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WideOpenWest Illinois, LLC and International Brotherhood of Electrical Workers Local Union 21.
Case 13–RC–274653

June 10, 2022

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS RING
AND PROUTY

On May 28, 2021,¹ the Acting Regional Director of Region 13 issued a Decision and Direction of Election in which he found, applying *Boeing Company*,² that the petitioned-for unit of Field Service Technicians, Field Service Technician Locators, System Technicians, and Warehouse Operations Specialists must also include Customer Service Support Specialists, Construction Project Coordinators, Network Assurance Technicians, and Product Assurance Technicians. In accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, on June 7, the Petitioner filed a timely request for review,³ contending that the petitioned-for unit is appropriate. The Employer filed an opposition brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Petitioner’s June 7 request for review is granted as it raises substantial issues warranting review. Having carefully considered the entire record,⁴ including the request for review and the Employer’s opposition, we find that, pursuant to *Boeing* and established caselaw, the employees in the petitioned-for unit share an internal community of interest and that the additional employees the Employer seeks to include have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with the unit members. Accordingly, we reverse the Acting Regional Director, find that the petitioned-for unit is an appropriate unit,⁵ and remand this case to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

¹ All dates hereinafter are in 2021.

² 368 NLRB No. 67 (2019).

³ On May 18, the Petitioner also filed a request for review of the Acting Regional Director’s rejection of the Petitioner’s posthearing brief. That request for review is denied as it raises no substantial issues warranting review.

⁴ The Board has exercised its discretion to read the entire record. See Sec. 102.67(e) of the Board’s Rules and Regulations.

⁵ In reversing the Acting Regional Director’s holding, Chairman McFerran and Member Prouty note that no party in this case disputes the

I. FACTS

The Employer is a broadband cable, high speed data, video and phone service provider that operates out of three facilities in Warrenville, West Chicago, and Calumet City, Illinois.⁶ It provides services to residential and commercial customers in the Chicagoland area, which includes parts of Illinois and Northwest Indiana. The Employer’s business model involves acquiring already-existing cable businesses and operating the cable infrastructure used by prior businesses to provide services to residential and commercial customers. All video, data, and phone signals originate from the Employer’s Illinois-area “headends,” which are small facilities that house transmission equipment. The signals are transported from the headends to customer premises through a hybrid fiber coaxial cable network that hands off the signal through a fiber node and a series of amplifiers and ultimately delivers it to the customer outdoor network interface devices, or “taps.” The Employer’s network incorporates both copper-based coaxial cable transmission components and glass-based fiber transmission components.

The Employer refers to its departments as cost centers. The employees at issue in this case work in the Technical Operations, System and Plant Maintenance, Construction, Hybrid Fiber Cable, and the Network Operations cost centers. There are approximately 50 employees in the petitioned-for unit and 30 employees in the additional classifications that the Employer contends, and the Acting Regional Director found, must be included.

The Petitioned-For Unit: Field Service and System Technicians and Warehouse Specialists

The Union seeks to represent employees in the following classifications: Field Service Technicians (including residential and commercial technicians, as well as team leads); Warehouse Operations Specialists (including the team lead); Field Service Technicians—Locators; and System Technicians (including those who work with coaxial cable and those who work with fiber, as well as team leads).

Field Service Technicians (FSTs) are part of the Employer’s Technical Operations cost center, which is headed by Senior Director of Operations Dominick Silvio;

Acting Regional Director’s application of *The Boeing Co.*, and that *Boeing* constitutes extant precedent. The Chairman notes that she dissented from the majority holding in *Boeing*, and Member Prouty notes that he was not a member of the Board when *Boeing* was decided. They note also that the Board has invited briefing on whether to adhere to the legal standard in that decision. See *American Steel Construction, Inc.*, 371 NLRB No. 41 (2021).

⁶ The Employer is a subsidiary of parent entity WideOpenWest, Inc.

they report to Supervisors Wayne Maki and Latonia Ross and are based out of the Warrenville and Calumet City facilities. The FSTs travel to customer locations primarily to install, upgrade, or perform maintenance on the services that a customer has purchased from the Employer. General FSTs work with residential customers and Commercial FSTs work with business customers. Commercial jobs are generally more complex because they may involve multiple phone lines or different tiered services. FSTs enter customers' homes or facilities; discuss with them their requests or problems; train them to use the equipment; and perform new connects, reconnects, disconnects, upgrades, downgrades, and changes of service. In performing these tasks, FSTs use, among other tools, drills, hammers, wrenches, screwdrivers, torque wrenches, crimping tools, cabling, strippers, and signal level meters. They are required while on the customers' premises to wear uniforms, protective equipment, and boot covers. They spend their workday completing jobs that are generated by an app; when their day concludes, they return their vehicles to their home or office locations. FST Leads—both residential and commercial—spend about half of their time performing the same duties as the other FSTs and the rest monitoring quality control, assisting with training, providing support to other technicians, and performing oversight functions.

Although they generally work alone, FSTs may encounter service issues requiring assistance. For instance, if they suspect that a billing issue might be the source of the problem, they can contact the Employer's call center (in Augusta, Georgia); if the call center is unavailable, FSTs can contact a local Customer Service Support Specialist for the same type of help. FSTs' work jurisdiction covers only the interior of a customer's premises and the exterior tap, so if they encounter a problem that appears to originate in the cable infrastructure outside of the customer's premises, FSTs can contact System Technicians—whose work jurisdiction covers everything beyond the customer tap—in the area.

FSTs, like all hourly employees at issue in this case, must at minimum have a high school diploma or its equivalent and must possess some degree of computer literacy, a commitment to customer service, and the ability to work in a fast-paced environment. And like the other employees here who work in the field, FSTs often work outdoors and sometimes in dirty indoor settings; they must be physically able to see close up, at distances, and peripherally, and to bend, lift, walk, and crawl in confined spaces and over sometimes-uneven terrain. General FSTs are required to have basic knowledge of electronics and working knowledge of a hybrid fiber coaxial network; 2 to 4 years of experience and a related associate degree (or

equivalent in training and experience) are preferred. Leads have the same education and skill requirements. Commercial FSTs have the same skills and qualifications, but are also required to have 3 years of cable installation experience with commercial applications and strong knowledge of wall fishing and commercial construction practices; the Employer prefers that Commercial FST Leads also have 2 to 4 years of experience and a related associate degree. General FSTs and Leads generally cover shifts every day of the week, from 8 am to 7 pm; Commercial FSTs and Leads generally work Monday through Friday from 8 am to 5 pm. Wages range from \$16.95–\$28.25 per hour for general FSTs, and \$20.70–\$36.00 per hour for Leads. Wages for Commercial FSTs range from \$18.70–\$31.80 per hour, and \$20.70–\$36.00 per hour for Commercial Leads. All of the Employer's full-time hourly employees, including FSTs, are eligible for the same benefits, including, but not limited to, medical, dental, and vision insurance, and retirement and are subject to the same work rules.

Warehouse Operations Specialists are also part of the Technical Operations cost center and, like FSTs, report to Senior Director of Operations Silvio; they are the only employees at issue who work out of the Employer's West Chicago facility. The Employer's warehouse maintains and tracks inventory for its Illinois operations and supplies materials and equipment to employees. Specifically, the Warehouse Operations Specialists support the FSTs and System Technicians by supplying materials, stock requests, customer modems, converter boxes, cables, and all supplies associated with completing an installation or service call. When a technician needs materials or equipment, they contact a warehouse employee, who then prepares the request. Warehouse Operations Specialists also accept equipment, and scan and record items before storing them in a company facility. As products come in and out, they operate forklifts and move pallets around the warehouse. The single Lead Warehouse Operations Specialist has similar duties to the other warehouse employees, but performs additional oversight, administrative, and training functions. Warehouse employees are required to wear boots, but do not wear uniforms. They are required to have basic computer skills (e.g., the ability to use e-mail), but MS Office skills are preferred; the Employer also prefers that they have 1 to 2 years of light industrial or material control experience. They generally work Monday through Friday from 7 am to 3:30 pm. Wages range from \$13.50–\$22.55 per hour, and from \$16.95–\$28.25 per hour for the Lead.

FST Locators are part of the System and Plant Maintenance cost center and work out of the Warrenville and Calumet City facilities; they are supervised by Brian Hume

and Edgar Morales. FST Locators use a metallic cable coding locator device to identify and determine the depth of existing buried cable infrastructure using a blueprint that maps the location. After being assigned a work ticket, an FST Locator drives a truck to the assigned location, identifies the company's line underground, and marks it with spray paint; for instance, if a pool or fence is being built, the FST Locator will mark the company's lines so that they can be avoided. FST Locators also take voltage measurements and assure system security by terminating unused ports and tag drops and locking pedestals. They generally work alone but may encounter System Technicians if called to locate buried cable infrastructure at an outage site. FST Locators wear uniforms; they do not need full ladder trucks but may drive smaller company cars or SUVs. FST Locators are required to have basic computer skills and must be able to operate office equipment and read street maps and system prints. FST Locators work Monday through Friday from 6:30 am to 5 pm and their wages range from \$12.10–\$20.15 per hour.

System Technicians (STs) are primarily part of the System and Plant Maintenance cost center; they work out of the Warrenville and Calumet City facilities and report to Manager Courtney Stevens. They are responsible for maintenance and repair of the Employer's physical plant, including every part up to the customer tap, at which point (as previously indicated) jurisdiction shifts to FSTs. To this end, STs troubleshoot and repair problems in hybrid fiber cable networks and they test, balance, align, and adjust components, cables, and equipment used to amplify and process signals. STs are typically assigned to a geographic area and are responsible for covering all calls in that area. STs wear uniforms and drive bucket trucks with an Altec boom. Like the FSTs, STs are assigned jobs via an app, but may be called directly for outages that occur after regular hours. STs use software to monitor and diagnose issues and use an array of tools, including coring tools, crescent wrenches, bell wrenches, propane torches, and ladders; they also wear required protective equipment. Unlike the FSTs, STs do not have contact with customers. In performing their duties, STs may contact FST Locators to assist in finding buried cables that have been cut or damaged. They may assist another ST from their own facility or from a different facility if short staffed. The ST Leads perform substantially the same work as the other STs but also assist in training, education, and knowledge sharing.⁷ The Employer requires that STs have basic computer skills, basic knowledge of electronics and working knowledge of the operation of a hybrid fiber cable

network. The Employer prefers that STs have 2 to 4 years of experience and a related associate degree (or equivalent in training and experience). Like FSTs, STs generally cover shifts every day of the week, from 8 am to 7 pm.

Unlike the other STs, the Fiber STs are part of the Construction cost center and report to Supervisor Edgar Morales. They perform similar troubleshooting and repair tasks as the other STs, but have a specialized skill set, work exclusively with fiber plant, and have a distinct path of progression in this area. Fiber STs work with other Construction employees to rehang or replace fiber as needed. They have the same training and education requirements as the other STs, and like the other STs wear uniforms and are assigned company bucket trucks. Fiber STs start as early as 7:30 am and are scheduled to work as late as 5pm, Monday through Friday. Wages for all STs, including those who work with Fiber, range from \$18.70–\$31.80 per hour, and from \$25.60–\$45.55 per hour for ST Leads.

Other Employees

In addition to those classifications sought by the Union, the Employer seeks to include in the unit employees in the following classifications: Customer Service Support Specialists, Construction Project Coordinators, Network Assurance Technicians, and Product Assurance Technicians.

Customer Service Support Specialists (CSSSs) are, along with the FSTs and Warehouse Operations Specialists, part of the Technical Operations cost center; their inclusion would mean that all employees in Technical Operations would be in the unit. There are two CSSSs, both of whom report to Supervisor Latonia Ross. One CSSS works out of the Warrenville facility, and the other works out of the Calumet City facility. CSSSs work primarily with the Employer's customer billing system to input new orders, verify that services are being properly billed, and test for functionality of billed equipment on customer accounts. They isolate and resolve technical issues in order to avoid the need for a technician visit. Every morning, the CSSSs receive a list of scheduled customer service calls that are broken down by timeframe, and they try to connect with as many customers as possible to confirm that they still have a problem, or they try to resolve the issue so that a technician visit can be canceled. They prioritize calls to customers in Illinois, but might deal with customers outside of the area if there is a high volume of calls or if they are finished with those in Illinois. They can, sometimes at the request of an FST, send a signal to a specific piece of equipment to either activate it or detect

⁷ Rather than complete a full inquiry into the supervisory status of the ST Leads during the preelection hearing, the Acting Regional Director permitted them to vote subject to challenge.

whether the signal is being received properly and the equipment is responding. If an FST sells services to a customer as part of a visit, the sale is electronically referred to a CSSS to process the order. Unlike the other employees in Technical Operations, the CSSSs are office employees who do not wear uniforms, go into the field, use company vehicles, or work with physical equipment or tools. The Employer prefers that CSSSs have 1 year of previous customer service experience and a basic knowledge of billing systems. CSSSs must be able to multitask and prioritize work and must have excellent customer service skills and a working knowledge of GSuite applications, email, and Internet. CSSSs work from Monday through Friday in shifts from 7 am to 5 pm; their wages range from \$15.15–\$25.25 per hour.

The three *Construction Project Coordinators* (CPCs), located in both the Construction and Hybrid Fiber Cable cost centers, are responsible for coordinating long-term repair work to the Employer's equipment or plant; this occurs when construction damages part of the plant and the repair may require ordering parts or managing third-party construction contractors. They are also responsible for new build or "edging out," which is extending the plant to new areas. All CPCs work from the Warrenville facility. The CPC who works out of the Construction cost center, and reports to Director of Construction Jared Trombetta, is responsible for providing cost quotes on commercial business opportunities and monitoring all approved commercial builds. These include "edge outs" and "fill ins" where the company is building a plant in an area that already has service, but where there is new construction such as a new subdivision. Inclusion of the Construction CPC would mean that all employees in the Construction cost center would be in the unit. The two CPCs who work out of the Hybrid Fiber Cable cost center, and report to Hybrid Fiber Cable Design Director David Johnson, perform cost-analysis on new business opportunities: they determine the best route and the necessary engineering, and undertake a financial review to make sure the project meets the Employer's metrics. All of the CPCs are office workers who do not wear uniforms or go into the field. The Employer requires that CPCs have a 1-year certificate from college or technical school, 3 to 6 months related experience and/or training, or an equivalent combination of education and experience. In addition, the Employer requires 3 to 5 years of fiber optic construction experience. CPCs must have computer skills in word processing, spreadsheets, internet software, email, order processing, and inventory. CPCs generally work from Monday through Friday from 8 am to 5 pm; their wages range from \$16.95–\$28.25 per hour.

Most of the employees that the Employer seeks to include (24 of approximately 30) work out of the Employer's Network Operations cost center (NOC). The NOC is physically located at the Warrenville facility and houses a system used to monitor the status of the Employer's network (including all video, voice, and data services) and to determine if there are any outages. NOC employees' work duties cover the entire country and all services provided by the corporate WOW entity; their duties are not limited to the Chicagoland-area services provided by the Employer. Each individual employee involved in monitoring at the NOC has nationwide geographic range and their duties are not divided by geographic region. The NOC is made up of two departments: the Network Assurance Center (NAC) and the Product Assurance Center (PAC).

Network Assurance Center Technicians (NAC Techs) are responsible for monitoring, identifying, repairing, and resolving issues on the Employer's network that are detected or reported to the NOC by other internal support groups. The Employer's 16 NAC Techs report to Supervisors Jacob Cohen, Steven Olsen, and Alfredo Rubio through the NOC, headed by Director Dean Johnson. They identify any devices on the network that are not operating properly and perform advanced troubleshooting steps to identify the cause and determine the most effective path to restoring the operability of services to both internal and external customers. If necessary, they can create an outage ticket and request that an ST be dispatched to the appropriate area; once the ST is onsite, the NAC Tech and the ST communicate to document repair activities. There are typically three NAC techs on a shift with their work distributed to ensure that all three systems used to monitor outages (CableMedic, SolarWinds, and email) are covered. The NAC Tech job is not customer-facing, and NAC Techs do not work in the field, use company vehicles, or wear uniforms. The Employer requires that NAC Techs have 1 to 3 years of previous experience working in an operation support center or customer support center (or an equivalent combination of relevant work experience and technical training), as well as a solid understanding of Windows and UNIX systems and system management. The Employer also prefers that they have formal technical education focusing on computer networking or telecommunications, industry-recognized certifications in networking, and/or a bachelor's degree in computer networking or telecommunications. NAC Techs work shifts that span 24 hours a day and 7 days a week; their wages range from \$16.95–\$28.25 per hour.

The *Product Assurance Center Technicians* (PAC Techs) provide customer support to residential customers. The seven PAC Techs report to Supervisor Tim Dublin

through the NOC cost center. They are a second step in the escalation of a service issue (the first step being a ticket entered by Dispatch or a customer call with a CSSS or the Employer's call centers). PAC Techs' workday involves working on "escalated items" involving issues with residential service, video, voice, or high-speed data. They can access a customer's devices to troubleshoot issues, and in some cases engage a technician on the ground to check the physical plant if they cannot troubleshoot the issue from the NOC. If the PAC Tech cannot resolve the issue, they can request that a FST go onsite. The PAC Tech position is considered customer-facing, as they speak with customers directly during troubleshooting activities and follow up with customers to ensure service restoration. The one PAC Tech Lead performs the same duties as other PAC Techs but provides additional technical assistance to them and serves as an escalation point prior to engaging Tier III engineers on customer issues. PAC Techs do not work in the field, use company vehicles, or wear uniforms. The Employer requires that PAC Techs have formal technical education, industry-recognized certifications in computer networking and/or telecommunications, or an equivalent combination of education and experience; in addition, they must also have a strong understanding of network concepts, and TCP/IP communications protocols coupled with the ability to communicate clearly to engineers and customers. The Employer prefers that PAC Techs have 1 to 3 years of work experience in a technical support role and previous experience in supporting a hybrid fiber cable and IP Network. PAC Techs work shifts that span 24 hours a day and 7 days a week; their wages range from \$16.95–\$28.25 per hour and \$20.70–\$36.00 per hour for the Lead.

II. LEGAL FRAMEWORK

In *Boeing Company*, the Board set out a three-step inquiry that applies when a non-petitioning party contends that a petitioned-for unit is inappropriate unless the unit includes classifications excluded from the petitioned-for unit.⁸ First, the proposed unit must share an internal community of interest.⁹ Second, the interests of those within the proposed unit and the shared and distinct interests of

those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved. 368 NLRB No. 67, slip op. at 3. In setting out Step Two of the inquiry, the Board underscored that this analysis "requires a comparative analysis of excluded and included employees." *Id.*, slip op. at 4. To this end, it explained that:

the fact that excluded employees have *some* community-of-interest factors in common with included employees does not end the inquiry. . . . [T]he Board must determine whether the employees excluded from the unit 'have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.' . . . If those distinct interests do not outweigh the similarities, then the unit is inappropriate.

Id. (emphasis in original) (quoting *PCC Structural*s, 365 NLRB No. 160, slip op. at 11 (2017)).

The Acting Regional Director, citing *Boeing*, found that the smallest appropriate unit here must include the additional employees sought by the Employer—CSSSs, CPCs, NAC Techs, and PAC Techs. But in reaching this conclusion, the Acting Regional Director misapplied Steps One and Two of the *Boeing* analysis. First, the Acting Regional Director appeared to consider several community-of-interest factors without analyzing or setting forth a clear finding as to whether the factor favored finding an internal community of interest. Although the Acting Regional Director ultimately concluded that employees in the petitioned-for unit share a community of interest, this conclusion did not clearly or necessarily follow from his preceding analysis. Second, in applying Step Two of the analysis, the Acting Regional Director did precisely what the Board in *Boeing* cautioned against: he considered only whether the excluded employees shared some community-of-interest factors in common with included employees but did not assess the distinct interests of the excluded employees. In this way, the Acting Regional Director essentially analyzed whether the larger unit urged by the Employer constituted *an* appropriate unit in which all employees shared some community of interest.¹⁰ The mere

⁸ The framework does not apply where an employer seeks to add additional locations to a petitioned-for unit. See *Opici Family Distributing of New York*, 371 NLRB No. 30, slip op. at 1 (2021). In that circumstance, the Board's multifacility variant of the community-of-interest test applies. See *id.* We note, however, that there is no dispute in this case with respect to what facilities should or should not be included here. Accordingly, the multifacility analysis is not at issue.

⁹ In assessing whether an internal community of interest exists, the Board will apply its traditional community-of-interest test:

"[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap

between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised."

368 NLRB No. 67, slip op. at 2 (internal citations removed).

¹⁰ For instance, in considering the skills and training factor, the Acting Regional Director found that all the employer's classifications required a high school diploma or its equivalent and are expected to have a customer service orientation and the ability to learn in a fast-paced environment. He then found that the excluded classifications "have some overlap in foundational skills with the FSTs and STs with regard to products and the network" and "have the same basic understanding of the network

fact that the Employer's preferred unit might also be an appropriate unit is irrelevant, however.¹¹ The operative question here is instead whether the Employer is correct that the petitioned-for unit is inappropriate because the smallest appropriate unit must contain additional classifications. By effectively limiting his analysis to whether the petitioned-for employees share some community of interest with the excluded classifications, the Acting Regional Director failed to articulate or assess the distinct interests of the excluded employees, and determine whether those distinct interests outweighed similarities with the petitioned-for employees.

For these reasons, we reject the Acting Regional Director's analysis and undertake a revised analysis that correctly adheres to the Board's current framework.

III. ANALYSIS

We find that, properly applying *Boeing*, the petitioned-for unit shares an internal community of interest, and that the interests of the excluded employees are meaningfully distinct from and outweigh similarities with the interests of the petitioned-for employees. In so doing, we emphasize that the facts in this case are substantially similar to those in previous cable industry cases where the Board expressly approved petitioned-for units that included cable technicians and warehouse employees but excluded office-based employees.¹² In *Harron Communications, Inc.*, 308 NLRB 62 (1992), the Board held that a petitioned-for unit comprising cable technicians, installers, a converter repairperson, and a warehouse employee was appropriate without the inclusion of customer service representatives. In so doing, the Board reasoned that:

[Customer service representatives] perform distinct duties from those of the installers and technicians, are separately supervised, are administratively organized in a separate department, do not work in the field with tools or on any cable equipment, and must have experience using computers and the telephone. The thrust of their work is thus customer relations, and, as the Acting Regional Director found, their inclusion is not required.

and its components." He concluded, with minimal further discussion or explanation, by stating that "skills and training weigh in favor of finding that the petitioned-for classifications have a community of interest, but the excluded classifications also share that community of interest."

Likewise, the Acting Regional Director's analyses of nearly every factor did not adequately explain why his factual findings led to the conclusion that the petitioned-for unit was not appropriate.

¹¹ See *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964) ("[T]he issue here is simply whether [the petitioned-for unit] is appropriate in the circumstances of *this* case and *not* whether another unit consisting of [additional employees] would also be appropriate, more appropriate, or most appropriate.") (emphasis in original).

Id. at 62, fn. 1. Likewise, in *Cablevision Systems Development Corp.*, 251 NLRB 1319, 1322–1325 (1980), enfd. 671 F.2d 737 (2d Cir. 1982), cert. denied 459 U.S. 906 (1982), the Board held that a petitioned-for unit of installers, field technicians, and construction employees was appropriate and that, contrary to the employer's contention, it need not include telephone service representatives, business office representatives, service clerical and installation clerical employees, audit employees, and programming employees.

Consistent with these holdings and the Board's extant framework, we find that the employees in the petitioned-for unit—FSTs, FST Locators, STs, and Warehouse Operations Specialists—share an internal community of interest, and that the inclusion in the unit of the additional classifications sought by the Employer—CSSSs, CPCs, NAC Techs, and PAC Techs—is not required, as the interests of those employees are meaningfully distinct from and outweigh similarities with the interests of the petitioned-for employees.

(1) Step One

As an initial matter, we find that the employees in the petitioned-for unit share an internal community of interest.¹³ Most significantly, they share similar job functions: across the Employer's three facilities, they constitute the full complement of employees who perform non-office, manual labor that requires the use of physical tools and work vehicles. In addition, the petitioned-for employees have similar skills and job qualifications: FST positions (save Commercial FSTs) and Warehouse positions require a high school diploma, generalized computer and cable network knowledge, requisite physical capabilities, and a customer service orientation; they do not require specialized degrees or experience. (The Commercial FSTs have these base requirements plus additional job-specific experience requirements.) Among the STs and Commercial FSTs, having a related associate degree is a preference rather than a requirement. Moreover, there is regular contact between FSTs and STs, particularly when a problem is detected that goes beyond their respective jurisdictions, and the STs work with FST Locators to assist in finding buried cables that have been cut or damaged. Although

¹² Under Step Three, we agree with the Acting Regional Director's findings that the Employer should not be treated as a public utility and that there are no "special facility or industry guidelines that apply to this case." Nonetheless, the Acting Regional Director did not cite or discuss relevant Board precedent involving cable company units. Although these cases do not present the sorts of special industry guidelines or rules considered at Step Three, they are persuasive support for the propriety of this petitioned-for unit.

¹³ The Employer did not dispute the Acting Regional Director's finding on this point.

Warehouse Operations Specialists do not work in the field with FSTs and STs or directly assist with repairs, they maintain, track, and distribute the equipment and tools that the technicians need to complete their work, and they perform manual labor and use physical tools, equipment, and vehicles, like their non-office counterparts. Finally, the petitioned-for employees share similar terms and conditions of employment: they are hourly employees who receive wages in the same general range; they are covered by the same work rules, benefits, and vacation, holiday, and time and attendance policies; and they generally work in the range of regular business hours Mondays through Fridays (with the general FSTs and STs working slightly longer hours, 7 days a week). Accordingly, we find that the FSTs, FST Locators, STs, and Warehouse Operations Specialists share an internal community of interest.¹⁴

(2) Step Two

Next, we assess whether the interests of the excluded employees are meaningfully distinct from and outweigh similarities with the interests of the petitioned-for employees. We find, on balance, that the petitioned-for unit shares a community of interest that is sufficiently distinct from the interests of the CSSSs, CPCs, NAC Techs, and PAC Techs the Employer seeks to include in the unit.

First, the job functions of the excluded employees fundamentally differ from those of the petitioned-for employees. Specifically, the excluded employees perform customer service, logistical, and information technology roles in an office setting. In contrast, the employees in the petitioned-for unit perform manual labor, use physical tools, equipment, and company vehicles, have specific gear requirements, and work in physically demanding field and warehouse settings. As in *Harron Communications*, the excluded employees in this case “do not work in the field with tools or on any cable equipment.” 308 NLRB at 62 fn. 1.¹⁵ And here as well, NAC Techs and PAC Techs, and sometimes the CSSSs, respond to service issues on a nationwide basis, while the employees in the petitioned-

for unit serve exclusively the immediate Chicagoland area.

In addition, we find that the job functions of the excluded employees are not meaningfully functionally integrated with those of the unit employees.¹⁶ CPCs, who plan and coordinate long-term repair and construction projects, are not at all involved in the day-to-day service and repair functions performed by FSTs and STs. CSSSs focus primarily on the administrative and billing components of customer service issues; to the extent they are involved in repair issues, their goal is to mitigate the need for a field technician visit altogether. And while NAC and PAC Techs are involved in troubleshooting functions generally, they work independently in the Network Operations Center, perform discrete, specialized tasks, and have few opportunities for genuine collaboration with technicians on the ground.¹⁷ With regard to contact, even where NAC and PAC Techs communicate with field technicians, they do so on a nationwide basis and not with the Chicagoland-based technicians in the petitioned-for unit. Likewise, there is minimal evidence of interchange. To this end, there is no indication that the excluded employees are trained to perform the work of the petitioned-for employees, and the Employer assigns work based strictly on departmental lines rather than need, which limits opportunities for employees to perform different tasks in the organization. And although there is evidence that a few FSTs permanently transferred to the Network Operations Center as PAC Techs, this, on its own, is insufficient to establish meaningful interchange between the petitioned-for and excluded classifications.¹⁸

Moreover, the excluded employees generally have more rigorous educational requirements than those employees in the petitioned-for unit. Indeed, while most of the petitioned-for unit jobs require only a high school diploma and generalized background knowledge, the CPCs, NAC Techs, and PAC Techs have specific degree and work experience requirements. And the NAC Techs and PAC Techs, who as Network Operations employees constitute

¹⁴ See *Harron Communications*, 308 NLRB at 62–63 (finding the cable technicians, installers, and warehouse employees in the petitioned-for unit share a community of interest); *Cablevision Systems*, 251 NLRB at 1322–1323 (petitioned-for unit of technicians and installation employees constitutes “a homogeneous group of installers and maintenance people who possess similar skills”).

¹⁵ See also *Cablevision Systems*, 251 NLRB at 1323–1324 (“[T]he fact that the telephone service rep is trained to ask the caller a series of prepared questions . . . does not align these employees with the service techs who are field employees, physically capable of climbing telephone poles and, beyond that, work with the tools of the trade.”).

¹⁶ In so finding, we emphasize that, contrary to the Acting Regional Director’s overly broad characterization, functional integration exists only where employees must work together and depend on one another to

accomplish their tasks. See, e.g., *Casino Aztar*, 349 NLRB 603, 605 (2007); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024–1025 (2004).

¹⁷ See *Home Depot USA, Inc.*, 331 NLRB 1289, 1291 (2000) (no integration where excluded employees “[did] not spend substantial portion of their time working alongside or in close proximity with other employees.”); *United Operations, Inc.*, 338 NLRB 123, 124–125 (2002) (same where technicians and field service employees responded independently to different types of service calls with limited opportunities for collaboration). Cf. *NCR Corp.*, 236 NLRB 215, 216 (1978) (finding functional integration where employees in different branches frequently assigned to cover service calls in other branches and employees often contacted and worked with employees in petitioned-for unit).

¹⁸ See *United Operations*, 338 NLRB at 125 (finding “minimal evidence of interchange” based on evidence of two permanent transfers and no temporary transfers).

the majority of excluded employees, do not share any administrative or supervisory overlap with the petitioned-for classifications.

To be sure, there are several areas where excluded employees and petitioned-for employees share meaningful similarities. The terms and conditions of employment for the petitioned-for employees and the excluded employees are generally shared or comparable (although, unlike any employees in the petitioned-for unit, NAC Techs and PAC Techs work regular shifts 24 hours a day). And the Employer's proposed unit would more closely track certain departmental lines because adding CSSSs (who also share a supervisor with some of the FSTs) and CPCs to the unit would include all employees in the Technical Operations and Construction cost centers.¹⁹ But overall, we find that the interests that differentiate the excluded employees far outweigh any shared interests with petitioned-for employees. As in *Harron*—where the Board found that a petitioned-for unit of technicians, installers, and warehouse employees was not required to include customer service representatives—the excluded employees here: 1) do not go into the field; 2) do not use tools or cable equipment, or wear uniforms; 3) have a different educational and skill background than the petitioned-for employees; 4) have minimal interchange with petitioned-for employees; 5) have minimal functional integration with petitioned-for employees; and 6) are for the most part supervised separately. See 308 NLRB at 63. And, here, unlike in *Harron*, the excluded employees and unit employees are not in regular or meaningful contact. See *id.*

¹⁹ At the same time, the Employer's proposed unit would encompass two entirely separate cost centers—Hybrid Fiber Cable and Network Operations Center—that do not include *any* employees in the petitioned-for unit.

We reject the Acting Regional Director's assertion that the exclusion of CSSSs—who would complete the Technical Operations cost center—would result in a “fractured” unit. Although departmental organization

IV. CONCLUSION

Accordingly, applying *Boeing* and extant Board precedent, we find the petitioned-for unit to be appropriate because the employees in that unit share an internal community of interest and because their interests are sufficiently distinct from the interests of excluded employees.

ORDER

The Acting Regional Director's Decision and Direction of Election is reversed, and the case is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

Dated, Washington, D.C. June 10, 2022

Lauren McFerran, Chairman

John F. Ring, Member

David M. Prouty, Member

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is a consideration in determining whether employees share a community of interest, the Board has never held that an appropriate unit requires the inclusion of all employees organized in a department where there are other reasons for exclusion, as there are here. See *Johnson Controls, Inc.*, 322 NLRB 669, 672 (1996) (finding a unit was not fractured where there was a “substantial, rational basis” for the exclusion of certain employees).