DECISION AND DIRECTION OF ELECTION

The Petitioner, District Council of Iron Workers of the State of California and Vicinity, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, seeks to represent a unit of eight field ironworker employees,\(^1\) including Field Helpers, Field Welders, and Foremen/Welders employed by the Employer, Ironwood Fabrication, Inc.\(^2\) at its La Habra, California, facility, where the Employer fabricates and installs metal.

The Petition, filed by Petitioner on March 28, 2022, excludes from the unit all other employees. The Employer maintains that the unit sought by the Petitioner is not appropriate and that the only appropriate unit must also include the following classifications employed by the Employer at its La Habra facility: Shop Helpers, Shop Drivers, and Shop Welders. With these classifications, the Employer seeks to include nine additional employees in the unit.

A Hearing Officer of the National Labor Relations Board (Board) held a hearing in this matter on April 15 and 18, 2022. The Petitioner and the Employer submitted post-hearing briefs. Having considered the record evidence, the relevant Board law, and the positions of the parties, I find that the current petitioned-for unit is not an appropriate unit for the purposes of collective bargaining, and that in order to be appropriate, it must also include the Shop Helper, Shop Driver, and Shop Welder classifications. The Petitioner has agreed to proceed to an election in this alternative unit. Accordingly, I shall direct an election therein.

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\(^1\) After the filing of the Petition, the Employer terminated one field helper, therefore the current petitioned-for unit consists of seven field ironworker employees.

\(^2\) Although the Petition refers to the employer as South Coast Iron, the parties stipulated that the correct name of the employer is Ironwood Fabrication, Inc.
A. Facts

1. The Employer’s Operations

The Employer is an architectural and structural metals manufacturer engaged in the business of fabricating and installing structural steel, steel gates, steel railings, steel canopies, and other miscellaneous steel products for its customers. It operates a single facility in La Habra, California, where it employs approximately 16 non-supervisory employees.

2. Community-of-Interest Factors

   i. Departmental Organization

The Employer’s operations are separated into two departments: Field and Shop. The Employer employs seven field employees, including Field Helpers, Field Welders, and Foremen/Welders, and nine shop employees, including Shop Helpers, a Shop Driver, and Shop Welders.

   ii. Distinct Skills and Training

The Employer hires employees with various levels of experience and does not require either applicants applying for work in the field or shop to have specialized training or specific certifications or licenses. The record establishes that two employees, one working in the field and the other in the shop, possessed the requisite certifications to permit them to weld on specific areas of structural steel in buildings in the City of Los Angeles. The record did not establish that other non-supervisory employees were similarly certified.

   Both shop and field employees have to submit to a welding test, which is administered by Supervisor Luis Preciado. The Employer does not require applicants to submit to any other pre-employment test, other than the welding test. The Employer also provides on-the-job training to both field and shop employees. Supervisor Preciado is responsible for training in the shop, while field employees typically receive training from the field foreman at the assigned job site. One field employee testified that working in the field necessitated a general knowledge of construction, including how to anchor and epoxying things into concrete, which is not necessarily required in the shop.

   Both field and shop employees use forklifts, and do not have to be certified to engage in this work. However, according to Supervisor Preciado, most employees in the shop and field are certified and have a license to drive a forklift.

   Job offer letters entered into the record that were issued to both field and shop welders include similar job descriptions and desired experience, including experience with structural steel, miscellaneous steel, fit up, welding, shop drawings, flux-cored arc welding (FCAW), and tig welding. The job offer letters also reference similar projects for both shop and field welders, including structural steel, miscellaneous steel, ladders, platforms, stairs, railings, frames, stainless railings, aluminum, and various miscellaneous fabrication projects.
The record further establishes that the Employer conducts weekly safety meetings for both field and shop employees, on a variety of topics, including welding, air compressor safety, and workplace emergency preparedness. Field and shop employees are trained on the same topics at each of these weekly meetings. Supervisor Preciado conducts these safety meetings for shop employees, and the assigned foreman conducts the safety meeting for the field employees.

### iii. Distinct Job Functions and Distinct Work

The finished materials installed by field employees at various job sites are fabricated by employees in the Employer’s shop. The record establishes that field employees may also fabricate parts on site, but most of the fabrication is completed in the shop.

Field helpers engage in a lot of manual labor at their assigned job sites and are responsible for getting tools, setting up, carrying material, drilling holes in concrete, and preparing for installation. Shop helpers engage in similar activities, including carrying, measuring, and cutting material, but mostly do so at the shop as opposed to at the actual job sites. The primary difference between field and shop helpers is the location of their work.

The Employer witnesses testified that while the Employer trains helpers so they can one day become welders, neither field nor shop helpers weld material. Rather, the Employer’s field welders devote their time to welding metal parts at the job sites, including welding, cutting material, fitting it, erecting it, leveling, and screwing it. Shop welders weld tube steel frames to beams, columns, canopies, awnings, gates, handrails, ladders, and platforms. Field welders perform any field welding that is necessary to complete the installation.

The Employer’s shop driver drives a 24-foot flatbed truck to various job sites to drop off material to be installed and used at each job site. The shop driver, supervised by Preciado, occasionally also assists in the unloading of material off of the truck.

The field foremen are responsible for communicating with the field crew about the scope of work, informing the customer about job progress, and ensuring that the job is completed properly. The field foremen are also responsible for directing the crew and telling them what to do at each job site, including showing blueprints to the crew, directing how things should be welded, and discussing safety related issues. Foremen also serve as the lead point of contact and communicate with Employer management about job status. Foremen are responsible for completing the timesheets of the crew. The Employer employs three field foremen, two of whom also engage in welding work.

### iv. Functional Integration, Contact, and Interchange

The documentary evidence in the record, by way of Employer offer letters, establishes that employees are either hired into the field or the shop, and no evidence was offered to show that employees have formally transferred from one department to the other. One shop welder testified that he was initially hired as a shop driver, transitioned to the shop helper position, and then was elevated to the shop welder position.
At the start of their shift, field employees typically report to their assigned job site first as opposed to going to the shop, and shop employees report to work at the shop. The shop driver picks up the fabricated material from the shop and delivers it to the field employees at the various job sites for installation. The shop driver occasionally assists in the unloading of the material off of the truck but does not perform other work at the job sites. A field foreman/welder testified that prior to April 2022, he would drive to the Employer’s shop in La Habra, California, to pick up the company truck and any materials needed in the field that day, and then drive that truck to the assigned job site, without performing any work at the shop before doing so.

Employee witnesses testified that the Employer does not regularly conduct all employee meetings, and any meetings for field and shop employees are held separately and are led by the assigned foreman for the field employees or by Supervisor Preciado for the shop employees. Field employees attend safety meetings at the job sites and shop employees attend safety meetings at the shop.

While the record establishes limited daily contact between field and shop employees, the work of the petitioned-for field employees is not entirely separate from or unrelated to that of the shop employees. The Employer fabricates at its shop most of the products that it ultimately installs at its various job sites. The record establishes that only a minimal percentage of the Employer’s work involves products that have been fabricated in the Employer’s shop and sold to customers for them to install themselves.

Moreover, the record further reveals, through both testimonial and documentary evidence, that shop employees perform work in the field, and field employees perform work in the shop. While there is conflicting evidence in the record regarding the frequency of this interchange between shop and field employees, the record evidence establishes that it does take place.

With respect to shop employees working in the field, one shop welder testified that he was assigned to work in the field at least a couple of times a month, working either by himself or with other field or shop employees, on jobs that were discrete daily tasks or ones taking one to two weeks to complete. The work in the field performed by the shop welder included welding and fabricating on site. The shop welder testified about one field job exclusively assigned to him and another shop welder.

Supervisor Preciado, as the lead supervisor of the shop employees, testified that shop employees work in the field about once or twice a week, and identified a number of job sites where the Employer had assigned shop employees to perform field work, including job sites in Pasadena, Newport Beach, Stanton, Irvine, and San Diego, California.

As to field employees working in the shop, one field foreman/welder testified that he had fabricated product in the shop on occasion, and that he had seen shop employees performing work in the field on a few occasions. While this field welder also testified that he had only worked in the shop less than 10 times during the past 20 months, time records entered into the record by the Employer contradict this representation and establish that he worked in the shop more regularly.
Supervisor Preciado testified that when the Employer does not have work for employees in the field or during times of inclement weather, it directs field employees to work in the shop to assist with welding and fabrication. Supervisor Preciado further testified that he recently requested that a field foreman/welder, and two field helpers work in the shop fabricating beams for pole racks.

There was conflicting testimony in the record regarding field employees returning to the shop to work after completing field work before the end of their shift. A shop welder testified that he saw field foremen/welders performing work in the shop on occasion, and that some may have done so to complete their hours. On the other hand, a field foremen/welder testified that if a field job ended early, he will go home and not return to the shop.

Despite the contradictory testimonial evidence about the frequency of shop employees working in the field and field employees working in the shop, time records entered into the record serve as further evidence of the extent of interchange between shop and field employees.

The documentary evidence in the record establishes the following: a foreman/welder worked in the shop approximately 21 times since January 2021, another foreman/welder worked in the shop at least 19 times since January 2021, a third foreman/welder worked in the shop at least 10 times since February 2021, and a field welder worked in the shop on at least four occasions since June 2021. The record evidence further establishes that a former shop employee of the Employer worked in the field on two occasions during a two-week period.

v. Terms and Conditions of Employment

1. Hours and Schedules

Field employees typically work Monday through Friday, from 6:00 a.m. to 2:30 p.m.; however, their start time can vary based on the assigned job and location. Shop employees are regularly scheduled to work Monday through Friday, from 6:00 a.m. to 2:30 p.m., with less variability in the start time as compared to field employees.

Employees receive two 15-minute breaks and one 30-minute lunch break during each workday. All employees in the shop take their rest and meal breaks at the same time. Supervisor Preciado stops production in the shop so that the shop employees can take these meal and rest breaks. In the field, the expected rest and meal break times may vary slightly from the routine rest and meal break times adhered to in the shop. The field foremen may direct an employee to take a break when he has completed operating a piece of equipment, as opposed to at a set scheduled time.

With respect to field employees, the assigned foreman is responsible for informing field employees when it is time for them to take their rest and meal breaks. Although the record indicated that the foreman was responsible for telling field employees when it was time for them to take their meal and rest breaks, it is unclear whether field employees take meal and rest breaks together.
Shop employees are required to record their time on a daily timesheet, noting the job number, description of work, and the number of regular and/or overtime hours worked. Employees engaging in cleaning and organizing in the shop note the job number 5000 on their timesheet. For field employees, the assigned field foreman is responsible for completing the daily timesheet and then turning in the timesheets on a weekly basis to the Employer’s management representative.

2. Wages and Bonuses

The Employer pays its field and shop employees on an hourly basis, and there is no formal wage range or scale for employees whether they work in the field or shop. If a shop employee is asked to work in the field, they get paid the same hourly rate as they would have earned in the shop. The same is true if a field employee is asked to work in the shop.

The record establishes that the Employer determines wage rates based on skills and experience. The average base hourly rate for shop employees is $24.83, while the average base hourly rate for field employees is $24.94. In January 2021, the Employer granted a 12 percent across-the-board wage increase to both shop and field employees.

The record further establishes that approximately 15 percent of the Employer’s work involves public works jobs, which is considered prevailing wage work. Owner Sean Michael testified that the Employer had completed a few prevailing wage projects at the beginning of 2022, but that no prevailing wage work is currently “in the books.” Field employees engaging in such work could receive the prevailing wage of approximately $75/hour, which is higher than the hourly wage of any of the Employer’s shop employees. However, the record is unclear as to whether the $75/hour is the actual hourly rate or the effective hourly rate, including benefits and whether the Employer’s field employees are paid the prevailing rate all in wages.

With respect to bonuses, the Employer’s bonus system is the same for field and shop employees. Shop employees and field employees are eligible for the exact same discretionary bonus of up to 10 percent of their salary. Prior to 2021, both shop and field employees were awarded bonuses based on individual performance. However, the record establishes that in 2021, all field and shop employees received a $1,000 bonus, except for newer hires, who received a $500 bonus.

3. Uniforms

The Employer provides both shop and field employees with company T-shirts and with fire-resistant clothing and safety vests when employees are working in the field. Fire-resistant clothing is not required in the shop. Both shop and field employees wear personal protective equipment, including steel-toe boots, glasses, face shields, hard hats, gloves, and a hood when welding.

4. Equipment

The Employer provides many of the tools used by both field and shop employees to perform their work; however, some employees choose to use some of their own tools. Both field and shop employees use similar tools, including drills, roto hammers, grinders, mag drills,
chipping hammers, metal-cutting skill saws, chain saws, brushes, and welders, including metal inert gas (MIG) welders. However, the welders in the field are portable, while those primarily utilized in the shop are not. Also, the shop employees use some gas welders that are not used in the field.

Both field and shop employees use forklifts, and do not have to be certified, but according to Supervisor Preciado, most employees in the shop and field are certified and have a license to drive a forklift. Field employees rely more frequently on aerial equipment, including harnesses, ladders, boom lifts, and scissor lifts, and reach forklifts that are different from the forklifts that they use in the shop.

Although both field and shop employees rely on blueprints created by an outside detailer to perform their work, the blueprints relied on by each department are different. Shop welders review blueprints to determine how to weld the material together, and the field employees review the blueprints to determine how to layout or erect the material, including any field welding that is necessary to complete the installation. The field foremen pick up the blueprints for the field and go over it with the field employees each day on the job site.

5. Rules and Policies

Both field and shop employees are subject to the same work rules as detailed in the Employer’s employee handbook. The handbook includes provisions on discipline, vacation, sick leave, and punctuality and attendance that apply to both field and shop employees. Shop and field employees also undergo the same performance-evaluation process.

While shop and field employees work under similar safety requirements and participate in weekly safety training, the work of employees working in the field at construction job sites is subject to more regulation by the California Occupational Safety and Health Administration (Cal OSHA). Cal OSHA has detailed regulations regarding lifting devices, fall protection, bolting metal and welding on a construction site. Employees working in the field at construction job sites need to have knowledge about fall protection, which is not necessarily required in the shop.

vi. Supervision and Assignment of Work

Sean Michael is the owner of the company and oversees the work of both employees in the field and shop. Michael typically goes out in the field about two to three times a week, conducting job walks or welding and fabricating material on site. Owner Michael, along with Project Manager Supervisor James Bradley, oversee projects completed by field employees, while Supervisor Preciado typically supervises the work of employees in the shop. While Supervisor Preciado is primarily responsible for hiring and administering a welding test to both shop and field employees, the record establishes that Messrs. Michael, Bradley, and Preciado jointly make termination decisions. The work of both shop and field employees is evaluated by the Employer’s management.

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3 I take administrative notice of these regulations.
representatives, including Messrs. Michael, Bradley, and Preciado. Prior to 2021, the Employer allocated bonuses based on employee performance.

Project Manager Supervisor Bradley is in charge of overseeing field projects from the time the work is contracted with the Employer’s client to the time work has been completed and billed out. Bradley will oversee shop fabrication, installation, ordering equipment, materials, and job walks related to all projects assigned to him. Messrs. Michael and Bradley visit the job sites to oversee the projects on occasion. Supervisor Preciado occasionally visits the job sites to either perform work or make deliveries. Office Manager Sonia Stech is responsible for handling all human resources and payroll matters for the Employer.

While Messrs. Michael and Bradley work together on the work schedules of field employees, Project Manager Supervisor Bradley is responsible for distributing the work schedule to field employees and informing them about their job assignments. Shop employees receive assignments from Supervisor Preciado, who typically will show the shop employees a blueprint outlining the work to be performed that particular day. Employees working in the field do not have to go to the shop to learn about their work assignments. Projects both in the field and shop are coded for billing purposes with a particular number, which has to be noted by shop employees on their daily timesheet and by the assigned field foreman on the timesheet for field employees. The timesheets in the record reflect that shop employees perform work in the field and field employees perform work in the shop.

B. Analysis

For the reasons set forth below, I find that a bargaining-unit consisting solely of all full-time and regular part-time field ironworker employees classified as field helpers, field welders, and foremen/welders is not appropriate for the purposes of collective bargaining in this case, both because it does not constitute an appropriate unit as a “craft unit,” as defined in Burns and Roe Services Corp., 313 NLRB 1307 (1994), and because the evidence is insufficient to establish that the Employer’s employees who work in the field as field helpers, field welders, and foremen/welders share a community of interest sufficiently distinct from the excluded employees.

1. Craft-Unit Analysis

i. Craft-Unit Standard

The Board has long held that a “craft unit” consists of “a distinct and homogeneous group of skilled journeymen and craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills, and specialized tools and equipment.” Burns and Roe, 313 NLRB at 1308. Where no bargaining history on a more comprehensive basis exists, a craft having a separate identity of skills, functions and supervision, exercising craft skills or having a craft nucleus, is appropriate. See MGM Mirage, d/b/a The Mirage Casino-Hotel, 338 NLRB 529 (2002) (holding that a petitioned-for unit of carpenters and upholsterers comprised a craft unit that did not include the remaining employees in the engineering department).
In determining whether a petitioned-for craft unit is appropriate, the Board examines:

1. Whether the employees take part in a formal training or apprenticeship program;
2. Whether the work is functionally integrated with the work of the excluded employees;
3. Whether the duties of the petitioned-for employees overlap with the duties of the excluded employees;
4. Whether the employer assigns work according to need rather than on craft or jurisdictional lines; and
5. Whether the petitioned-for employees share common interests with other employees.

See, Burns and Roe, 313 NLRB at 1308. The Board has evaluated the appropriateness of welder bargaining units in the past. See North American Aviation, 162 NLRB 1267 (1967) (finding that military/aviation product welders do not constitute an appropriate unit). In North American Aviation, Inc., the Board noted that welders, though craftsmen, do not in the traditional sense possess strong craft identity, and that the Board does not normally recognize welders as a separate and distinct group of craftsmen in any industry other than aerospace.

ii. Application of Craft Unit Standard

I find that the field ironworker employees, consisting of Field Helpers, Field Welders, and Foremen/Welders, do not constitute an appropriate craft unit. First, the record evidence establishes that field employees do not participate in a formal training or apprenticeship program at the Employer. While the Board has found that a lack of an apprenticeship program or formal training does not necessarily negate separate craft status, it has done so only when the employer requires employees to have extensive experience and no other class of employees has the same level of knowledge. Burns and Roe, 313 NLRB at 1308. These factors are not present here. The Employer does not require field employees to have any licenses or certifications. The record establishes that out of seven field employees, only one has a special certification to be able to work on areas of structural steel in buildings in the City of Los Angeles. The record further establishes that a shop welder is similarly certified. Furthermore, the welding work performed by shop welders suggests that these employees have similar levels of knowledge as welders working in the field.

Second, the record establishes a significant degree of functional integration between field employees in the petitioned-for unit and the shop employees. The shop employees fabricate the products that the field employees ultimately install. Both the Employer’s field and shop employees also use similar tools. See Clarian Health Partners, Inc., 344 NLRB 332, 334 (2005) (unit of hospital maintenance employees appropriate where they used the same tools to inspect and repair the same types of medical equipment). Compare Mirage Casino-Hotel, 338 NLRB at 533 (only carpenters used skilled carpentry machinery).
Third, the record establishes that there exists significant overlap between the duties of field employees and shop employees. The record reflects that both field and shop welders are responsible for welding metal parts. Field welders will typically weld metal parts at job sites, including welding, cutting material, fitting it, erecting it, leveling, and screwing it. Shop welders typically weld material in the shop as opposed at specific job sites.

Fourth, the record demonstrates that the assignment of field work is accomplished both according to need and classification. Field employees typically receive their assignments from Project Manager Bradley or the assigned foreman. However, the record also reveals that shop employees are assigned to perform work in the field and field employees assigned to work in the shop, when needed. Field employees also work in the shop during times of inclement weather or when they finish their field work early and want to work more hours. Therefore, the record does not reflect that the Employer assigns skilled work along separate craft lines between the field and the shop. The primary distinction between the work of field welders included in the petitioned-for unit and excluded shop welders, is the location in which they weld.

Fifth, the record also demonstrates that field employees share common interests with the Employer’s shop employees. The record does not reflect that field employees are subject to a unique system of compensation that is not applicable to the excluded shop employees. Rather, the record reflects that the range of wage rates does not vary significantly between the field and shop employees. Furthermore, both field and shop employees are eligible for paid holidays and sick leave. They are also subject to the same safety training, rules, and policies and, with a few exceptions related to fire resistant clothing, wear the same company issued t-shirts. See Brown & Root, Inc., 258 NLRB 1002, 1004 (1981) (separate unit of pipefitters and boilermakers inappropriate where, among other factors, all of employer’s skilled employees had same wage rates and fringe benefits); Hotel Tropicana, 176 NLRB 375, 376 (1969) (separate unit of slot machine mechanics inappropriate where, among other factors, mechanics did not wear special uniforms and were not highest paid employees in casino). Compare Mirage Casino-Hotel, 338 NLRB at 533 (carpenters in appropriate unit earned nearly $10 more on average than unskilled coworkers and wore a unique uniform).

Based on these factors and the record as a whole, I find that the field ironworker employees, classified as field helpers, field welders, and foremen/welders do not constitute an appropriate craft unit.

2. Community- of-Interest Standard
   i. Standard

   When examining the appropriateness of a unit, the Board need not determine 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 n. 2 (2010), citing Overnite Transportation Co., 322 NLRB 723 (1996). Yet, the Board also analyzes “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit.” PCC Structural Inc., 365 NLRB No. 160, slip op. at 9 (2017).
Under the framework the Board set out in *PCC Structurals, Inc.*, the inquiry begins with a determination of whether the petitioned-for employees have shared interests sufficient to constitute an appropriate unit. If a determination is made that the petitioned-for unit is an appropriate unit, then the Board will consider “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 Structurals, Inc.*, 365 NLRB No. 160, slip op. at 9.

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.’” *Id.* (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). Once this determination is made, “the appropriate-unit analysis is at an end.” *Id.*

In making a community-of-interest determination, the Board considers whether the employees in question:

(1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals*, slip op. at 9 (citing *United Operations*, 338 NLRB 123 (2002)).

The Board considers all the factors together, as no single factor is controlling. *Id.*

On brief, the Employer argues that the petitioned-for unit of field ironworker employees is an inappropriate fractured unit as the shop employees excluded from the petitioned-for unit perform the same work, under the same working conditions, and in close coordination with the petitioned-for employees.

In *The Boeing Co.*, 368 NLRB No. 67 (2019), the Board described the three-step analysis to be applied under *PCC Structurals* when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit. *Id.*, slip op. at 2. The first step considers the shared interests within the petitioned-for unit, examining whether the interests of the included employees are too disparate, preventing a community of interest. *Id.*, slip op. at 3. The second step considers the shared interests of the petitioned-for and excluded employees, and specifically whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. *Id.*, slip op. at 4. Third, the Board considers whether special considerations, such as guidelines for specific industries, are present. *Id.*

Pursuant to *The Boeing Company*, 368 NLRB No. 67, slip op. at 3-4 (2019), my analysis therefore begins with examining the petitioned-for group of employees to determine whether they share a community of interest. I then examine whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit
members and consider the Board's decisions on appropriate units in the particular industry involved.

**ii. Application of Community-of-Interest Standard**

1. **Departmental Organization**

   A consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. *See Check Printers, Inc.*, 205 NLRB 33 (1973). However, in certain circumstances, the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1291 (2000) (finding unit of drivers and dispatchers appropriate despite integration into the activities and operations of the store, where the petitioned-for employees had special driving qualifications and licensing, lacked substantial interchange, and had distinct job functions).

   Here, departmental organization weighs against a shared community of interest. The Employer maintains a delineated departmental structure with respect to its field/installation work and shop/fabrication work. As the field employees are in a different operating department than the shop employees, this factor does not support a shared community of interest.

2. **Skills and Training**

   This factor examines whether disputed employees can be distinguished from one another on the basis of skills and training. 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 and training. *Casino Aztar*, 349 NLRB 603, 604-605 (2007); *J.C. Penney Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *The Phoenician*, 308 NLRB 826 (1992).

   The Employer hires employees at various levels of experience and does not require either applicants applying for work in the field or shop to have specialized training or specific certifications or licenses. The record establishes that two employees, one working in the field and the other in the shop, possess the requisite certification to permit them to weld on specific areas of structural steel in buildings in the City of Los Angeles. The record does not establish that other employees are similarly certified.

   Both shop and field employees have to submit to a weld test, which is administered by Supervisor Preciado. The Employer does not require applicants to submit to any other pre-employment test, other than the weld test. The Employer also provides on-the-job training to both
field and shop employees. Supervisor Preciado is responsible for training in the shop, while field employees typically receive training from the field foreman at the assigned job site. One field employee testified that working in the field necessitated a general knowledge of construction, including how to anchor and epoxying things into concrete, which is not necessarily required in the shop.

Job offer letters entered into the record issued to both field and shop welders include similar job descriptions and desired experience, including experience with structural steel, miscellaneous steel, fit up, welding, shop drawings, FCAW, and tig welding. The job offer letters also reference similar projects for both shop and field welders, including structural steel, miscellaneous steel, ladders, platforms, stairs, railings, frames, stainless railings, aluminum, and various miscellaneous fabrication projects.

Both field and shop employees use similar tools, including drills, roto hammers, grinders, mag drills, chipping hammers, metal cutting skill saws, chain saws, brushes, and welders, including MIG welders. However, the welders in the field are portable, while those primarily utilized in the shop are not. Also, the shop employees use some gas welders that are not used in the field. Both field and shop employees use forklifts, and do not have to be certified, but according to Supervisor Preciado, most employees in the shop and field are certified and have a license to drive a forklift.

The record further establishes that the Employer conducts weekly safety meetings for both field and shop employees, on a variety of topics, including welding, air compressor safety, workplace emergency preparedness. Field and shop employees are trained on the same topics at each of these weekly meetings.

Based on the foregoing, I find that this factor weighs in favor of finding community of interest among the petitioned-for field employees, but there is a lack of evidence that this community of interest is distinct from the excluded shop employees.

3. **Distinct job functions and perform distinct work**

This factor examines whether disputed employees can be distinguished from one another on the basis of duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. *See, e.g., Impact Site Works, LLC, 2021 WL 2006048 (NLRB) (finding distinct job functions where equipment operators spent the majority of their time with heavy equipment, whereas junior operators only performed that work on isolated occasions); Casino Aztar, 349 NLRB 603, 604-605 (2007).*

The finished materials installed by field employees at various job sites are fabricated by employees in the Employer’s shop. The record establishes that field employees may also fabricate parts on site, but most of the fabrication is completed in the shop.

Field helpers engage in a lot of manual labor at their assigned job sites and are responsible for getting tools, setting up, carrying material, drilling holes in concrete, and preparing for installation. The Employer witnesses testified that while the Employer trains helpers so they can
one day become welders, neither field nor shop helpers weld material. Rather, the Employer’s field welders devote their time to welding metal parts at the job sites, including welding, cutting material, fitting it, erecting it, leveling, and screwing it. The field foremen are responsible for communicating with the field crew about the scope of work, informing the customer about job progress, and ensure that the job is completely properly. The foremen are also responsible for directing the crew and telling them what to do at each job site, including showing blueprints to the crew, directing how things should be welded, and discussing safety related issues. They also serve as the lead point of contact and communicate with Employer management about the job status. Foremen are responsible for completing the timesheets of the crew. The Employer employs three field foremen, two of whom also engage in welding work.

Shop helpers engage in similar activities as field helpers, including carrying, measuring, and cutting material, but mostly do so at the shop as opposed to at the actual job sites. The primary difference between field and shop helpers is the location of their work. Shop welders also perform some types of gas welding that field welders do not perform. Shop welders weld together tube steel frames, to beams, columns, canopies, awnings, gates, handrails, ladders, and platforms. Field welders perform any field welding that is necessary to complete the installation. The record establishes that none of the Employer’s foremen exclusively work in the shop.

The Employer’s shop driver drives a 24-foot flatbed truck to various job sites to drop off material to be installed and used at each job site. The shop driver, supervised by Preciado, occasionally also assists in the unloading of material off of the truck.

Taken as a whole, I find that the fundamental similarities of the work performed by the field and shop employees are greater than the differences, particularly given the fact that they have similar levels of training and use similar equipment, and therefore conclude that this factor weighs in favor of finding a community of interest among the petitioned-for field employees, and a lack of evidence that this community of interest is distinct from the excluded shop employees.

4. Functional Integration

Functional integration refers to when employees’ work constitutes integral elements of an employer’s production process or business. Thus, 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. 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 Systems, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

As previously discussed, the record establishes a significant degree of functional integration between field employees in the petitioned-for unit and the shop employees. The shop employees fabricate the products that the field employees ultimately install. The work of each department, field and shop, is highly dependent on the other. Field employees have nothing to
install but for the fabrication work of employees in the shop, and shop employees would have nowhere to send their fabricated metals without field employees being able to install them.

Accordingly, this factor strongly supports the Employer’s position that the shop employees excluded from the petitioned-for unit share a community of interest with the included field employees because the two groups function as one integrated team. See, e.g. *The Boeing Co.*, 368 NLRB No. 67 (2019) (holding it was “particularly compelling” that the petitioned-for employees had a high degree of functional integration with excluded employees); *Potter Aeronautical Corp.*, 155 NLRB 1077 (1965) (finding that machine shop employees and electronics department employees were part of the same unit because the jobs of each group, though functionally different, depended on one another in an integrated process).

I find that the high degree of functional integration between field employees in the petitioned-for unit and the shop employees weighs in favor of finding a community of interest among the field employees, and a lack of evidence that this community of interest is distinct from the excluded shop employees.

5. **Contact**

With respect to contact, the record establishes limited daily contact between field and shop employees. Employee witnesses testified that the Employer does not regularly conduct all employee meetings, and any meetings for field and shop employees are held separately and are led by the assigned foreman for the field employees or by Supervisor Preciado for the shop employees. Field employees attend safety meetings at the job sites and shop employees attend safety meetings at the shop.

The record establishes that the shop driver picks up the material from the shop and delivers it to the field employees at the various job sites. While the shop driver occasionally assists in the unloading of the material off of the truck, he does not perform work at the job sites. A field foreman/welder testified that prior to April 2021, he would drive to the Employer’s shop in La Habra, California, to pick up the company truck and any materials needed in the field that day, and then drive that truck to the assigned job site, without performing any work at the shop before doing so. The daily interactions of the shop driver and the field foremen picking up and dropping off materials at various job sites constitutes limited contact at best.

I find that the limited contact weighs against a finding that the shop employees excluded from the petitioned-for unit share a community of interest with the included field employees.

6. **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 Resources Associates*,
301 NLRB 400, 401 (1991) (citing Spring City Knitting Co. v. NLRB, 647 F.2d 1011, 1015 (9th Cir. 1981)). Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought.

In this case, as to temporary interchange, the record reveals evidence of shop employees performing work in the field and field employees performing work in the shop. While there is conflicting evidence in the record regarding the frequency of this interchange between shop and field employees, the record evidence establishes that it does take place.

With respect to shop employees working in the field, one shop welder testified that he is assigned to work in the field at least a couple of times a month, working either by himself or with other field or shop employees on jobs that are discrete daily tasks or ones taking one to two weeks to complete. The work in the field performed by the shop welder included welding and fabricating on site. The shop welder also testified about one field job exclusively assigned to him and another shop welder.

Supervisor Preciado, as the lead supervisor of the shop employees, testified that shop employees work in the field about once or twice a week, and identified a number of job sites where the Employer had assigned shop employees to perform field work, including job sites in Pasadena, Newport Beach, Stanton, Irvine, and San Diego, California.

As to field employees working in the shop, one field foreman/welder testified that he had fabricated product in the shop on occasion, and that he had seen shop employees performing work in the field only on a few occasions. While this field welder also testified that he had only worked in the shop approximately five times during the past 14 months, time records entered into the record by the Employer, contradicts this representation and establish that he worked in the shop more regularly.

Supervisor Preciado testified that when the Employer does not have work for employees in the field or during times of inclement weather, it will direct field employees to work in the shop to assist with welding and fabrication. Supervisor Preciado further testified that he recently requested that a field foreman/welder, and two field helpers work in the shop fabricating beams for pole racks.

There is conflicting testimony in the record regarding field employees returning to the shop to work after completing field work before the end of their shift. A shop welder testified that he saw field foremen/welders performing work in the shop on occasion, and that some may have done so to complete their hours. On the other hand, a field foremen/welder testified that if a field job ended early, he would go home and not return to the shop.

Despite the contradictory testimonial evidence about the frequency of shop employees working in the field and field employees working in the shop, time records entered into the record serve as further evidence of the extent of interchange between shop and field employees.

The documentary evidence in the record establishes the following: a foreman/welder worked in the shop approximately 19 times since January 2021, another foreman/welder worked
in the shop at least 21 times since January 2021, a third foreman/welder worked in the shop at least 10 times since February 2021, and a field welder worked in the shop on at least four occasions since June 2021. The record evidence further establishes that a former shop employee of the Employer worked in the field on two occasions during a two-week period.

While the Petitioner takes issue with the accuracy of the data reflected in these records, in whole, the testimonial and documentary evidence in the record establish a significant degree of interchange between shop employees and field employees.

With respect to permanent interchange, while one shop welder testified that he was initially hired as a shop driver and then promoted to a shop helper then a shop welder, there was no evidence in the record that any shop employee had permanently transferred from the field or that any field employee had permanently transferred to the shop. Rather, the record reveals that employees are either hired into the field or the shop, and no evidence was offered to show that employees have formally transferred from one department to the other.

In spite of the lack of regular contact between field and shop employees, I find that the fact that there can be and has been interchange between the two groups militates in favor of finding a community of interest between them. Based on the foregoing, I find that this factor weighs in favor of finding community of interest among the petitioned-for field employees, but there is a lack of evidence that this community of interest is distinct from that of the excluded shop employees.

7. 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 (1996).

Both field and shop employees are subject to the same work rules as detailed in the Employer’s employee handbook. The handbook includes provisions on discipline, vacation, sick leave, and punctuality and attendance that applies to both field and shop employees. Shop and field employees also undergo the same performance evaluation process.

The Employer also pays its field and shop employees on an hourly basis, and there is no formal wage range or scale for employees whether they work in the field or shop. If a shop employee is asked to work in the field, they get paid the same hourly rate as they would have earned in the shop. The same is true if a field employee is asked to work in the shop.

Other than prevailing-wage work, which is about 15% of the Employer’s work, the record does not reflect that field employees are subject to a unique system of compensation that was not applicable to the excluded shop employees. Rather, the record reflects that the range of wage rates does not vary significantly between field and shop employees. In January 2021, the Employer granted a 12 percent across-the-board wage increase to both shop and field employees.
The record further establishes that shop employees and field employees are eligible for the exact same discretionary bonus of up to 10 percent of their salary. Prior to 2021, both shop and field employees were awarded bonuses based on individual performance. However, the record reveals that in 2021, all field and shop employees received a $1,000 bonus, except for new hires, who received a $500 bonus.

Additionally, the Employer provides both shop and field employees with company t-shirts and with fire resistant clothing and safety vests when employees are working in the field. Furthermore, the work hours of field and shop employees do not differ greatly, as both shop and field employees typically work from 6:00 a.m. to 2:30 p.m.; however, the start time of field employees can vary on occasion based on the assigned job and location.

I conclude that the similarities in terms and conditions of employment, particularly wages and benefits, strongly favor finding community of interest among the petitioned-for field employees, but a lack of evidence that this community of interest is distinct from that of the excluded shop employees.

### 8. Common Supervision

In examining supervision, most important is the identity of employees’ supervisors who have the authority to hire, fire, or discipline employees or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB 400, 402 (1991); *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, 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*, 388 NLRB at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607, n. 11. Rather, more important is the degree of interchange, contact and functional integration. *Id.* at 607.

The record reflects that field employees are subject to substantially the same supervision as the shop employees. The record reveals that Supervisor Preciado is responsible for hiring both shop and field employees, and that Messrs. Michael, Bradley, and Preciado jointly make termination decisions. Moreover, the work of both shop and field employees is evaluated by the Employer’s management representatives, including Messrs. Michael, Bradley, and Preciado. Prior to 2021, the Employer allocated bonuses based on employee performance.

While Owner Michael and Project Manager Supervisor James Bradley oversee projects completed by field employees, and Supervisor Luis Preciado typically supervises the work of employees in the shop, this daily supervision does not offset the significant common supervision related to matters of hiring, firing, and performance appraisals. See *Hotel Services Group*, 328 NLRB 116, 117 (1999) (separate unit of massage therapists at hotel resort not appropriate where therapists were separately supervised “in some respects” and there was some evidence of limited central control over the hiring and firing of employees); *Westin Hotel, Inc.*, 277 NLRB 1506, 1508
Based on the foregoing, I find that this factor weighs in favor of finding community of interest among the petitioned-for field employees, but there is a lack of evidence that this community of interest is distinct from that of the excluded shop employees.

9. Conclusions Regarding Community of Interest

Having considered each community-of-interest factor, in turn, I do not find that they form a basis for finding the petitioned-for unit to be an appropriate unit. While field employees appear to share a community of interest, their differences from shop employees are not sufficiently distinct so as to warrant a separate bargaining unit. While employees working in the field and in the shop work in separate departments, have different individuals serve as their daily supervisor, and perform slightly different job functions based on assignment, there is sufficient evidence of similar skills, functional integration, employee interchange, wages and benefits, and other terms and conditions of employment to establish a community of interest among both field and shop employees. See Berea Publishing Co., 140 NLRB 516, 517 (1963) (although employees engage primarily in different processes, employees do similar work, perform functions requiring similar skills, work moves from one department to the other for further processing, and employees in both departments share the same working conditions and overall supervision in a small plant).

10. Industry Practice

The record establishes that there is no history of collective bargaining at the Employer. The Petitioner presented evidence of a statewide collective-bargaining unit for ironworkers in the State of California, to which independent employers are a party, covering all field ironworkers and excluding shop employees, as support of industry practice. However, the record reflects that employees covered under this statewide collective-bargaining agreement work on construction projects thereby establishing representative status based on Section 8(f) of the National Labor Relations Act. Here, however, Petitioner seeks representation under Section 9(a) of the Act and the Board has found units consisting of both shop and field workers appropriate where the employer both fabricates and installs structural steel. See, e.g. Detroit Incinerator Co., 45 NLRB 414, 417 (1942); Comwel Co., 88 NLRB 810, 812 (1950); Pointer-Willamette Co., 93 NLRB 673, 674–75 (1951); and Plant City Welding & Tank Co., 118 NLRB 280, 283 (1957).

The Petitioner’s reliance on McCann Steel Company, Inc., 179 NLRB 635 (1969) to support its contention that the field employees constitute a separate appropriate unit is misplaced. In McCann Steel, the field erection crew consisted of three ironworkers, three welders and four helpers. Although there were welders among the employer's 56 production and maintenance employees, there were no ironworkers regularly assigned to either of the shops. The Board found field erection employees possessed a unique community of interest based upon their separate supervision, their separate workstations that frequently demanded overnight lodging away from home, their special skills, the hazardous nature of their work, and the premium rates paid to them for it. However, because erection work, as compared to fabrication, involved a higher risk of physical injury, the employer paid premium rates to erection employees for particularly hazardous
assignments. The Board found that the field erection employees constituted a separate appropriate unit under Section 9(b) of the Act.

The majority of the factors relied on by the Board in *McCann Steel* are not present in this case. The record reveals that the range of wage rates does not vary significantly between field and shop employees, with limited exception related to prevailing wage work. The Employer also does not pay field employees more because of the hazardous nature of some of their assignments. Moreover, if a shop employee is asked to work in the field, they get paid the same hourly rate as they would have earned in the shop. The same is true if a field employee is asked to work in the shop. Lastly, the record reveals that both field and shop welders have similar skills and use similar equipment.

C. Conclusion

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find 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.4

3) The parties stipulated, and I so find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4) There is no collective-bargaining agreement covering any of the employees in the unit sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.

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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   **Included:** All full-time and regular part-time field helpers, field welders, foremen/welders, shop helpers, shop drivers, and shop welders, employed by the Employer at or out of its facility currently located at 215 Industry Avenue, La Habra, California.

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4 The parties stipulated, and I find, that the Employer, Ironwood Fabrication, Inc., a California corporation, with a place of business located at 215 Industry Avenue, La Habra, California, the only facility involved in this matter, is engaged in the business of providing metal fabrication and installation. During the past 12 months, a representative period, the Employer, in conducting its operations, purchased and received at its La Habra, California facility goods valued in excess of $50,000 directly from points located outside the State of California.
**Excluded:** All confidential employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by District Council of Iron Workers of the State of California and Vicinity, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers.

**A. Election Details**

The election will be held on Friday, June 17, 2022, from 6:00 a.m. to 8:00 a.m., in the Break Room at the Employer’s facility located at 215 Industry Avenue, La Habra, California.

**B. Safety Protocols**

If these protocols cannot be followed (or attested to as described in Memorandum GC 20-10), the Regional Director reserves the right to cancel or reschedule the manual election or convert the election to a mail ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date. Given the COVID-19 pandemic, in order to protect the voters, observers, Board agent(s), and others during the election and ballot count:

a) Employer will provide four separate tables with three chairs that will be placed at least 6 feet apart in the voting area: There will be one table for the Employer’s Election Observer, one for the Petitioner’s Election Observer, one for the Board agents, and one for the ballots/ballot box/writing utensils. In the event the space of the voting area will not allow for four separate tables; the Employer will set the voting area up to ensure that 6 feet of space between the voters, the Board agent, and the Election Observers can be maintained at all times.

b) Employer will place markings throughout the voting area, and in the immediate vicinity outside of that area, to ensure proper social distancing for voters and to ensure that the voting line does not exceed four voters at a time.

c) Employer will ensure that the voting area has sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area (the Board agent will direct the flow of traffic to allow only one voter in the area at a time).

d) Employer will ensure the voting area has a separate entrance and exit for voters, with markings to depict safe traffic flow throughout the polling area.

e) Employer will provide hand sanitizers and an abundant number of sanitizing wipes for the voting area.

f) Employer will provide masks for all voters.
g) Employer will provide masks and gloves for all party representatives and observers.

h) The Board agent, voters, and Election Observers shall wear masks in the voting area during the entirety of the election process. In accordance with the “Voting Place Notice”, Form NLRB-5017, the Board agent has the discretion to advise a voter who is not properly masked to leave the voting area and return when properly masked.

i) Employer will provide a sufficient number of disposable pencils without erasers for each voter to mark their ballot.

j) Employer will provide glue sticks or tape to seal challenged ballot envelopes.

k) Employer will provide plexiglass barriers of sufficient size to protect the observers and Board agent to separate observers and the Board agent from voters and each other, pre-election conference, and ballot count attendees.

l) The Board agent has the discretion to limit attendance at the counting of the ballots to the number of people who can maintain 6 feet of space between one another.

m) All individuals attending the pre-election conference and ballot count shall wear masks. The Board agents have the discretion to advise a conference or count attendee who is not properly masked to leave the conference/count and return when properly masked.

n) Employer will create and distribute the invitation for an inspection of the polling area that will occur by Zoom or other videoconference platform with all parties at 1:00 p.m. on Thursday, June 16, 2022, so that the Board agents and parties can view the polling area.

o) Employer will post signs immediately adjacent to the Notice of Election to notify voters, observers, party representatives, and other participants of the mask requirement.

p) Employer will sanitize the polling area the day of the election, prior to the start of the pre-election conference.

q) Parties will immediately notify the Regional Director in writing if any participant in the election, including all representatives, observers, and eligible voters, test positive for COVID-19 or if they have been directly exposed to individuals who have tested positive for COVID-19 during the 14 days immediately preceding the election date.

r) The Employer will complete and submit GC 20-10 COVID-19 Certification Forms A and B to the Region within the time frame set forth on the forms. The Forms will be considered by the Regional Director in determining whether conducting the election manually will jeopardize public health. Failure to provide accurate or timely forms may result in the election being cancelled, rescheduled, or converted to a mail ballot election.

s) The Petitioner and the Intervenor will complete and submit GC 20-10 COVID-19 Certification Form B to the Board agent conducting the election within the time frame set forth on the form.
t) Individuals for which Form B was not submitted will not be permitted to be physically present at the pre-election conference, to serve as an observer during the election or at the ballot count.

u) All parties agree to immediately notify the Regional Director, if, within 14 days after the day of the election, any individuals who were present in the facility on the day of the election:

- have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;

- are awaiting results of a COVID-19 test;

- are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath; or have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending Friday, June 3, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. At hearing, the parties stipulated that notwithstanding the Employer's engagement in the construction industry, the Board's standard eligibility formula shall apply, rather than the Board's construction industry (Daniel/Steiny) eligibility formula. Daniel Construction Company, Inc., 133 NLRB 264 (1961), as modified in 167 NLRB 1078 (1967), and Steiny & Company, Inc., 308 NLRB 1323 (1992). In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.
D. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

The voter list will be due within two (2) business days of the issuance of this Decision and Direction of Election. To be timely filed and served, the list must be received by the Regional Director and the parties by Friday, June 10, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region does not serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

E. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election in English and Spanish in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible
for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

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 10 business days after a final disposition of the proceeding by the 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 must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. 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.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: June 8, 2022

William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Courthouse, Spring Street
312 N Spring Street, 10th Floor
Los Angeles, CA 90012