties, the field service technicians may spend up to 30 days on the road and they do not report to the facility every day like the delivery drivers and the lead plant operator.

I find that the overlap in job duties of the lead plant operator and the delivery drivers weigh in favor of finding that they share a distinct community of interest. The job duties of the field service technicians tend to distinguish them somewhat from the other two classifications, but not in such a manner as to overcome the overall community of interest that is established by other factors.

#### **iv. Functional Integration**

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. For example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or a single service as a group. *Arvey Corp.*, 170 NLRB 35 (1968); *Transerv Sys.*, 311 NLRB 766 (1993). Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Sys.*, 311 NLRB 766.

The record demonstrates that the work of delivery drivers and, the lead plant operator is highly integrated. The lead plant operator mixes and loads the product into the trailers that is subsequently delivered by the delivery drivers to customers and pumped into their tanks. The field service technicians do not necessarily depend on the drivers to perform their functions, except in cases of understaffing where drivers may be dispatched to assist them. On the other hand, the record discloses that at least some of the ammonia that is pumped out by the field service technicians is taken back to the Jeffersonville facility, which would support some degree of integration between the field service technicians and the lead plant operator. In this regard, the record discloses that, when the delivery drivers assist field service technicians with pump outs, they return the pumped-out products to the Employer's facility, which is maintained by the lead plant operator. While the record is less clear on the degree to which this occurs, the field service technicians presumably deliver some of their pumped-out product to the Jeffersonville facility.

I find that this factor supports inclusion of both the lead operator and the field service technicians due to the high degree of functional integration between the delivery drivers and the, lead plant operator, and the evidence showing that there is some functional integration between the field service technicians and the lead plant operator.

#### **v. Contact**

Another factor to be considered in determining the appropriateness of a unit is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to analyze the amount of contact employees in the unit sought by a union have with one another. See, e.g., *Casino Aztar*, 349 NLRB 603.

Here, the record establishes that all delivery drivers have regular contact with the lead plant operator, occasional contact with one another, and somewhat more limited contact with field service technicians. The lead plant operator has regular contact with the delivery drivers as necessitated by his function as a dispatcher and one who helps to load product into the trailers. Moreover, the record indicates that delivery drivers all report daily to the facility, where the lead plant operator regularly works. Conversely, the record indicates that field service technicians are

not required to report daily to the facility and may go extended periods without visiting it. This is perhaps best illustrated by record evidence that all delivery drivers and the lead plant operator attended a safety meeting within the past 3 months, at which none of the field service technicians were present because they were all working in the field. However, the evidence also shows that the delivery drivers occasionally assist the field service technicians and that, when at the facility, all the employees share a common office area and use the same break rooms and parking areas. Moreover, I note that the record discloses that all three classifications spend the bulk of their day working independently of each other. Thus, even the drivers in the petitioned-for unit often have relatively little daily contact with each other.

I find that the amount of contact between the delivery drivers and the lead operator would support their inclusion in the same unit. Additionally, I find that the record establishes that the field service classification has sufficient contact with the other two classifications to warrant its inclusion.

#### **vi. Interchange**

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Res. Assoc.*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)). Also relevant for consideration of interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp.*, 287 NLRB 359.

There is evidence of interchange between the lead plant operator and the drivers. He regularly provides temporary relief to absent drivers about 3 to 4 days per month. Additionally, a delivery driver is currently training to permanently transfer to the lead plant operator position, indicating that the lead operator position is in delivery drivers’ line of progression.

While, the record offers no example of a field service technician who has temporarily served in a capacity as a delivery driver, it is critical that all three of the field service technicians formerly served as delivery drivers at the Jeffersonville facility. And while there is no evidence that any delivery driver has been temporarily transferred or assigned to perform the functions of a field service technician, the record does offer examples of delivery drivers assisting field service technicians with not only delivering pumped out product, but with the process of pumping out. Thus, on balance, the existence of some permanent and temporary interchange between delivery drivers, the lead plant operator, and field service technicians supports a finding that the community of interest warrants a single unit comprising all three classifications.

**vii. Terms and Conditions of Employment**

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. See, e.g., *Overnite Trans. Co.*, 322 NLRB 347, 349 (1996).

I find that the petitioned-for delivery drivers have the same or substantially similar terms and conditions of employment as excluded employees with regard to shared facilities and equipment, work rules and policies, benefits, and uniforms.

The evidence concerning wages indicates that field service technicians are generally paid on a higher scale than drivers and the lead plant operator. And, as noted above, field service technicians must complete additional training and take an examination as a precondition of employment in this position.

I find that all three classifications generally share the same interest in terms and conditions of employment.

**viii. Supervision**

The fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, 338 NLRB at 125. Similarly, although, the fact that two groups of employees are separately supervised may weigh in favor of finding against their inclusion in the same unit, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607, n.11.

Here, the lead plant operator and the delivery drivers are commonly supervised by Area Manager Jason Joslin, while the field service technicians are supervised separately by field service coordinators from other facilities. The record offers no information on the extent to which Joslin may exercise some incidental supervisory authority over field service technicians. It is evident that the field service technicians' work is coordinated nationwide under the Employer's field services program. On this record, I find that the common supervision between the lead plant operator and delivery drivers weighs in favor of finding a shared community of interest between those two classifications. I further find that the field service technicians are under separate supervision. However, on balance, I do not find that this factor is sufficient to overcome the factors showing the shared interests between the field service technicians and the other two classifications.

**ix. Industry Standards**

Finally, I find that the existence of collective-bargaining agreements at other Employer facilities, which cover delivery drivers, lead plant operators, and field service technicians provides additional support for the conclusion that all classifications should be included in a single unit.

**CONCLUSIONS AND FINDINGS**

Based upon the foregoing and the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case. <sup>1/</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time delivery drivers, lead plant operators, and field service technicians employed by the Employer at its facility located at 5133 Maritime, Jeffersonville, Indiana, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

**DISMISSAL OF PETITION**

Because the Petitioner stated at the hearing that it does not wish to proceed if the Acting Regional Director finds that a single unit comprised of all job classifications herein at issue is appropriate, the petition is hereby dismissed.

---

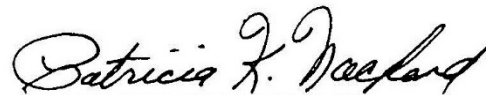
<sup>1/</sup> The parties stipulated to the facts establishing that the Employer is engaged in commerce for purposes of establishing jurisdiction.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Acting Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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](http://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 Acting Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: March 11, 2020



---

Patricia K. Nachand, Acting Regional Director  
National Labor Relations Board, Region 09  
550 Main Street, Room 3-111  
Cincinnati, OH 45202-3271