UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

UNITED PARCEL SERVICE, INC. (OHIO)  
Employer  
and  
Case 31-RC-294382

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
DISTRICT LODGE 947  
Petitioner

DECISION AND DIRECTION OF ELECTION

United Parcel Service, Inc. (Ohio) (“Employer”) is engaged in the business of small package delivery, and its operations include facilities throughout Southern California, including a ground package facility in Ontario, California (“Ontario Ground”). International Association of Machinists and Aerospace Workers, District Lodge 947 (“Petitioner”) filed the instant petition on April 20, 2022 with Region 31 of the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”), seeking to add approximately 22 specialists employed in the Building and Systems Engineering (“BaSE”) Department at Ontario Ground to an existing bargaining unit consisting of certain employees of the Employer at its facilities in Southern California in what is commonly referred to as an Armour-Globe election.

The Employer contends that the petitioned-for group of Ontario Ground specialists does not share a community of interest with the existing multifacility unit and, therefore, the instant petition should be dismissed, while Petitioner maintains that a sufficient community of interest exists for their inclusion with the existing unit.

1 The Employer also operates an air package facility in Ontario, California, but that facility is not at issue here.

2 Although there is vague testimony indicating a specialist transferred from the Ontario Ground facility to another facility, the record does not establish that there currently are any specialists employed at any facility other than the Ontario Ground facility. Further, no party asserts that there are specialists at other facilities that should be included in the voting group at issue here.

3 The parties stipulated that their current collective-bargaining agreement “covers certain employees of the Employer in Los Angeles, Orange, Riverside, San Bernardino, Ventura, Imperial, Yuma, Inyo, Kem, Santa Barbara, and San Luis Obispo Counties in the following classifications: automotive mechanics, machinists, electricians, body shop, repair person, district floaters per classification, parts person, welders and maintenance person.”


5 In its post-hearing brief, the Employer argues the instant petition should be dismissed because, on its face, the petition seeks a unit of all full-time, regular part-time, and on-call Tech Specialists; does not specifically indicate it seeks an Armour-Globe self-determination election; and Petitioner never amended the petition to clarify or correct these inaccuracies. I find this argument without merit. The Employer acknowledges it was informed that Petitioner sought to include the petitioned-for specialists in the existing unit of employees it currently represents; the Employer’s statement of position specifically states the existing unit should be excluded from the proposed unit.
A hearing was held on May 11, 12, and 16, 2022, before a Hearing Officer of the Board. The parties were provided with an opportunity to call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and to orally argue their respective positions and submit post-hearing briefs. Both parties timely submitted post-hearing briefs.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. As explained below, based on the record and relevant Board law, I find the petitioned-for specialists are a distinct-and-identifiable group that shares a community of interest with the existing unit of employees. I also find that the current circumstances of the COVID-19 pandemic in San Bernardino County, California, where a manual election would be held, merit directing a mail-ballot election under Aspirus Keweenaw, 370 NLRB No. 45 (2020). Accordingly, I am directing a self-determination election to be conducted by mail ballot among the Ontario facility specialists to vote on whether they wish to join the existing bargaining unit of automotive mechanics, machinists, electricians, body shop, repair person, district floaters per classification, parts person, welders, and maintenance persons.

I. THE EMPLOYER’S OPERATIONS

The Employer is engaged in small package delivery throughout the United States and the world. It operates multiple types of facilities, including facilities focused on the ground transportation of packages and those focused on transporting packages via air. The Employer’s operations are divided into, among other things, districts and territories. At issue in the instant petition is the Employer’s Ontario Ground facility located in its Southern California District and California Coast Territory.

The parties stipulated the Employer and International Association of Machinists and Aerospace Workers (“IAMAW”) are parties to a national master collective-bargaining agreement (Item 3(c)); and the parties stipulated that “Petitioner is seeking an Armour-Globe self-determination election that would add the BaSE Specialists to [the existing bargaining unit].” The Employer’s citation to the NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11014, is unavailing. First, the provisions of the Casehandling Manual are not binding procedural rules, as the Casehandling Manual is issued by the General Counsel, who does not have authority over matters of representation, and is only intended to provide nonbinding guidance to Regional personnel in the handling of representation cases. See Representation-Case Procedures, 84 Fed. Reg. 39930, 39937 fn. 43 (2019) (“the General Counsel’s nonbinding Casehandling Manual”); Sunnyvale Medical Clinic, 241 NLRB 1156, 1157 fn. 5 (1979). See also Patient Care, 360 NLRB 637, 638 (2014) (citing Solvent Services, 313 NLRB 645, 646 (1994); Superior Industries, 289 NLRB 834, 837 fn. 13 (1988)); Hempstead Lincoln Mercury Motors Corp., 349 NLRB 552, 552 fn. 4 (2007); Sawyer Lumber Co., L.L.C., 326 NLRB 1331 fns. 6 & 8 (1995); Queen Kapiolani Hotel, 316 NLRB 655, 655 fn. 5 (1995). Second, the Casehandling Manual does not provide procedures for filing a representation petition seeking a self-determination election, including an Armour-Globe election.

6 Election details, including the type of election to be held, are nonlitigable matters left to my discretion; however, I allowed the parties to present their positions on the election details, including the method of election. The parties stipulated “the election should be conducted by manual ballot (in-person), on the earliest Wednesday practicable following the issuance of the Decision and Direction of Election, from 8:00 a.m. to 9:00 a.m. and 6:00 p.m. to 7:00 p.m. … in the S-Complex 2nd floor conference room” at Ontario Ground. The parties also stipulated to abiding by General Counsel Memorandum 20-10 Suggested Manual Election Protocols (“GC Memo 20-10”).

7 Also referred to in the record as SouthCal and CalCoast, respectively.
(“Master Agreement”) that “applies to all employees who are covered by any local agreement between [the Employer] and a local IAMAW union,” such as IAMAW Local 1186 which is part of Petitioner. They further stipulated the Employer and Petitioner are parties to a Local Supplemental Agreement (“Local CBA”) that covers certain employees of the Employer’s Southern California District, including “Los Angeles, Orange, Riverside, San Bernardino, Ventura, Imperial, Yuma, Inyo, Kem, Santa Barbara, and San Luis Obispo Counties in the following classifications: automotive mechanics, machinists, electricians, body shop, repair person, district floaters per classification, parts person, welders and maintenance person.” For purposes of this decision, I use the term “maintenance mechanic” in place of maintenance person, which the Employer identified as an M355 Maintenance Journeyman. 8

The Master Agreement and Local CBA are both effective August 1, 2019, through July 31, 2024. The record does not indicate how long Petitioner has represented employees in the existing unit.

A. Ontario Ground

The Employer’s Ontario Ground facility 9 consists of approximately four buildings: a Main Hub, with approximately 400 bay doors for loading and unloading packages from trucks, and three satellite buildings—Excise, Air Cargo, and Air Recovery. Since 2018, Ontario Ground has been considered a fully automated sorting facility, meaning the majority of processing and sorting occurs with minimal manual manipulation by employees. The facility has 29 different systems and approximately 23 conveyors. Some irregular-sized packages still require conventional processing. Automation Supervisor James Lang10 testified that Ontario Ground employs approximately 3000 hourly employees.

Work at Ontario Ground is organized around the “sort”—when packages are actively being sorted and processed by the automated conveyor systems. In a typical sort, packages are unloaded from delivery trucks at the Main Hub bay doors by Teamsters-represented employees. Packages then move to conveyor systems, which consist of photo eyes, automated sorters, Visicon singulators, camera tunnels, and other equipment. As packages proceed along the conveyor belts, singulators ensure they proceed single file, Polaris camera tunnels read their labels to determine their destinations, and the sorters route the packages along subsequent conveyors until they reach the appropriate outbound door, where they are loaded onto trucks for delivery. During the sort, if photo-eyes are triggered by foreign objects or debris (“FOD”) or there is a jam of packages, then the conveyor stops. There are approximately five to seven sorts per day. As such, employees have varied start times.

8 I note that the parties focused their evidence and witness testimony on the community of interest between the petitioned-for specialists and maintenance mechanics in the BaSE Department at Ontario Ground, and that they introduced minimal evidence regarding other classifications, including those at Ontario Ground and other Petitioner-represented facilities.

9 The Employer has an air facility across the street from Ontario Ground, but it is not involved in the instant petition.

10 Also referred to in the record as Jimmy Lang.
As it relates to the instant petition, the petitioned-for specialists generally work on the automated aspects of the equipment, Petitioner-represented maintenance mechanics generally work on the mechanical aspects of the equipment, and Teamsters-represented employees generally manually manipulate the packages.

At issue in the instant petition are employees in the BaSE Department at Ontario Ground. The BaSE Department is overseen by Director Ed Vadbunker and has three subdepartments—Maintenance, Specialists, and Housekeeping. Maintenance mechanics work in Maintenance, specialists work in Specialists, and porters and the housekeeping specialist work in Housekeeping. Petitioner currently represents approximately 45 maintenance mechanics in Maintenance as part of its existing unit, and there are approximately 22 BaSE specialists Petitioner seeks to add to its existing unit. The record does not disclose the number of employees across the existing multifacility unit.

Certain other employees at Ontario Ground are represented by Teamsters Local Union No. 63 ("Teamsters"), including porters, clerks, drivers, and package handlers such as belt tenders, jam breakers, inductors, and pick offs.

B. The Petitioned-for Specialists

The Employer has a single classification and job description for specialists—M500 BaSE Specialist—but specialists have four primary assignments or functions: (1) Automation, which is further broken down into control room and floor coverage; (2) Housekeeping; (3) Compliance; and (4) Parts. Currently, the Employer employs approximately 19 automation specialists, one housekeeping specialist, one parts specialist, and one compliance specialist. Only certain aspects of the specialists’ job description apply to each assignment. The housekeeping specialist is cross-trained on automation. The record does not indicate whether, or on which assignments, other specialists are cross-trained, nor does it specify whether, or how frequently or regularly, specialists change assignments.

Specialists work a multitude of 8-hour shifts: 8:00 a.m. to 4:30 p.m., 11:00 a.m. to 7:30 p.m., 12:00 a.m. to 8:30 a.m., 1:00 a.m. to 9:30 a.m., 2:00 a.m. to 10:30 a.m., 5:00 a.m. to 1:30 p.m., 6:00 p.m. to 2:30 a.m., 1:00 a.m. to 9:30 a.m., 2:00 a.m. to 10:30 a.m., and 5:00 a.m. to 1:30 p.m. Their hourly wages range from $26.40 to $42.90. The Employer guarantees 40 hours

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11 Petitioner also represents employees in the Automotive Department that primarily work on the Employer’s vehicles.

12 Formerly known as the Plant Engineering Department.

13 According to Local 1186 President Michael Stachowiak, Vadbunker is a Division Manager; Automation Supervisor James “Jimmy” Lang identified Vadbunker as a district president; and the Employer’s post-hearing brief identifies Vadbunker as Ontario Director of BaSE.

14 Compare BaSE Specialist job description (Employer Exh. 4) with Ontario Ground BaSE Specialist assignments (Employer Exh. 8), which lists each Ontario Ground specialist employed by the Employer along with their specific assignment and one of three “job descriptions”—Control Room/Floor Coverage (assigned either Automation or Housekeeping), Environmental Audits/Compliance (assigned Compliance), Parts Inventory Coordination (assigned Parts). Automation Supervisor Lang testified that not all bullet points on Employer Exh. 4 apply to each job description and assignment listed in Employer Exh. 8.
of pay each week, even if less hours are worked, plus overtime for any hours worked in excess of 40. They are eligible for annual merit increases, holiday and vacation pay, and other benefits, including health insurance, life insurance, savings plans, including 401(k), discounted employee stock purchase plan, and employee discounts.

Specialists report to work in the Main Office, which is located in the southern part of the Main Hub next to the South Maintenance Shop. Each specialist has a computer workstation that they share with one other specialist. The Employer provides specialists with cellphones and an e-mail account. They typically carry a utility knife, multitool, flashlight, and some carry an insulated screwdriver. Specialists record their worktime on their computer or cellphone. They are authorized to drive Employer golfcarts. The record does not indicate whether, or how often, specialists use golfcarts.

Specialists are required to wear a collared shirt with slacks or jeans. They do not have Employer-provided clothing. The Employer prefers specialists have, or be pursuing, a bachelor’s degree.

1. Automation Specialists

The Employer employs approximately 19 automation specialists, who are supervised by six Automation Supervisors. Each supervisor oversees two to four automation specialists. The Automation Supervisors report to one of four Facilities Engineers, who themselves report to Director Vadbunker. The record does not indicate how much contact automation specialists have with their supervisors or Facilities Engineers.

Automation specialists perform one of two primary duties, either control room or floor coverage. Automation specialists in the control room relay information between operations management and floor specialists and mechanics. Automation specialists on the floor optimize the automation equipment to ensure the efficient flow of packages. The record does not disclose the number of automation specialists regularly performing control room duties or the number regularly performing floor coverage. It is also unclear as to how frequently automation specialists switch between control room and floor duties. For example, one automation specialist testified that he worked in the control room for approximately one year three years ago. He has since worked in the control room “from time to time,” although he had not worked in the control room “in a few months” as of the time of the hearing.

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15 The record does not indicate whether specialists are salaried nonexempt employees under the Fair Labor Standards Act (“FLSA”) or hourly employees.

16 Also referred to in the record as R-100.

17 Automation Supervisor Lang testified that a bachelor’s degree is required. The specialist job description does not list a bachelor’s degree as a requirement.
Specialists in the Control Room

Automation specialists working in the control room receive reports of issues with equipment and problems during the sort; call out to maintenance mechanics and automation specialists on the floor to investigate, assess, and correct the issues and problems; and receive reports from maintenance mechanics and automation specialists about the status of the issues and problems. Part-time supervisors previously performed these functions, but now there are two automation specialists on each sort working in the control room with supervisors.

Call-outs from the automation specialists in the control room are made over the same radio channel to maintenance mechanics and other automation specialists. A given call-out could be made to just maintenance mechanics, just automation specialists, both, or not specify either position.

The record contains the example of a maintenance mechanic getting a call-out for a belt stalling. A maintenance mechanic and automation specialist would go to the human-machine interface (“HMI”) and a programmable logic chip (“PLC”) would identify the problem—zero speed detected—and its location. The specialist and mechanic would then go and investigate the problem area to determine its cause, such as too many packages on the belt or a mechanical failure. A Teamsters-represented jam breaker might be needed to fix the former while a maintenance mechanic would correct the latter. If there were an issue with the automated equipment or systems communication, the automation specialist would make the repairs.

Specialists on the Floor

The record describes the shift of automation specialists on the floor beginning with a pass off—a brief discussion with the previous shift’s specialists and supervisors about any ongoing issues with the automated equipment or any issues requiring immediate attention. Next, the specialists are given their assignments for the shift, including maintaining, repairing, and troubleshooting equipment. After completing their assigned work, the automation specialists remain on-call with maintenance mechanics for any issues during the sort.

If an issue arises, a call-out is made by an automation specialist assigned to the control room. Automation specialists may also receive direction from Automation Supervisors and Maintenance Supervisors. As discussed above, the call-out may be for a specialist, maintenance mechanic, or both. The record indicates control room personnel oftentimes the control room often do not care which classification responds. For specialist-specific calls, the automation specialists on the floor investigate and assess the reported problem and correct or repair it if its within their scope of work, that is, automated-related issues. If outside the specialist’s scope of work, they narrow or identify where a maintenance mechanic should investigate and repair equipment. Specialists also carry and retrieve tools and parts for mechanics.

Automation specialists assess, troubleshoot, and work on computer systems and automated-related equipment, such as high-speed label applicators (“HSLA”), small sort label applicator (“SSLA”) systems, and photo-eyes. In assessing and investigating issues, they use

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18 The record does not indicate where the control room is located in the Main Hub.
diagnostics from Visicon, Polaris, and other Employer systems. They can clean up and clear photo-eyes and camera tunnels, clear any FOD, and power cycle equipment.

If the issue requires work on mechanical equipment, pulling modules, or using maintenance mechanic tools, then the automation specialist should call a maintenance mechanic. For example, automation specialists can troubleshoot wiring issues such as loose wiring, but if wires need to be pulled or tested, a maintenance mechanic should be called. The record contains other examples of specialists identifying belt problems, such as bad lacing or being ripped or rolled over, which requires a maintenance mechanic to repair.

Automation specialists sometimes perform work within the scope of maintenance mechanics, including pulling modules and wiring, working inside electrical panels and cabinets, and trimming belts with utility knives. The record indicates automation specialists have adjusted photo-eyes when a maintenance mechanic was not available or present. The record does not indicate how often this occurs, but Petitioner has raised issues with specialists performing maintenance mechanic work about 25 times in the past 4 years.

When not working on problems with the sort, automation specialists on the floor perform preventative maintenance inspections (“PMIs”), which are an observe-and-report “walking trace” of certain automated system components completed on a daily and weekly basis. The PMIs are recorded on a written form, noting any necessary repairs. Issues reported in PMIs are repaired by maintenance mechanics.

Automation specialists on the floor also assist with maintenance mechanic audits and safety audits, which are known as safe work methods (“SWMs”). They also assist with inventory and assist Housekeeping with SWMs on porters.

2. **Housekeeping Specialist**

The Employer employs one housekeeping specialist, who works in the Housekeeping Subdepartment. The housekeeping specialist is supervised by Housekeeping Supervisor Alejandro Rodriguez, who reports to Facilities Engineer Rigo Gutierrez, who in turn reports to Director Vadbunker. Facilities Engineer Gutierrez also oversees the compliance specialist and four maintenance mechanics. There are approximately 70 Teamster-represented porters in Housekeeping, and the Employer plans to hire an additional five porters.

The housekeeping specialist conducts SWMs on porters and housekeeping audits on the work performed by porters, ensuring bathrooms and other areas of the facility meet the Employer’s cleanliness standards. The housekeeping specialist spends a majority of her time escorting vendors and auditing the porters. The record indicates at least one automation specialist

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19 The record example lists daily PMIs for Visicon components, light curtains, mirrors, camera status, and camera read rate, and weekly PMIs for various photo-eyes, encoders, belts, FOD catchers, and Visicon filters and Jobox.

20 No housekeeping specialists testified at the hearing.

21 The record indicates that the housekeeping specialist function was eliminated a few months prior to the pre-election hearing and was only recently reimplemented.
has performed some duties of the housekeeping specialist, including ensuring the porters received dispatched work orders.

The housekeeping specialist attends the pre-sort meeting with the operations-management teams to discuss any ongoing issues with facility cleanliness. The record does not include further details regarding the pre-sort meeting or disclose how often they occur.

A part-time supervisor covers the role when the housekeeping specialist is absent. The record indicates that another specialist could cover the function and, as noted above, automation specialists assist with certain housekeeping duties. The record contains no instances or examples of another specialist covering for the housekeeping specialist.

3. **Parts Specialist**

The Employer employs one parts specialist, who is supervised by Full-Time Parts Supervisor James Hasler, who reports to Facilities Engineer Alan Painter, who in turn reports to Director Vadbunker. Engineer Painter also oversees four automation specialists and 11 maintenance mechanics.

The parts specialist ensures proper inventory levels for parts and equipment at Ontario Ground. Specifically, the parts specialist monitors maintenance mechanics’ use of parts and equipment, tracking inventory levels, ordering parts and equipment, and ensuring parts and equipment arrive on time, including meeting vendors at Ontario Ground. The record contains-the example of the parts specialist accounting for all the belts in the facility and setting reorder points for parts to ensure they are replenished before being depleted. The parts specialist also orders items for interior and exterior of Ontario Ground, such as lighting, light bulbs, ballasts, and bollards for the perimeter.

The parts specialist researches vendors to assess the types and quality of equipment and parts they can provide. As such, the parts specialist spends a lot of time working on computers and making phone calls.

The parts specialist also works with maintenance mechanics to order parts, something maintenance mechanics cannot do. Automation Supervisor Lang testified that the parts specialist “works closely” with maintenance mechanics “on occasion,” and an automation specialist described maintenance mechanics and the parts specialist or Parts Supervisor Hasler as working “side-by-side” when ordering parts. The parts specialist orders tools for the mechanics.

Parts Supervisor Hasler covers for the parts specialist when he is absent. The record does not disclose further details regarding the parts specialist.

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22 No parts specialists testified at the hearing.

23 As noted above, the parts specialist is also referred to in the record as an inventory specialist and parts inventory specialist.
4. Compliance Specialist\textsuperscript{24}

The Employer employs one compliance specialist, who is currently overseen by Facilities Engineer Gutierrez, who reports to Director Vadbunker.\textsuperscript{25} As noted above, Facilities Engineer Gutierrez also oversees the housekeeping specialist and four maintenance mechanics. As such, the compliance specialist is currently under Housekeeping.

The compliance specialist position was implemented in early 2022, approximately two months before the preelection hearing in this case. The compliance specialist ensures regulatory compliance of certain processes at Ontario. Specifically, the compliance specialist ensures hazmat audits are completed for regulated goods and conducts audits of certain equipment at Ontario Ground, such as fuel islands, car washes, and compressed natural gas and liquid natural gas pumps. The compliance specialist audits Employer processes not employees.

The compliance specialist tracks employee compliance with training requirements by sending a weekly e-mail to supervisors notifying them which employees need to complete which trainings. The compliance specialist does not conduct trainings.

The compliance specialist works with a full-time supervisor. The record does not disclose any other employees with whom the compliance specialist works.

C. The Existing Unit

According to the parties’ stipulation and Local CBA, Petitioner represents “certain employees of the Employer in Los Angeles, Orange, Riverside, San Bernardino, Ventura, Imperial, Yuma, Inyo, Kern, Santa Barbara, and San Luis Obispo Counties in the following classifications: automotive mechanics, machinists, electricians, body shop, repair person, district floaters per classification, parts person, welders, and maintenance person [maintenance mechanic].” The record does not indicate how many Petitioner-represented employees are in the existing multifacility unit.

Existing unit employees at Ontario Ground are employed in the BaSE Department, where the petitioned-for specialists work, and the Automotive Department. Specifically, maintenance mechanics work in the BaSE Department and perform maintenance on systems in the Main Hub while Petitioner-represented employees in the Automotive department work on vehicles and related components. The record does not disclose the total number of existing unit employees at Ontario Ground.

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\textsuperscript{24} No compliance specialists testified at the hearing.

\textsuperscript{25} The record does not identify any direct supervisor, and the Employer’s list of specialists shows the compliance specialist’s supervisor as “open.” See Employer Exh. 8.
1. **Maintenance Mechanics**\(^{26}\)

The Employer employs approximately 45 maintenance mechanics in the BaSE Department at Ontario Ground. The maintenance mechanics are supervised by four Maintenance Supervisors, who are overseen by the same four Facilities Engineers as the specialists. As discussed above, the Facilities Engineers report to Director Vadbunker.

To maintain the Employer’s continuous operations, maintenance mechanics work 8-hour shifts starting every four hours: 8:00 a.m. to 4:30 p.m., 12:00 p.m. to 8:30 p.m., 4:00 p.m. to 12:30 a.m., 8:00 p.m. to 4:30 a.m., 12:00 a.m. to 8:30 a.m., and 4:00 a.m. to 12:30 p.m. The Local CBA provides an hourly wage rate of $40.27 per hour,\(^ {27}\) along with overtime rates of time-and-a-half and double-time depending on the circumstances, and holiday and vacation pay. The Local CBA also provides for contractual benefits, such as health insurance, pension, and the IAMAW’s 401(k) plan. Maintenance mechanics are also eligible for the Employer’s life insurance plans, discounted employee stock purchase plan, and employee discounts.

Maintenance mechanics report to work in the Main Hub at either the North Maintenance Shop, which is centrally located, or the South Maintenance Shop, which is next to the Main Office where specialists report to work. They record their worktime on electronic timeclocks located throughout the Main Hub. The Employer provides maintenance mechanics with radios, personal digital assistants (“PDAs”), and about half of their tools.\(^ {28}\) They use three-wheeled vehicles called PICOs to move themselves and their tools throughout Ontario Ground.

The primary duty of a maintenance mechanic is ensuring the efficient operation of the conveyor system through maintaining and repairing its mechanical systems.\(^ {29}\) As noted above, maintenance mechanics use tools to correct and repair broken or malfunctioning mechanical equipment inside Ontario Ground. They also work on equipment outside the facility, such as fuel islands. As discussed above, maintenance mechanics may notify the control room of an issue in the facility that requires the attention of a specialist, and they can specifically request an automation specialist. Examples in the record include working on electrical panels and pulling modules and wiring, jogging a sorter, and addressing problems with the conveyors and belts.

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\(^{26}\) One witness from the Maintenance Subdepartment testified at the hearing.

\(^{27}\) President Stachowiak testified that maintenance mechanics base wage rate is currently $40.60 per hour.

\(^{28}\) President Stachowiak testified that the Employer provides about 50% of maintenance mechanics tools. The Master Agreement and Local CBA provide for a tool allowance. See also Employer Exh. 7, which lists approximately 50 different maintenance mechanic tools, including various hammers, pliers, ratchet and socket sets, screwdrivers, and wrenches.

\(^{29}\) The maintenance mechanic job description lists the following equipment under major work activities: mechanical components such as motors, reducers, drive chains, sprockets, sheaves, pulleys, rollers, conveyor belts, bearings, and transfer plates; electrical equipment such as batteries, control stations, fuses, motor starters, relays, switches, timers, servo driven equipment, PLCs, photo electrical devices, transducers, Variable Frequency Drives (VFDs), and encoders; pneumatic equipment such as diverters, air compressors, lubricators, hoses, and coils; hydraulic equipment such as hoses, fittings, cylinders, and pumps; welding equipment such as hand rails, conveyor supports, package handling equipment, carts, and grading.
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Maintenance mechanics receive their daily assignments through their PDAs. Assignments include work orders for repairs on mechanical equipment and preventative maintenance inspections (PMIs). Maintenance mechanics perform PMIs on equipment such as conveyors, bulk carts, and power industrial equipment. A record example shows the daily, weekly, monthly, quarterly, and annual PMI for conveyors. The record does not disclose how much time maintenance mechanics spend on PMIs versus assigned maintenance or on-call repairs.

Maintenance mechanics wear Employer-provided uniforms. The Employer requires maintenance mechanics to pass an online written test and a hands-on test, requiring the identification of tools, equipment, components, and how they are repaired.30

The record indicates that maintenance mechanics are included on the same seniority list with all IAMAW-represented employees but is unclear whether this includes existing unit employees at other facilities.

2. Other Classifications

The record contains minimal evidence regarding other existing unit classifications, other than they work in the Automotive Department at Ontario Ground. The Local CBA lists the following classifications in addition to maintenance mechanic: auto mechanics, auto machinists, auto electricians, body shop, repair person, and welder.

D. Classifications Outside the Existing Unit

With the exception of porters, the record contains only brief mention of employees in Teamster-represented or unrepresented classifications. As to Teamsters-represented employees, the record reflects that Teamsters represents belt tenders, jam breakers, inductors, pick offs, and drivers.31

II. ARMOUR-GLOBE ANALYSIS

A. Board Law

Under the Board’s Armour-Globe doctrine,32 employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. NLRB v. Raytheon Co., 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may add unrepresented employees to its existing unit through an Armour-Globe self-determination election under the two-part standard set forth in Warner-Lambert Co., 298 NLRB 993 (1990): (1) the employees sought to be included share a community of interest with unit

30 This is referred to in the record as PEMAT (Plant Engineering Mechanic Applicant Testing).

31 In addition, unexecuted collective-bargaining agreements between the Employer and Teamsters list the following job classifications as represented by Teamsters Local Union No. 63: Router, Sheetwriter Loader, Positioner, Beltman: Center Belt, Unloader and Feeder Loader, Tractor-Trailer Driver: Round Trip to 300 Miles, Tractor-Trailer Driver: Round Trip 301 Miles & Over, Hostler and Cashifier, Cashifier Beltman, Center Report Clerk/Cashier, Center Clerk, and Package Driver. See Employer Exh. 26. See also Employer Exh. 25.

employees, and (2) they “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” Id. at 995 (citing Capital Cities Broadcasting Corp., 194 NLRB 1063 (1972)). See also Rush University Medical Center v. NLRB, 833 F.3d 202, 209 (D.C. Cir. 2016). Whether a voting group is distinct and identifiable is not the same question as whether the voting group constitutes an appropriate unit. St. Vincent Charity Medical Center, 357 NLRB 854, 855 (2011) (citing Warner-Lambert, above at 995). A certifiable unit, including the combined unit formed in an Armour-Globe case, need only be an appropriate unit, not the ultimate or the only or even the most appropriate unit. International Bedding Co., 356 NLRB 1336, 1337 (2011) (citing Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), enf’d. 190 F.2d 576 (7th Cir. 1951)); see also Overnite Transportation Co., 322 NLRB 723 (1996).

The Board looks to similar albeit separate community-of-interest factors depending on the facts of the particular case. For example, the Board uses a multifacility community-of-interest test if the involved employees are spread across more than one location but analyzes community of interest under its “traditional” factors when the unit involves employees at a single facility.

Typical factors considered in the Board’s traditional community-of-interest analysis include: (1) whether the employees are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including an inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with other employees; (5) have frequent contact and interchange with other employees; (6) have distinct terms and conditions of employment; and (7) whether they are separately supervised. See, for example, United Operations, Inc., 338 NLRB 123, 123 (2002). However, the administrative grouping of the employees is often combined with their supervision for a single community-of-interest factor in Armour-Globe cases and is also considered when determining whether the employees are a distinct-and-identifiable segment. See, for example, Warner-Lambert, above at 996, fn. 4.

Comparably, the Board’s multifacility community-of-interest analysis examines: (1) employees’ skills and duties; (2) terms and conditions of employment; (3) employee interchange; (4) functional integration; (5) geographic proximity; (6) centralized control of management and supervision; and (7) bargaining history. Audio Visual Services Group, LLC, 370 NLRB No. 39, slip op. at 2 (2020) (quoting Laboratory Corp. of America Holdings, 341 NLRB 1079, 1081–1082 (2004)). The Board has also recently considered the extent of employee organization and employee choice and whether the petitioned-for unit corresponds to an administrative grouping of the employer in the context of an Armour-Globe petition. See FreshPoint Southern California, Inc., 28-RC-252613 at fn. 3 (June 18, 2020) (unpublished).

Regardless of the test used, the factors must be considered in their totality, although some factors may carry more weight depending on the degree to which they are exhibited. See, for example, Executive Resources Associates, 301 NLRB 400, 401 (1991).

Under both community-of-interest tests, differences in terms and conditions of employment that resulted from collective bargaining are afforded less weight. See, for example, Public Service Co. of Colorado, 365 NLRB No. 104, slip op. at 1 fn. 4 (2017); Frontier Telephone of Rochester, Inc., 344 NLRB 1270, 1273 fn. 12 (2005) (then-Member Liebman, concurring); Oxford Chemicals, Inc., 286 NLRB 187, 188 fn. 5 (1987). See also NLRB v. Klochko Equipment Rental Co., 657 Fed.Appx. 441, 448 (6th Cir. 2016) (“to deny [an employee’s] request to join the collective-bargaining unit based on differences that exist because [he] is not covered by the collective-bargaining agreement would defeat the purpose of the [Act]”).

B. Community-of-Interest Analysis

The instant case involves petitioned-for employees at a single facility within an existing multifacility bargaining unit. In similar circumstances, the Board has used the traditional community-of-interest factors. See Public Service Co. of Colorado, 365 NLRB No. 104, slip op. 1, fn. 4 (2017) (affirming inclusion of employees in additional classifications of plant planner and plant planner/scheduler with an existing multifacility unit of operations, production and maintenance, and technical employees based on traditional community-of-interest factors despite petitioned-for employees being spread across seven facilities). Compare FreshPoint, above at fn. 3 (applying multifacility community-of-interest factors to Armour-Globe self-determination where union sought to add drivers from a single unrepresented location to its existing multifacility unit of drivers). See generally, AT&T Mobility Services, 371 NLRB No. 14, slip op. at 1 (2021).

Before going through the community-of-interest analysis, I note that the Employer asks that I apply the “missing witness” rule and draw several adverse inferences from Petitioner’s

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34 Given this is an Armour-Globe case, I have primarily analyzed the facts pursuant to the Warner-Lambert standard discussed, above, rather than under the Board’s more recent decisions in PCC Structural, Inc., 365 NLRB No. 160 (2017), which overruled Specialty Healthcare & Rehabilitation Center of Mobile, 357 NLRB 934 (2011). See also King Soopers v. NLRB, 809 Fed.Appx. 1, 2 (D.C. Cir. 2020) (unpublished opinion) (“the Board fulfills its statutory obligation to determine unit appropriateness … by applying the Warner-Lambert standard to the facts in each Armour-Globe self-determination representation proceeding”).

The Board has indicated that Specialty Healthcare was not the correct standard for determining whether an Armour-Globe self-determination election was appropriate, and this remains true after PCC Structural. See Republic Services of Southern Nevada, 365 NLRB No. 145, slip op. at 1, fn. 1 (2017); see also Concord Toyota, 32-RC-255130 (Sep. 22, 2020) (unpublished) (denying review of Regional Director’s application of Warner-Lambert standard for Armour-Globe self-determination where PCC Structural was cited only for general community-of-interest principles); King Soopers, Inc., 27-RC-215705 (Nov. 20, 2018) (unpublished) (denying review of Regional Director’s declination to apply PCC Structural to an Armour-Globe petition); South Texas Project Nuclear Operating Co., 16-RC-128913 at fn. 1 (Oct. 19, 2014) (unpublished) (Member Johnson applying Warner-Lambert to determine whether an Armour-Globe self-determination election was a proper and finding Specialty Healthcare inappropriate). However, I have considered PCC Structural and its progeny insofar as they address general community-of-interest principles applicable in any representation case, including Armour-Globe cases. See, for example, Macy’s West Stores, Inc., 32-RC-246415 at fn. 1 (May 27, 2020) (unpublished).
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failure to introduce evidence regarding the existing unit other than the Ontario Ground maintenance mechanics. Specifically, it asserts any facts related to other classifications in the existing unit would be adverse to shared community of interest with the Ontario Ground specialists, particularly job duties and working conditions, citing *Martin Luther King, Sr. Nursing Center*, 231 NLRB 15, fn. 1 (1977) (applying the “missing witness” rule in an unfair labor practice case to draw an adverse inference). See 29 Am. Jur.2d §178 (“Where relevant evidence which would properly be part of a case is within the control of the party whose interest it would normally be to provide it, and he fails to do so without satisfactory explanation, the [trier of fact] may draw an inference that such evidence would have been unfavorable to him”).

I deny the Employer’s requests and reject its assertions. As an initial matter, the Board has long held that preelection hearings are factfinding proceedings and non-adversarial in nature. See generally, *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 2 (2020) (citing *Marian Manor for the Aged & Infirm, Inc.*, 333 NLRB 1084, 1084 (2001)). Thus, a party’s failure to produce evidence in its control may affect the weight of the testimony, but it does not allow an adverse inference. The Employer cites to no representation cases, and I know of none, where the Board endorses drawing an adverse inference in a nonadversarial proceeding.

However, even assuming it is possible for me to draw an adverse inference, it would not be appropriate for me to do so here. The fact that a classification may not share a community of interest with a portion of the bargaining unit does not necessitate its exclusion from the unit, even more so in the *Armour-Globe* context. See *Public Service Co. of Colorado*, 365 NLRB No. 104 (finding petitioned-for planners shared a community of interest with the existing unit based on similarities with represented maintenance employees where the existing unit also included operations, production, and technical employees). See also *Ameren Missouri*, 14-RC-278595 fn. 1 (November 18, 2021) (unpublished) (denying review of *Armour-Globe* election including petitioned-for planners in an existing unit based on a community of interest with maintenance employees, even though the record contained no evidence regarding any other employees in the existing production-and-maintenance unit). The Board has long recognized more than one appropriate bargaining unit usually can be defined from any particular factual setting. *Bergdorf Goodman*, 361 NLRB 50, 51 (2014).

As discussed below, after examining the record as a whole and weighing the factors above, I find that the frequency of contact between employees and degree of functional integration fully support Petitioner’s position with respect to the alleged community of interest between the Ontario Ground specialists and Petitioner’s existing unit while the administrative grouping and common supervision, similarity of job functions and work, including overlap, and the two groups’ terms and conditions of employment weigh slightly in favor of including specialists with the existing unit. Bargaining history is neutral, and the difference in employee skills and training is the only factor weighing in favor of dismissing the petition. Accordingly, I find the petitioned-for specialists share a sufficient community of interest to warrant their inclusion in the existing unit.

1. **Administrative Grouping and Employee Supervision**

An important 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 will 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, Inc., 331 NLRB 1289, 1289, 1291 (2000).

The record reveals that the petitioned-for specialists exist exclusively within the BaSE Department at Ontario Ground, where maintenance mechanics in Petitioner’s existing unit also work, although both groups are employed in different subdepartments. Maintenance mechanics fall under Maintenance; the automation specialists, compliance specialist, and inventory specialist fall under Specialists; and the housekeeping specialist falls under Housekeeping. Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees’ supervisors who have the authority to hire, fire or discipline employees (or effectively recommend those actions), 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, above at 402; NCR Corp., 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, above 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, above at 607, fn. 11. Rather, more important is the degree of interchange, contact, and functional integration. Id. at 607.

As discussed above, the petitioned-for specialists and maintenance employees are both in the BaSE Department. While they have separate immediate supervision, the Ontario Ground specialists and maintenance mechanics work under the same four Facilities Engineers. The record does not disclose the level of contact or direct supervision by specialists’ respective supervisors versus the Facilities Engineers.

Accordingly, I find that this factor weighs slightly in favor of finding the specialists share a community of interest with the existing unit.

2. Employee Skills and Training

This factor examines whether disputed employees can be distinguished from one another based on qualifications, skills, or training. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the petitioned-for unit. Evidence that disputed employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same employer training programs, or that they use similar equipment supports a finding of similarity of skills. Casino Aztar, 349 NLRB 603 (2007); J.C. Penny Co., Inc., 328 NLRB 766 (1999); Brand Precision Services, 313 NLRB 657 (1994); The Phoenician, 308 NLRB 826 (1992).
The Employer asserts the specialists have entirely distinct job skills and training from maintenance mechanics, and Petitioner does not address this factor. The evidence indicates that, in a broad sense, automation specialists and maintenance mechanics investigate, assess, and correct problems with Employer systems. Further, the record reveals specialists and maintenance mechanics perform some of the same functions, such as adjusting photo-eyes, trimming belts, and jogging the sorter and, as such, have some of the same basic skills. Nevertheless, a review of the position descriptions and the record as a whole fails to establish that the specialists have similar qualifications, skills, or training as the maintenance mechanics, or any other employees in the unit. Rather, the record reveals maintenance mechanics must perform skilled work using traditional mechanic’s tools, including welders, and must have related work experience while specialists use computer-based diagnostic equipment and tools. The record does not indicate how often mechanics or specialists use skills exclusive to their specific position.

In sum, although there may be some minor overlap in skills, it is apparent that the specialists and maintenance mechanics generally have distinct qualifications, skills, and training. Accordingly, I find this factor weighs against a shared community of interest among the petitioned-for specialists and existing unit employees.

3. **Job Functions and Work, including Job Overlap**

This factor examines whether disputed employees can be distinguished from one another on the basis of job duties or functions or the work they perform. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another’s work, or that disputed employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, above; *J.C. Penny*, above; *Brand Precision*, above. 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, despite lack of common supervision or evidence of interchange. *Phoenician*, above.

As noted above, all call-outs involve an automation specialist making and receiving the calls from the control room, and a majority of calls involve an automation specialist and a maintenance mechanic working together. Automation specialists also carry and retrieve tools for the maintenance mechanics. While the record does not reveal the frequency, it shows that the parts specialist orders parts and tools for maintenance mechanics to be able to complete their work.

Thus, I find some similarity in the automation specialists performing floor coverage and maintenance mechanics job functions of investigating, assessing, and repairing Employer sorting systems. I also find that there is job overlap among these groups in that they both perform some

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35 While the parts specialist may monitor tool inventory levels and order tools for maintenance mechanics, the record does not indicate he possesses skills with those tools.

36 Nothing in the record suggests shared skills between the housekeeping specialist or compliance specialist and the maintenance mechanics.
of the same basic repairs, including aiming and adjusting photo-eyes, trimming belts, jogging sorters, and accessing electrical panels. Further, the record reveals no other classifications performing PMIs or SWMs. However, the record fails to show similarities among the housekeeping specialist or compliance specialist and the maintenance mechanics.

Accordingly, I find that this factor weighs slightly in favor of finding a community of interest between specialists and the existing unit.

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 as a group provides a service. 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 and perform similar functions is relevant when examining whether functional integration exists. Publix Super Markets, Inc., 343 NLRB 1023, 1024–1025 (2004); Transerv Systems, Inc., 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.

The Employer argues the record evidence shows nothing more than functional integration with the whole of employees at Ontario Ground. Specifically, it highlights specialists work with unrepresented employees and Teamster-represented belt tenders and jam breakers. However, the record shows specialists and maintenance mechanics ensure efficient operation of the Employer’s conveyor belts. As discussed above, maintenance mechanics and automation specialists in both the control room and on the floor function as a team to address issues with the Employer’s automated conveyor systems. The specialist in the control room radios to mechanics and specialists on the floor, who then investigate, assess, and address the issue in a majority of the call-outs. Similarly, the parts specialist monitors the inventory levels of the parts and tools used by maintenance mechanics in the performance of the work. Maintenance mechanics work directly with the parts specialist to order parts and tools.

Given the work of automation specialists and the parts specialist is required for maintenance mechanics to complete their work, and automation specialists account for 19 of the 22 petitioned-for specialists, I find the degree of functional integration weighs heavily in favor of finding this factor shows a shared community-of-interest with the existing unit.

5. Employee Contact and Interchange

Relevant to the traditional community-of-interest analysis is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See, for example, Casino Aztar, 349 NLRB at 605-606; Associated Milk Producers, Inc., 251 NLRB 1407, 1408 (1970).
Here, the record reveals daily work-related contact between the automation specialists and the maintenance mechanics. President Stachowiak, who is a maintenance mechanic, and an automation specialist both specifically testified to “daily” contact between maintenance mechanics and automation specialists. The automation specialist estimated that he goes on 10 to 15 calls per day and 10 of those calls are with maintenance mechanics. Stachowiak testified that 75 percent of the calls he responds to involve work with specialists. Even assuming as correct the Employer’s calculation that specialists and maintenance mechanics spend over 19 percent of their workday together on calls, the Board has found such contact to warrant inclusion with petitioned-for employees. See, for example, National Health Laboratories, Inc., 239 NLRB 213, 214 (1978) (overruling Regional Director and including sales service employees in a unit with petitioned-for delivery drivers based on their “extensive contacts with other unit employees,” consisting of “10 or 15 percent of their working time” each day).

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 at 401 (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 by a union; however, the existence of permanent transfers is not as important as evidence of temporary interchange. Walt Disney World Co., 367 NLRB No. 80, slip op. at 7 fn. 5 (2019).

The Employer asserts there is no record evidence of temporary interchange and only one record instance of interchange at Ontario Ground, a specialist who became a maintenance mechanic, while Petitioner argues testimony shows five instances of specialists becoming maintenance mechanics. Assuming Petitioner’s argument is correct, given the permanent nature of the interchange over a generally unspecified time period, I give little weight to the aspect of interchange.

Despite the lack of interchange, particularly temporary interchange, the Board has described the degree of contact in situations similar to those here as “extensive.” See, for example, National Health Laboratories, Inc., 239 NLRB at 214. Thus, I find that this factor overall weighs in favor of specialists sharing a community of interest with existing unit employees.

37 The Employer’s post-hearing brief combines Stachowiak’s testimony that he should spend no more than 10 minutes to address a call out and the specialist’s testimony that he works with mechanics on an average of 10 calls per day to assert specialists and mechanics spend approximately 100 minutes per 510-minute shift working together. However, nothing in the record indicates the number of call-outs Stachowiak or any other mechanic receives on an average day, nor does it indicate that specialists only work for 10 minutes on a call-out. Further, the Employer incorrectly attributes Stachowiak’s testimony that 75% of his calls are with specialists to the automation specialist.
6. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (e.g., 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. However, the fact employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. Bradley Steel, Inc., 342 NLRB 215 (2004); Overnite Transportation Co., 322 NLRB 347 (1996). As noted above, differences in terms and conditions that resulted from collective bargaining are afforded little weight. Public Service Co. of Colorado, 365 NLRB No. 104, slip op. at 1 fn. 4.

The Employer asserts specialists are “pseudo-management” and “management-adjacent employees,” arguing differences in “wages, merit raises, pay structure, benefits, dispute resolution, lack of written discipline policy, holiday pay, dress code, and working conditions” are the result of this special status rather than due to the Master Agreement and Local CBA. However, nothing in the record compels this conclusion. Rather, nearly all of the differences in terms and conditions between specialists and Petitioner-represented employees are encapsulated within the provisions of the Master Agreement and Local CBA, and the record fails to indicate whether purported specialist-specific terms are afforded only to management or to all other unrepresented employees at Ontario Ground or Employer-wide.

Despite the contractual differences, Petitioner-represented employees, including maintenance mechanics’ $40.27 per hour wage rate is within the specialists’ wage range of $26.40 to $42.90, and both classifications receive overtime. Further, Petitioner-represented employees enjoy some of the same unrepresented companywide benefits as specialists, such as eligibility for life insurance, discounted employee stock purchase plan, and employee discounts.

Accordingly, I find this factor weighs in favor of finding a community of interest between specialists and employees in the existing unit.

7. Bargaining History

The Employer argues “broader bargaining realities also weigh heavily against a combined unit,” as there are only 22 petitioned-for specialists in one facility and the existing unit consists of nine classifications spanning multiple counties. In support, it quotes Great Lakes Pipe Line, Co., 92 NLRB 583 (1950), to argue that it is the Board’s “duty to prevent injustice being done to minority groups by gerrymandering practices which would require the arbitrary inclusion of such groups in a larger unit wherein they would have no effective voice to secure the benefits of collective bargaining.” Id. at 585. However, I view this case differently. In Great Lakes, the Board specifically endorsed and ordered a self-determination election to give the petitioned-for employees the opportunity to choose whether to be represented as part of the larger existing unit rather than mandating their inclusion through accretion.

Bargaining history can be a community-of-interest factor, where it is recent and significant and involves the petitioned-for employees. However, in an Armour-Globe context, the
petitioned-for voting group will generally lack a relevant history of collective bargaining while the existing unit typically has a significant history of representation. To apply a bargaining history criterion to the existing unit of represented employees would predispose the Board against finding a community of interest in any *Armour-Globe* case. Thus, there is no bargaining history relevant to the community-of-interest analysis in the instant *Armour-Globe* dispute, as the petitioned-for specialists have never been represented by a labor organization on either a more limited or a more comprehensive basis. See, for example, *Alaska Communications Systems Holdings, Inc.*, 19-RC-226955 at fn. 1 (June 27, 2019) (unpublished).

Accordingly, I find this factor is neutral.

C. Distinct-and-Identifiable Segment Analysis

In examining whether a voting group constitutes a distinct-and-identifiable segment, the Board considers factors similar to those in a community-of-interest analysis, including separate supervision, geographic separation of work areas, lack of integration with employees in other segments in the performance of ordinary job duties, skills or functions distinct from other employees, and whether the group includes all employees in an administrative division. See generally *Birdsall, Inc.*, 268 NLRB 186, 190 fn. 12 (1983) (citing *A. Harris & Co.*, 116 NLRB 1628, 1632 (1956)). The distinct-and-identifiable analysis asks merely whether the voting group sought unduly fragments the workforce or constitutes an arbitrary segment of unrepresented employees. *Capital Cities Broadcasting*, 194 NLRB at 1064 (citing *Solar Aircraft Co.*, 116 NLRB 200 (1956); *Minneapolis-Honeywell Regulator Co.*, 116 NLRB 1324 (1956); *Martin Co.*, 162 NLRB 319 (1966)).

While the petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to the existing unit, as noted above, neither party disputes that the Ontario Ground specialists are an appropriate bargaining unit.38

I further find that the record evidence indicates specialists are a distinct-and-identifiable segment because they have separate direct supervision from other employees (with the exception of the housekeeping specialist), constitute the entirety of the M500 BaSE Specialist classification at Ontario Ground, and perform essential tasks that no other employees perform. Specifically, automation specialists make call outs from the control room and investigate, assess, and repair Employer computer systems; the housekeeping specialist conducts housekeeping audits and safe work method audits of the porters (with which automation specialists may assist); the compliance specialist tracks employees training and ensures the Employer’s processes meet regulations; and the parts specialist monitors and maintains the parts inventory.39 I further note that the automation specialists and compliance specialist are the entirety of the Specialist subdepartment of BaSE at Ontario Ground.

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38 In fact, the parties’ post-hearing briefs and counsels’ on-the-record comments appear to acknowledge Ontario Ground specialists are an appropriate unit.

39 Regarding functions with only one specialist, there is no record evidence of other employees performing these jobs.
D. Conclusion

In sum, based on the foregoing, I find that the specialists share a sufficient community of interest with employees in the existing unit represented by Petitioner and that the specialists constitute an identifiable, distinct segment so as to constitute an appropriate voting group.

III. METHOD OF ELECTION

A. Agency Directives and Legal Authority

The Board is charged, under Section 9 of the Act, with the duty to conduct secret-ballot elections to determine employees’ union representation preference and to certify the results of these elections. The Board’s obligation to conduct secret ballot elections must be taken seriously, particularly at this time when the country and local community are facing a public health crisis. Although, as noted above, the parties have agreed to details for a manual election, Regional Directors have an obligation to properly exercise their discretion concerning the timing and manner of the election with due contemplation of safety considerations in the context of a pandemic.

It is well established that the Board has a strong preference for conducting manual elections. San Diego Gas & Electric, 325 NLRB 1143 (1998). However, the Board has acknowledged that circumstances may necessitate adaptations on the Board’s part to facilitate an election. In National Van Lines, 120 NLRB 1343 (1956), the Board asserted that “circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions.” 120 NLRB at 1346, citing Shipowners’ Assn. of the Pacific Coast, 110 NLRB 479, 480 (1954). The Board noted that, “[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted.” Id.; see also Casehandling Manual Sec. 11301.2. 40 Thus, “[o]nly where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him [or her] to conduct representative elections will the Board nullify an election and prescribe other election standards.” National Van Lines, 120 NLRB at 1346.

The Board has determined that there are some instances in which a mail-ballot election is appropriate because “of circumstances that would tend to make it difficult for eligible employees to vote in a manual election.” San Diego Gas, above at 1144. The Board clarified that a mail-ballot election may be appropriate where employees are scattered because of their job duties in terms of geography and/or varied work schedules such that “they are not present at a common location at common times” or if there is an ongoing strike, lockout, or picketing. Id. at 1145. The Board further concluded that there may be other relevant factors to consider and that “extraordinary circumstances” may warrant a departure from the specific guidelines articulated in that case. Id.

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, a Regional Director may exercise discretion to order a mail-ballot election where

40 As noted above, the provisions of the Casehandling Manual are not binding procedural rules.
conducting an election manually is not feasible and, under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. In light of the COVID-19 pandemic, to assist Regional Directors in determining when a manual election could be conducted safely, the General Counsel issued General Counsel Memorandum 20-10 (“GC Memo 20-10”) on July 6, 2020, setting forth detailed suggested manual election protocols. The memo does not provide an enforcement mechanism for any of its suggestions other than canceling an election.

Ultimately, after several months of considering requests for review of decisions directing mail-ballot elections during the current pandemic, the Board issued its decision in Aspirus Keweenaw, 370 NLRB No. 45 (2020), which provided guidelines for when a mail-ballot election would be appropriate during the COVID-19 pandemic. After affirming the Board’s longstanding policy favoring manual elections, the Board set forth six situations related to the pandemic that Regional Directors should consider and stated that where one or more of the situations is present, it would “suggest the propriety of using mail ballots under the extraordinary circumstances presented by this pandemic.” Id., slip op. at 4. Those situations are as follows:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status.

2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size.

4. The Employer fails or refuses to commit to abide by GC 20-10.

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status.

6. Other similarly compelling circumstances.

Id., slip op. at 4–7. The Regional Director has discretion to conduct an election by mail ballot “under the peculiar conditions of each case.” Id., slip op. at 3 (citing National Van Lines, 120 NLRB at 1346). The Regional Director’s determination to conduct an election manually or by mail is subject to an abuse of discretion standard. Aspirus, 370 NLRB No. 45, slip op. at 3 (citing San Diego Gas, 325 NLRB at 1144 fn. 4). Finally, in Aspirus, the Board noted that a Regional Director who directs a mail-ballot election under one or more of the foregoing six situations will not have abused her or his discretion. Aspirus, above, slip op. at 8. See also, Packers Sanitation Services, Inc., Ltd., 16-RC-294333 (June 29, 2022) (unpublished) (denying review of Regional Director’s decision to convert a stipulated manual election to a mail-ballot election based on the increasing 14-day trend and a testing positivity rate over 5% in the county where the in-person election was scheduled).
B. Analysis

In view of the *Aspirus* criteria set forth above, several factors support directing a manual election. First, the Region tasked with conducting the election is not operating under mandatory telework status. Second, the proposed manual election site can be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size. Third, the parties stipulated to and appear able to comply with the protocols set forth in GC Memo 20-10. Fourth, there is no current Covid-19 outbreak at the Employer’s facility.

However, the criteria that either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing or the 14-day testing positivity rate where the facility is located is 5 percent or higher indicate the propriety of a mail-ballot election in this case. Regarding the latter, the Board has noted that many locales do not report the 14-day testing positivity rate. Rather, experience has shown a 7-day average is more often available from national, state, county, and municipal health agencies, and the Board has found such metrics to be sufficient. See, for example, *CentTrio Energy South LLC*, 371 NLRB No. 94 (2022) (finding use of 7-day positivity rate “consistent with “Aspirus Factor 2” and denying review of mail-ballot election); *Sysco Central California, Inc.*, 32-RC-272441 (September 28, 2021) (unpublished) (citing reported 7-day testing percent positivity rate when denying review of mail-ballot election); *Stericycle, Inc.*, 04-RC-260581 (February 22, 2021) (unpublished) (same). See also, “COVID-19 Integrated County View” provided by the Centers for Disease Control and Prevention (“CDC”) (showing updated 7-day percent positivity at the county level). As noted above, Ontario Ground, where a manual election would take place, is located in San Bernardino County, California. As of July 6, the most current complete data available from the CDC for San Bernadino County showed a 7-day percent positivity for Covid-19 over 14 percent for the period of June 12 to 25, 2022. Furthermore, based on the 14 most recent days for which San Bernardino County has available data, I find that the 14-day testing positivity rate is well above 5-percent based on the information in the following table.

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41 Although the Board has occasionally referred to the *Aspirus* situations as “factors,” the *Aspirus* decision makes clear that the six situations are not part of a multifactor analysis and, as stated above, if even one of the situations is present, it is not an abuse of discretion to direct a mail-ballot election.

42 I note the Employer did not certify, by affidavit, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days. The Board “require[s] that in all cases where a party requests a manual election, the employer shall certify, by affidavit, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days)” (emphasis added). *Aspirus*, 370 NLRB No. 45, slip op. at 7; see also *Planned Building Services, Inc.*, 02-RD-274535, slip op. at 8 (Aug. 27, 2021)(unpublished)(Member Ring, dissenting) (“the certifications specified in *Aspirus*, which must be sworn to by affidavit”).


Specifically, I find that the 14-day testing positivity rate in San Bernardino County is 10.46 percent.46

Accordingly, I find that a mail-ballot election is warranted given that the 14-day testing positivity rate in San Bernardino County exceeds 5 percent, which alone is sufficient to find directing a mail-ballot election appropriate.

IV. CONCLUSIONS AND FINDINGS

I have carefully weighed the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold a self-determination election among the specialists to determine whether they wish to join the existing unit of production and maintenance employees. Based upon the entire record in this matter, including stipulations by the parties, and in accordance with the discussion above, I further conclude and find as follows:

1. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.47

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46 The Region calculated this 14-day testing positivity rate by dividing the total number of daily positive cases during the 14-day period by the total number of daily tests during the same 14-day period.

47 The Employer, United Parcel Service, Inc. (Ohio), a Delaware corporation with an office and place of business in Ontario, California, is engaged in the business of small package delivery. During the past calendar year, a representative period, the Employer purchased and received at its 3140 East Jurupa Avenue, Ontario, California facility, goods valued in excess of $50,000 directly from points located outside the State of California.
3. The parties stipulated and I find that the 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 petitioned-for voting group, and the parties stipulated and I find that there is no contract bar, or any other 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 voting group 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 BaSE Specialists, including control room/floor coverage specialists (automation specialists), environmental audit/compliance specialists (compliance specialists), parts inventory coordination specialists (parts specialists), and housekeeping specialists, employed by the Employer in the Building and Systems Engineering Department at its facility currently located at 3140 East Jurupa Street, Ontario, California 91761.

   **Excluded:** All managers, office clerical employees and guards, and professional employees and supervisors as defined in the Act.

7. If a majority of the valid ballots in the election are cast for Petitioner, the employees in the above appropriate voting group will be included in the existing bargaining unit consisting of certain employees of the Employer in Los Angeles, Orange, Riverside, San Bernardino, Ventura, Imperial, Yuma, Inyo, Kem, Santa Barbara, and San Luis Obispo Counties in the following classifications: automotive mechanics, machinists, electricians, body shop, repair person, district floaters per classification, parts person, welders, and maintenance person.

   Accordingly, for the reasons detailed above, I will direct a mail-ballot election in the voting group above, which includes approximately 22 employees.

**DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret-ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 947.
A. Election Details

For the reasons I have explained above, I have determined that a mail-ballot election will be held.

The ballots will be mailed to employees employed in the appropriate voting group at 5:00 p.m. on Monday, July 18, 2022. Ballots will be mailed to voters by the National Labor Relations Board, Region 31. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, July 27, 2022, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310) 235-7352 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

The returned ballots must be received by the Region 31 office by Monday, August 8, 2022. All ballots will be commingled and counted by the Region 31 office at 2:00 p.m. on Tuesday, August 9, 2022. In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties’ representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count. Upon conclusion of the count, a tally of ballots will be prepared and immediately made available to the parties by email.

B. Voting Eligibility

Eligible to vote are those in the voting group who were employed during the payroll period ending July 9, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the voting group 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. Voting group employees in the military services of the United States may vote by mail as described above.

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.
C. 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.

To be timely filed and served, the list must be received by the Regional Director and the parties by Wednesday, July 13, 2022. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer 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.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this Decision. The list may be electronically filed with the Region 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.

D. 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 accompanying this Decision in conspicuous places, including all places where notices to employees in the voting group 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 voting group 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
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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: July 11, 2022

Mori Rubin, Regional Director
National Labor Relations Board, Region 31
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Los Angeles, California 90064-1753