

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1**

ROGERS CORPORATION

Employer

And

Case 01-UC-254546

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 251**

Petitioner

DECISION AND ORDER

The Employer, Rogers Corporation (Employer), operates a facility in Narragansett, Rhode Island where it develops and manufactures specialty material products used in the aerospace, automotive, and communications industries. On September 20, 2019, Petitioner, International Brotherhood of Teamsters, Local 251 (Petitioner), in Case 01-RC-246785, was certified as the exclusive collective-bargaining representative for “all full-time and regular part-time production, maintenance and shipping/receiving employees employed by the Employer at its Narragansett facility,” (the Unit). In that case, I approved a Stipulated Election Agreement between the parties covering the Unit that would allow Quality Assurance Technicians to vote subject to challenge, and that the eligibility or inclusion of those individuals would be resolved, if necessary, following the election.¹

On January 13, 2020,² the Petitioner filed the petition in this matter seeking to include the Quality Assurance Technician (QA Tech) and Quality Assurance Engineering Assistant (QA

¹ Because the challenged ballots cast by the Quality Assurance Technicians were not determinative of the election results, they were neither included in nor excluded from the Unit covered by the certification.

² All dates hereinafter are in 2020 unless otherwise noted.

Engineering Assistant) positions in the Unit. The Employer opposes this broader unit and seeks to exclude the QA Techs and QA Engineering Assistant on the basis that they do not share a community of interest with the employees in the Unit, asserting that the exclusion of QA employees from bargaining units at its other unionized facilities supports their exclusion here.

A hearing officer of the Board held a hearing in this matter on February 25. As described below, based on the record and in accordance with Board unit principles, I find that the classifications of QA Tech and QA Engineering Assistant share a sufficient community of interest with employees in the Unit and are therefore, properly included.

The Employer's Operations

The Employer's Narragansett facility has two floors. About 180 employees work at the facility, 140 of which are in the Unit. Most of the production employees work on the first floor. The shipping and receiving and maintenance departments are also on the first floor. The QA office and laboratory are on the second floor, but slitting and spooling machines operated by production employees are also located on that floor. All employees can freely enter the production and quality department work areas without using a security pass card. The unit employees and quality employees share a parking lot while office and salaried employees use a different lot.

Jerry Fargo, the Operations Manager, oversees production, shipping and receiving, and maintenance work at the facility. The production, shipping and receiving, and maintenance departments have their own respective supervisors – all of whom report to Fargo. Quality

Supervisor, Clint Propst supervises the disputed QA Techs and QA Engineering Assistant, and he reports to Senior Quality Manager, Royal Jones.

The Unit Employees

Production employees operate the manufacturing equipment and are responsible for visually inspecting, testing, and measuring their work. Qualifications for these positions include a minimum of one-year general manufacturing experience, a high school diploma or equivalent, the ability to lift 50 pounds, and a demonstrated ability to be “comfortable” around manufacturing equipment. Maintenance employees service and repair production equipment and perform maintenance work in the quality department, while the shipping and receiving employees receive incoming raw materials and ship manufactured product to customers.

The Disputed QA Tech and QA Engineering Assistant Classifications

The quality department consists of five QA Techs and one QA Engineering Assistant. The quality department tests samples of raw and manufactured materials and reports whether those samples pass specification tests. If the samples do not pass testing, the quality department employees prepare and issue non-conformance notices in ETQ, the Employer’s electronic quality reporting system.

QA Tech

QA Techs test incoming raw materials and samples of manufactured materials in the QA lab. Test samples are obtained in three ways, two of which result in contact between quality and production department employees: (1) production employees drop off the samples at the QA lab;

(2) QA Techs pick up samples from the production floor; and (3) a supervisor may bring samples to the QA lab. One of the Employer's QA Techs testified that on a daily basis, he and other QA Techs collect samples for testing from the production floor and communicate with production department employees about production and quality issues. The QA Techs measure and test production samples using equipment, such as mass spectrometers, in the QA Lab, to determine if they meet specifications. A QA Tech testified that he tests anywhere between ten to thirty-five samples per shift, in addition to testing raw material samples. He testified that he measures materials with a production employee on the production floor to address run issues and ensure that materials meet specifications for width, thickness, and length. When a sample fails testing, the QA Tech communicates with the production department. Initially, the QA Tech will go to production floor to "red X" the non-conforming product to segregate it from the conforming materials. The QA Tech then enters a "non-conformance" into the ETQ system, which generates an email alert to individuals involved in producing the product, that the sample is non-conforming.³

QA Techs' job description identifies the essential functions for the position as notifying production if final material passes certification, certifying and generating certificates of compliance, performing lab testing of incoming raw materials, and maintaining quality records and procedures.⁴ The required education and experience for the position includes a high school

³ The email alert is sent to production department employees, quality supervisors, and employees of the management operation team, and a decision for a retest or adjustment is made.

⁴ A job posting for QA Tech at the facility states that the position "assists production within process testing."

diploma or equivalency, and a minimum of one-year hands-on experience in product testing. No technical degree or state certification is required for the position.⁵

QA Techs' duties also overlap with those of employees in the shipping and receiving and maintenance departments. QA Techs work with shipping and receiving employees to perform document audits for certain customers, depending on business volume and occasionally help prepare the cardboard boxes used to ship goods. These audits involve the review and verification of paperwork associated with a customer order. In the month preceding the hearing, QA Techs performed document audits about two to three times a week. One QA Tech testified he works with the maintenance department personnel when he is assigned to clean the thermal oxidizer machine.⁶ The Maintenance Supervisor assigns this work to him, and he has performed this task six to twelve times in the past couple years, including as recently as two weeks before the hearing in this matter.⁷

Four of the five incumbent QA Techs at the facility previously worked in production and one was promoted into the position without the requisite high school diploma. One of the QA Techs permanently returned to production. In addition, QA Techs have been temporarily

⁵ New QA Techs receive a one-month training period on how to operate specific machines and how to research material specifications.

⁶ The thermo oxidizer is a tall smokestack with over 500 holes. The cleaning process involves a person crawling inside the machine and using an air compressor with a cable and attached scrapers to clean the holes. The QA Tech performing this work testified that he typically cleans half the holes and another maintenance employee cleans the remaining holes. The QA Tech began cleaning the machine when he was in production and now serves as a "backup."

⁷ Special training is required to perform this work and there is no record evidence that any other quality employees perform this work or interact with employees of the maintenance department in this manner.

assigned to perform work in the production department.⁸ The record reveals for instance that the Employer assigned one QA Tech to operate an S-pack machine for a two-month period when no production employees were available to operate that machine. During this period, this employee performed this work exclusively, although his pay rate remained the same. The record also reveals that another QA Tech, was assigned to operate a machine in the production department for a similar reason. When he was temporarily assigned to production, this employee simultaneously worked in the quality and production departments, working four hours in each department every day for a month.

QA Engineering Assistant

The QA Engineering Assistant addresses and corrects production defects or issues by “root-causing” the problem.⁹ Prerequisites for the position include, a high school diploma or equivalent, five years of technical experience in similar work, strong computer skills, and demonstrated root cause analysis and problem-solving techniques. The QA Engineering Assistant position requires more intricate problem solving and its incumbent bears more responsibility than the QA Techs does.¹⁰ However, the QA Engineering Assistant works in the QA lab with QA Techs, reviews non-conforming materials, and issues the certifications for materials ready for shipping just as they do. The incumbent in the position completes a considerable amount of the paperwork associated with compliance. Thus, the QA Engineering

⁸ There is no evidence that the Employer transferred or assigned nit production personnel to work in quality or perform quality work, on a temporary basis.

⁹ The record is silent about what steps a QA Engineering Assistant takes to “root cause” and correct non-conformance issues.

¹⁰ There are no specific details in the record regarding the problem-solving aspects of the QA Engineering Assistant position.

Assistant is responsible for completing written reports and responses to customer complaints which require review and approval by Fargo. Finally, because of his role in handling customer complaints and non-conformance at the facility, the QA Engineering Assistant attends daily meetings with plant leadership and support services, including production planning and engineers.

Terms and Conditions of Employment of the Unit and the Disputed QA Classifications

Unit and quality employees are paid hourly, work the same three-shift schedule, and record their time using the same timekeeping system (although they input it differently). They are also covered by the same sick time, vacation, holiday, and overtime policies and utilize the same e-mail system. They also participate in the same plant shutdown leave bank, have the same unpaid 30-minute break, attend the same monthly plant meetings, are eligible to serve on a plant safety committee and as first responders and share many of the same benefits. Although quality employees do not share the same bonus, evaluation, and discipline process with unit employees, their hourly wage rates fall within the same range as many of the production and shipping and receiving employees and are significantly less than what the skilled maintenance employees in the Unit earn. Wage increases for all groups are merit based and occur on an annual basis.

The Employer posts open positions on its Taleo jobs board. Unit production openings are posted internally, whereas quality positions are simultaneously posted internally and externally. Open unit production positions are usually filled based on seniority when there are internal candidates. The Employer's operations team does not interview internal candidates for production positions but does interview employees for QA positions.

Analysis

If collective bargaining cannot resolve the status of non-determinative challenged voters following an election, the Board will process a unit clarification petition to determine the placement or status of the contested individuals. *See Kirkhill Rubber Company, 306 NLRB 559 (1992)*. In this case, the Petitioner is seeking to add the QA Techs and QA Engineering Assistant to the existing production and maintenance bargaining unit. The Employer opposes this broader unit on the grounds that the quality employees lack a sufficient community of interest with existing bargaining unit employees to warrant inclusion. In particular, the Employer argues that there are few to virtually no shared interests between the quality and unit employees because quality employees perform different functions, have more technical job requirements, have different supervision, work in different areas, and are not involved in the production process.¹¹ The Employer particularly distinguishes the QA Engineering Assistant, arguing that the duties of that position carry more responsibility than those of the QA Techs.

In deciding the appropriate unit, the Board first considers the union's petition and whether the unit sought is appropriate. *Overnite Transportation Co., 322 NLRB 723 (1996)*; *See also National Cash Register Co., 166 NLRB 173 (1967)*. The Act does not require that a bargaining unit be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate one. *Overnite Transp. Co., 322 NLRB 723 (1996)*; *P.J. Dick Contracting, Inc., 290 NLRB 150 (1988)*; *Morand Bros. Beverage, 91 NLRB 409, 418*

¹¹ Specifically, the Employer points to differences such as QA employees' method of recording time, their performance evaluation process and bonuses, the fact that they are not involved in the production process, different benefits, no shared supervision, different work areas, and attendance of separate department meetings.

(1950), *enf'd*. 190 F.2d 576 (7th Cir. 1951). In this regard, a union is not required to seek a narrower unit if a broader unit is also appropriate. *Overnite*, 322 NLRB at 723-724, citing *NLRB v. Carson Cable TV*, 795 F.2d 879 (9th Cir. 1986). A union is not required to seek the same unit at different locations of the same employer, even where there is a collective bargaining history of such units. *Overnite*, 322 NLRB at 724, citing *Big Y Foods, Inc.*, 238 NLRB 855, 857 (1978), *enf'd*. 651 F.2d 40, 46-47 (1st Cir. 1981).¹²

In determining whether a petitioned for unit is appropriate, the Board's focus is on whether the employees share a sufficient community of interest. *Id. Overnite*, 322 NLRB at 724. The Board has recently reaffirmed that the community of interest test requires it to 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 conditions of employment; and are separately supervised.

PCC Structural, Inc., 365 NLRB No. 160, slip op. at 11 (2017), quoting *United Operations, Inc.*, 338 NLRB 123, (2002).

The Board has routinely found the inclusion of quality control employees with production and maintenance employees to constitute an appropriate bargaining unit where there exists a sufficient community of interest between the two groups, particularly where the duties of the quality control employees are an integral part of the production process. *Keller Crescent Co., Inc.*, 326 NLRB 1158 (1998); *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987); *Libbey*

¹² Thus, the fact that QA employees are not included in the production and maintenance units at the Employer's other locations is of no consequence in determining whether their inclusion is appropriate here.

Glass Division, Owens-Illinois, Inc., 211 NLRB 939, 941 (1974); *Ambrosia Chocolate Division of W. R. Grace & Co.*, 202 NLRB 788, 789 (1973).

In this case, the record clearly establishes that the disputed quality employees play an integral role in the Employer's manufacturing process and share a sufficient community of interest with the unit employees to appropriately include them in the Unit.¹³ The record establishes that the QA Techs inspect and test samples of incoming raw materials and manufactured materials and report on whether such samples meet specifications to bargaining unit employees. QA Techs have frequent contact with unit production employees when they perform this work, sometimes working with them directly on production run issues to ensure the manufactured goods meet specifications. The QA Techs have skills and education requirements comparable to those of employees in the Unit. QA Techs have substituted for production employees and have overlapping job duties and contact with the shipping and receiving employees. In addition, at least one QA Tech, performs work in the maintenance department.¹⁴

¹³ In its brief, the Employer argues that the overwhelming community of interest standard set forth in *Safeway Stores, Inc.*, 256 NLRB 918 (1981) is the appropriate standard to apply in this case. Unlike this case, the issue in *Safeway* did not involve an initial unit determination, but rather an accretion of a newly created delicatessen department into an existing bakery unit. The overwhelming community of interest test applies when the Board is considering the appropriateness of an accretion and is not used in making an initial unit determination when a petitioner is seeking a broader unit than what the employer is proposing. See *Schuylkill Medical Center South Jackson Street d/b/a Lehigh Valley Hospital- Schuylkill South Jackson Street*, 367 NLRB No. 100, slip op. at 7 fn. 11 (2019) where the Board observed that *PCC Structural, Inc.*, 365 NLRB No. 160 overruled *Macy's, Inc.*, 361 NLRB 12 (2014) "to the extent that *Macy's* applied an 'overwhelming community of interest' standard to the inclusion of additional employees in the initial unit determination context..." The Union's petition in this case seeking a broader unit is analogous to an *Armour-Globe* self-determination election, which permits petitioned for unrepresented employees to seek representation in an existing unit where a community of interest exists between the two groups. See *Public Service Company of Colorado*, 365 NLRB No. 104 (2017) (a self-determination election properly directed where the petitioned for plant planners and plant planner/schedulers share a sufficient community of interest with the existing unit).

¹⁴ I note that none of the disputed and unit classifications require a college degree. Despite the Employer's assertion that the work of the disputed QA employees is more technical in nature, the Employer's own witness acknowledged

The quality employees and unit employees work the same three-shift schedule, and share the same non-work areas, e-mail system, participate in the plant shutdown leave bank, are given an unpaid 30-minute break, attend the same monthly plant meetings, and enjoy similar benefits. The quality employees and the Unit employees are paid hourly and the wage rate paid to the quality employees falls within the range paid to the production and shipping and receiving personnel.

Contrary to the Employer's assertions, the fact that the disputed QA classifications are assigned to their own department and have a different line of supervision does not foreclose their inclusion in the Unit. Like the quality employees, unit employees and their immediate supervisors are assigned to their own departments. Moreover, the Board has held that the fact that quality employees may report to a different line of supervision is not sufficient to preclude their inclusion in a production and maintenance unit. *Blue Grass Industries, Inc.*, 287 NLRB at 299, citing *W. R. Grace & Co.*, 202 NLRB at 789. Any other differences raised by the Employer, for instance, the manner in which the quality and unit employees record their time, how they are evaluated, attendance rules, and certain differences in benefits and administration thereof, do not warrant excluding the QA Techs or QA Engineering Assistant from the Unit.

The Employer's attempts to further distinguish the QA Engineering Assistant because their duties carry more responsibility than that of the QA Tech, and they are required to attend daily meetings with plant management are unpersuasive and do not serve as a sufficient basis for

that no technical degree or certification is required for the position of QA Tech. The fact that four of the five incumbent QA Techs previously worked in production, including one who was hired into the position without the requisite high school diploma, further undermines the thrust of the Employer's argument.

excluding that position from the Unit. Similar to the QA Techs, the QA Engineering Assistant is an hourly employee, works in the QA lab, reports to the same quality supervisor, shares the same terms and conditions of employment, including benefits and workplace policies, and performs a similar role of ensuring quality control of manufactured products, albeit, one that involves more paperwork, and root causing production problems. The QA Engineering Assistant also shares comparable educational requirements and wage rate as the QA Techs. Moreover, the Employer does not specifically identify another grouping of unrepresented employees in which it would be more appropriate to include this classification.

The Employer's reliance on *E.I. Dupont de Nemours, Inc.*, 341 NLRB 607 (2004) to support its argument that including the disputed quality assurance classifications in a broader unit is inappropriate is misplaced. In *Dupont*, a union petitioned to accrete a newly created PSM Quality Assurance/ Quality Control Recovery Examiner classification into an existing unit of production and maintenance employees. That case involved an accretion and the more rigorous overwhelming community of interest test was applied to resolve the issue of whether accretion was appropriate. The Board did not hold that the employees in dispute could not be included in the broader production and maintenance unit, it only held that their inclusion could not be accomplished by accreting them. Consequently, *Dupont* is inapplicable to resolve the unit placement issue presented here.

Accordingly, based on the foregoing, I find that the petitioned for QA Techs and QA Engineering Assistant share a sufficient community of interest with the employees in the Unit and their inclusion is appropriate.

CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings 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.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. 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.
5. Based on the foregoing discussion, I find that the Quality Assurance Technician and Quality Assurance Engineering Assistant classifications are properly included in the bargaining unit of the Employer's employees represented by the Petitioner.

ORDER

IT IS HEREBY ORDERED that the Petitioner's petition to clarify the bargaining unit represented by International Brotherhood of Teamsters, Local 251, at Rogers Corporation, to include the Quality Assurance Technician and Quality Assurance Engineering Assistant is granted.

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 **Tuesday, May 26, 2020**.

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 this 11th day of May 2020.



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