

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

**AIRGAS SPECIALTY PRODUCTS, INC**

**Employer**

**and**

**Case 09-RC-346757**

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

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

Airgas Specialty Products, Inc. (the Employer) supplies and delivers industrial ammonia and diesel exhaust fluid and offers various repair, maintenance, and field services for ammonia systems. General Drivers, Warehousemen and Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters (Petitioner or Union) filed the instant petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent all full-time and regular part-time bulk delivery drivers employed by the Employer at its 5133 Maritime Rd., Jeffersonville, Indiana facility; excluding all field service technicians, and all office clerical employees, professional employees, guards, and supervisors as defined in the Act. Additionally, the Petitioner argues that the current plant operator, Mike Melton, is, in fact, a bulk delivery driver and should be included in the unit. There are approximately six employees in the petitioned-for unit.

The Employer argues that the petitioned-for unit is inappropriate because it excludes employees that share an overwhelming community of interest. The unit that the Employer contends is appropriate is one that includes all full-time and regular part-time bulk delivery drivers and field service technicians; excluding all office clerical employees, professional employees, guards, and supervisors as defined by the Act. The Employer seeks to exclude the current plant operator from the unit. There are approximately 10 employees in the unit sought by the Employer.

The issues before me are whether the petitioned-for unit is an appropriate unit or if an appropriate unit must include all full-time and regular part-time field service technicians, and whether the employee who is serving as the plant operator should be included in the unit. The Union asserts that the petitioned-for unit of bulk delivery drivers is a sufficiently distinct identifiable group that shares an internal community of interest. The Union is not asserting that the job classification of plant operator should be included in the unit, merely that the employee

currently serving as plant operator should be included because most of his time is spent performing the duties of a bulk delivery driver. The Employer argues that there is an overwhelming community of interest between the bulk delivery drivers and field service technicians. Further, the Employer maintains that the plant operator should be excluded because he is classified as a plant operator.

A hearing officer of the Board held a hearing in this matter in Cincinnati, Ohio on July 31, 2024. The parties were not permitted to submit post-hearing briefs. Based on the review of the record, relevant Board law and guidelines, and in consideration of the parties' arguments, I have concluded that the petitioned-for unit is appropriate. The employees of the petitioned-for unit share an internal community-of-interest, are readily identifiable as a group, and the Employer failed to show that the field service technicians share an overwhelming community of interest with the petitioned-for unit. Further, I have concluded that the plant operator, Mike Melton, is a dual-function employee who performs a sufficient amount of unit work to have a substantial interest in the unit's wages, hours, and terms and conditions of employment, and therefore should be included in the unit. Accordingly, I direct an election in the petitioned-for unit.

## II. FACTS

### *A. General Facility Operations*

The Employer is engaged in manufacturing and supplying ammonia for industrial applications. The major products the Employer supplies to customers are anhydrous ammonia and aqua ammonia. In addition to supplying ammonia, the Employer also provides delivery, repairs, pump-outs, tank inspection, and preventative maintenance for ammonia applications and equipment. The facility at issue is the Employer's Jeffersonville, Indiana location.<sup>1/</sup> The Jeffersonville facility has 11 employees and 1 manager on site, along with 1 manager who works remotely. There are five bulk delivery drivers, five field service technicians, and one plant operator. Karen Rapp is the director of new business development and manages the bulk delivery drivers. Mike Hunter manages the field service technicians, but Hunter is based out of the Employer's Riverdale, Illinois facility and predominately works from home. Each manager controls the work assignments of the employees they oversee.

Access to the facility is limited by a locked gate. Employees must unlock the gate to get into the facility, which consists of a parking lot and a small office building. The parking lot is one lot. The northern corner of the lot is the parking area for employee vehicles. All employees at the facility park in the same area. The rest of the lot is used as a parking area for field service equipment. The western corner primarily stages semi sleeper trucks and anhydrous trailers that are generally operated by field service technicians. The eastern corner primarily stages the ammonia delivery vehicles that are generally operated by bulk delivery drivers. The small office building is on the southern side of the lot, facing the road. The office building contains a break room and one office shared by everyone at the facility. The bulk delivery drivers and field service technicians spend little time in the office, but they use the computers for checking email and completing training. The plant operator works out of the office when he is not on deliveries

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<sup>1/</sup> The Employer operates more than one facility but the record did not specify the number.

or mixing ammonia outside. The break room is shared by all 11 employees at the facility. The break room contains a bulletin board and wall postings meant for all employees.

### *B. Bulk Delivery Drivers and Field Service Technicians*

Generally, bulk delivery drivers deliver product to customers and pickup raw materials from suppliers, while field service technicians provide installation, maintenance, and repair services to customers. Bulk delivery driver starting pay is \$29.35 per hour and they are eligible for overtime. They are expected to work between 50 and 60 hours per week. There is only one level of bulk delivery driver within the job classification. Bulk delivery drivers are eligible for a sign on bonus of \$5,000, safety bonus earnings up to \$1,500, and a referral bonus of \$1,000. They are paid weekly through direct deposit. Benefits for bulk delivery drivers include medical, prescription drug, dental, and vision coverage; 401K; and a healthcare spending account. Bulk delivery drivers also have the potential for up to \$1,500 in per diem pay annually.

The minimum requirements for bulk delivery drivers reflected in the Employer's job description are focused almost exclusively on driving ability and safety. Bulk delivery drivers must have a Class A CDL with at least 1 years of experience operating a commercial motor vehicle and obtain tanker and hazardous materials endorsements before hiring. Additionally, drivers must have no preventable accidents, no more than two minor tickets, no tickets for serious traffic violations, and no suspensions of their CDL in the past three years, and no DUI convictions within the past seven years. The only other requirement is the ability to lift sixty pounds or more. A high school diploma or its equivalent is preferred but not required.

Applicants for both bulk delivery driver and field service technician job openings are initially vetted by the Employer's human resources department. Recruiters vet applicants and provide the manager overseeing the position with qualified candidates to interview. Director of New Business Development Rapp interviews applicants and makes hiring decisions for bulk delivery drivers. Manager Hunter handles interviews and hiring decisions for field service technicians. All positions must undergo training through Airgas University, the Employer's corporate policy training. Airgas University focuses on subject matter that is broadly applicable to Airgas employees, including cybersecurity training. Additionally, bulk delivery drivers and field service technicians must both complete annual ammonia handling and Hazardous Waste Operations and Emergency Response ("HAZWOPER") training. Ammonia handling is administered through a training program called WB Manager, while the record does not clearly indicate how HAZWOPER training is administered. In WB Manager, managers only have access to their own teams. Thus, Rapp controls all training in WB Manager for bulk delivery drivers and Hunter controls training for field service technicians.

Bulk delivery drivers travel within a 250-mile radius of the facility to complete deliveries to customers and pickups at facilities to bring back raw materials. Generally, bulk delivery drivers make one or two deliveries or pickups per day and do not travel overnight. They typically utilize day cab tractors and bobtails for deliveries and pickups. Since their routes are within the 250-mile radius, bulk delivery drivers do not use the sleeper trucks that have space in the tractor for the driver to sleep. Those are reserved for use by field service technicians. However, bulk

delivery drivers may use them if necessary, depending on the number of jobs assigned to the facility and requirements of each job.

Bulk delivery drivers first receive information about their deliveries from their manager. They get a delivery bill of lading that provides order details. Drivers must complete pre-trip inspections of their vehicles before deliveries and pickups. They then drive to the location and offload the product or pickup raw material. When drivers are finished using a piece of equipment for the day, they complete a post-trip safety inspection on the equipment. Bulk delivery drivers are generally ineligible to engage in service tasks. While on the job, a bulk delivery driver might infrequently make a minor repair, but this is the extent of their service work.

Field service technician starting pay is \$34.13 per hour and they are eligible for overtime. There are four levels within the job classification of field service technician. They are expected to work between 70 and 80 hours per week with significant travel. Field service technicians may travel up to 95 percent of the time, with jobs assigned to them nationwide. Field service technicians must also have the flexibility to work weekends and holidays and work overnight. Field service technicians have the same or comparable sign on, safety, and referral bonuses as bulk delivery drivers and are also paid weekly through direct deposit. They are offered the same medical, prescription drug, dental, and vision coverage; 401K benefits; and healthcare spending account. Because of the amount of travel incurred on the job, field service technicians have the potential of up to \$10,000 in per diem pay per year. Further, any required hotel and travel accommodations are covered by the Employer.

Though the minimum qualifications for a field service technician have some overlap with the minimum qualifications for a bulk delivery driver, the requirements expand beyond mere driving experience and certifications. Field service technicians, like bulk delivery drivers, must have a Class A CDL with tanker and hazardous materials endorsements and a clean motor vehicle record. However, the position requires additional skills not seen in the minimum requirements for bulk delivery driver. Field service technicians must have either a high school diploma or its equivalent, basic knowledge of chemistry and physics, basic computer experience, reasonable mechanical aptitude, and the ability to read and comprehend material safety data sheets and mechanical drawings. Further, field service technicians must be able to work weekends and holidays, be willing to work away from home for extended periods of time, be willing to travel up to 75 percent of the time, and meet requirements to wear and use an ammonia escape respirator.

Field service technicians must be able to perform all the job duties of a bulk delivery driver. However, field service technicians have additional skills that allow them to perform tasks that bulk delivery drivers are not eligible to do. Field service technicians perform pump-outs on customer equipment. This is the process of removing ammonia liquid and vapor from customer equipment such as refrigeration systems, storage tanks, or pipelines. Field service technicians install and perform maintenance on ammonia tanks, piping, and pumps. Field service technicians also perform nearly all repairs. Field service technicians, unlike bulk delivery drivers, are assigned jobs throughout the country instead of serving a localized region. Therefore, they spend most of their time traveling. The estimates on the record show that field service technicians are

traveling 75-90 percent of the time. Because of the constant travel, field service technicians use sleeper trucks containing a sleeping area.

Bulk delivery drivers and field service technicians rarely interact with each other. Indeed, the testimony reflects that a bulk delivery driver can go weeks or months without seeing a field service technician. On occasion, there are jobs where a bulk delivery driver and field service technician are both necessary. When the customer needs a pump-out and another transport to replace the product that was removed, a bulk delivery driver and field service technician are both required to complete the job. In this instance, the bulk delivery driver and field service technician would have a high level of interaction while performing the work.

During the busy summer months, field service technicians will perform pickups and deliveries depending on staffing levels and the volume of work. However, deliveries and pickups are only assigned to field service technicians when necessary and constitute a very small percentage of their work. In fact, bulk delivery driver Chuck Schafer testified that he estimated field service technicians spend only about 5 percent of their time making pickups and deliveries. Bulk delivery drivers do not likewise cover for field service technicians on a local level. In extraordinary circumstances, about once every few years, bulk delivery drivers will be sent to assist field service technicians on big jobs. Specifically, testimony referred to a recurring job every few years in Texas. On these unusual assignments, bulk delivery drivers may perform duties that they typically do not. Bulk delivery drivers assigned to these jobs also get paid a shift differential.

### *C. Plant Operator Mike Melton*

The current plant operator, Mike Melton, was originally hired as a bulk delivery driver approximately 6 years ago. About a year and a half later, he accepted a new role as a flex driver. The record does not develop what that particular role entails. However, it does establish that Melton was unhappy with the amount of travel the job required and, at some point, he returned to being a bulk delivery driver. Thereafter, in April of 2024, Melton accepted the role of plant operator. The record reflects that Melton will return to a bulk delivery driver position whenever another plant operator is hired.

The record does not elaborate on all the plant operator position's job duties, but the main responsibilities include making aqua ammonia, which is done by mixing water and ammonia, and loading and unloading trailers used by bulk delivery drivers and field service technicians. Plant operators also perform various tasks around the plant as they arise, such as cleaning the facility and fixing leaks in trailers. Melton is supervised by Rapp, who manages the bulk delivery drivers, and he receives no instruction or direction from field service technician supervisor Hunter. Plant operator pay starts at the same rate as bulk delivery drivers.

Although Melton does not have a dedicated number of hours during which he is assigned to make deliveries and pickups, Schafer testified that Melton spends approximately 80 percent of his time doing deliveries and pickups – the work of a bulk delivery driver. According to former plant manager Jason Joslin, typically plant operators do not regularly make deliveries but he acknowledged, that Melton is making deliveries and pickups and he would not be surprised if

that constituted most of his duties, because the Employer is short-handed. While Melton is making deliveries, Rapp assumes these plant operator duties. Though Rapp generally fills in while Melton is out on deliveries, delivery drivers are also capable of taking over the duty of making aqua ammonia.

### III. LEGAL ANALYSIS

#### A. *Classification of Plant Operator Mike Melton*

Dual-function employees are those who perform both unit and nonunit work for the employer. The Board has long held that “[t]he test for determining whether a dual-function employee should be included in a unit is ‘whether the employee [performs unit work] for sufficient periods of time to demonstrate that he . . . has a substantial interest in the unit’s wages, hours, and conditions of employment.’” *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997) (quoting *Berea Publishing Co.*, 140 NLRB 516, 518-519 (1963)). The Board has no bright-line rule for the amount of time a dual-function employee must spend on unit work to be included in the unit, instead leaving it to the facts of each case. *Martin Enterprises*, 325 NLRB 174, 715 (1998). However, the Board generally determines that “dual-function employees should be included in a bargaining unit if they spend 25 percent or more of their time performing unit work.” *WLVI Inc.*, 349 NLRB 683, 686 fn. 5 (2007) (citing *Avco Corp.*, 308 NLRB 1045 (1992)).

I find that plant operator Mike Melton is a dual-function employee under the Board’s substantial interest test and should be included in the unit. The record establishes that Melton regularly performs the unit work of making deliveries and pickups. Melton more than meets the minimum threshold generally followed by the Board of 25 percent of his time performing unit work. Indeed, the record shows that although he spends time carrying out plant operator responsibilities, Melton spends the majority of his time performing unit work. Accordingly, the evidence establishes that Melton does perform unit work for a sufficient period of time such that he has a substantial interest in the bulk delivery drivers’ wages, hours, and conditions of employment as a dual-function employee.

For these reasons, I find that Melton is a dual-function employee under the Act and shall include him as a bulk delivery driver in the unit.

#### B. *Scope of the Unit*

##### i. The Current Legal Standard

Board law has clearly established that the Petitioner need not seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. The Act merely requires that the unit sought by the Petitioner be an appropriate unit. *Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 2 (2010), citing *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). “[I]n every unit determination case, the Board’s inquiry will ‘consider only whether the requested unit is an appropriate one even though it may not be the optimum or most appropriate unit for collective bargaining.’” *American Steel*

*Construction, Inc.*, 372 NLRB No. 23, slip op. at 3 (2022), quoting *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019).

In *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), the Board overruled *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), and reinstated the “overwhelming community of interest” standard for determining whether a unit is appropriate as established by *Specialty Healthcare*, 357 NLRB 934 (2011). The Board reiterated the three elements for analyzing situations where a petitioned-for unit includes a subset of employee classifications as whether “the employees in the petitioned-for unit share a community of interest (i.e., whether the unit is homogeneous); whether the petitioned-for unit is readily identifiable as a group (i.e., identifiable) based on job classifications, departments, functions, work locations, skills, or similar factors; and whether the petitioned for unit is sufficiently distinct.” *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op at 6 (2022) (internal quotations omitted).

The party who contests that the smallest appropriate unit contains employees not in the petitioned-for unit bears the burden of proving that there is an “overwhelming community of interest” between the petitioned-for employees and excluded employees. *Id.* Thus, the contesting party must show that the interests of the “petitioned-for and excluded employees are so similar that the petitioner is seeking, in essence, an arbitrary segment of an otherwise appropriate unit.” *Id.* “A unit is not fractured simply because a larger unit might also be appropriate, or even more appropriate.” *Macy’s Inc.*, 361 NLRB 12, 22 (2014) (citing *Specialty Healthcare*, 357 NLRB at 942).

### *C. Application of Current Law to Facts*

#### i. The Petitioned-for Unit is a Readily Identifiable Group That Shares an Internal Community-of-interest.

To start my analysis, I must determine whether the petitioned-for employees share an internal community-of-interest. I must also decide whether the petitioned-for employees are readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors. A petitioned-for unit is identifiable “where unit employees can ‘logically and reasonably be segregated from other employees for the purposes of collective bargaining.’” *American Steel Construction*, 372 NLRB No. 23 slip op. at 5, quoting *Champion Machine & Forging Co.*, 51 NLRB 705, 707-708 (1943). In other words, “there must be a ‘substantial, rational basis’ for the unit’s contours.” *Id.*, quoting *Johnson Controls, Inc.*, 322 NLRB 669, 672 (1996). For the following reasons, I find the petitioned-for unit meets the first two elements of the *Specialty Healthcare* test.

All employees in the petitioned-for unit work at the Jeffersonville location. The employees in the petitioned-for unit spend their day making deliveries and pickups to fulfill contractual obligations to customers and share the same trucks and equipment to complete their work. The employees all possess a Class A CDL, have at least 2 years of experience operating a commercial motor vehicle, and have earned tanker and hazardous materials endorsements.

Additionally, the employees are all managed by Karen Rapp, while the other employees at the facility are managed by Mike Hunter.

Based on the above, I find the employees in the petitioned-for unit are clearly homogenous and the unit is identifiable. The employees in the petitioned-for unit share common supervision, equipment, skills, work experience, and job functions. Accordingly, I conclude that the petitioned-for unit is readily identifiable as a group and shares an internal community of interest.

ii. Field Service Technicians Do Not Share an Overwhelming Community-of-interest with Bulk Delivery Drivers.

As the Board set forth in *American Steel Construction*, the third element requires that a petitioned-for unit cannot exclude employees “who cannot rationally be separated from the petitioned-for employees on community-of-interest grounds.” 372 NLRB No. 23 slip op. at 5. “Crucially, the Board has always made clear that the presence of *some* overlapping interests between the petitioned-for and excluded employees does not invalidate the petitioned-for unit, even if those overlapping interests indicate that a larger unit would also be appropriate for collective bargaining.” *Id.* “Instead, the excluded employees must share ‘strong,’ ‘substantial,’ ‘overwhelming,’ ‘significant,’ or extremely ‘close’ interests with the petitioned-for employees to mandate inclusion.” *Id.* (internal citations omitted). In other words, the Employer must prove “that the petitioned-for unit is ‘irrational’ and that ‘there is no legitimate basis upon which to exclude certain employees from it.’” *Id.*, quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008). Since the Employer contends that the smallest appropriate unit must contain all field service technicians, Board law requires I apply the traditional community-of-interest factors “to determine whether there is an ‘overwhelming community of interest’ between the petitioned-for and excluded employees, such that there is no rational basis for the exclusion.” *American Steel Construction*, 372 NLRB No. 23 slip op. at 17.

Applying the Board’s traditional community-of-interest test, I find, for the following reasons, that the field service technicians do not share an overwhelming community-of-interest warranting their inclusion with the petitioned-for employees. Thus, I find the petitioned-for unit is appropriate for the purposes of collective bargaining.

1. *Departmental Separation and Supervision*

The Employer does not nominally separate bulk delivery drivers and field service technicians into separate departments. Both classifications use the same parking lot, office space, break room, and bulletin board. They both wear the same uniform. However, the supervisory structure and division of work functionally separate the two classifications. First, the bulk delivery drivers and field service technicians report to separate managers. Karen Rapp manages the bulk delivery drivers. She oversees bulk delivery driver training, interviewing, hiring, discharges, and work assignments. Likewise, Mike Hunter has the same responsibilities for the field service technicians. Each manager has exclusive authority over these responsibilities for their respective departments.

The Employer argues that while each job classification has its own manager, the managers coordinate to share resources and ensure customer needs are met if one side is shorthanded. However, the circumstances by which they share resources is not sufficient to weigh in favor of the finding an overwhelming community of interest and support the idea that the classifications are functionally separated. First, the manager in need must obtain the other manager's consent to borrow employees. Next, employees are shared only on rare occasion. Typically, this only happens in summer months when the Employer is busiest. Finally, and most importantly, the help generally goes only one way. Because bulk delivery drivers are ineligible to perform most job duties of field service technicians, field service technicians are almost exclusively the employees being moved to help the other department.

Based on the above, I find that this factor weighs strongly against finding that the field service technicians share an overwhelming community-of-interest with the petitioned-for unit.

2. *Distinct Skills, Training, Job Functions and the Performance of Distinct Work, Including Inquiry into the Amount and Type of Job Overlap Between Classifications*

One factor in the community of interest test examines whether disputed employees can be distinguished from one another based on duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that disputed employees must meet similar requirements to obtain employment, have similar job descriptions or licensure requirements, participate in the same employer training programs, or 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 Serv.*, 313 NLRB 657 (1994).

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

The record reflects a marked difference in minimum job requirements between bulk delivery drivers and field service technicians, despite some commonalities. While both descriptions require a Class A CDL and tanker and hazardous materials endorsements, the similarities largely end here. Bulk delivery driver requirements are based almost solely on driving ability, driving history, and driving safety. The only bulk delivery driver requirement that is not related to driving is the ability to lift sixty pounds or more. Field service technician requirements are more knowledge-based. Field service technicians must have a knowledge of chemistry and physics, have a reasonable amount of mechanical aptitude, possess a high school diploma or its equivalent, and have basic computer skills. The requirements also mention the ability to deal with constant travel.

There is some overlap in training for each position. Both must complete Airgas University training, though so do all employees within the company. Further, both must complete annual ammonia handling and HAZWOPER training. These are basic safety trainings

that apply to both bulk delivery drivers and field service technicians since both regularly handle ammonia and other hazardous materials. However, training is assigned and monitored by each position's respective manager. Rapp is in charge of bulk delivery driver training, while Hunter handles field service technician training. Additionally, field service technicians receive extra training that comes primarily through on-the-job experience.

The difference in job requirements and field service technicians' additional training reflects the reality of the positions. While field service technicians can perform bulk delivery driver tasks, the opposite does not hold true. Both positions are capable of performing deliveries and pickups. However, bulk delivery drivers cannot complete any repairs outside of infrequent minor repairs, perform pump-outs, perform installations, or perform tank maintenance. Thus, any job overlap between the classifications only comes from field service technicians covering job duties primarily carried out by bulk delivery drivers.

The evidence shows that, while there is overlap between the positions, that overlap is a one-way street. Field service technicians are capable of performing bulk delivery driver job duties, but bulk delivery drivers cannot return the favor. The skill and training disparity is laid out in plain language in the Employer's minimum job requirements for each position. Bulk delivery driver requirements focus entirely on driving, while field service technician requirements show a need for more technical ability and knowledge. For these reasons, I find these factors weigh strongly against finding that field service technicians share an overwhelming community of interest with the petitioned-for unit.

### 3. *Functional Integration*

The functional integration factor in the community of interest analysis refers to "when employees' work constitutes integral elements of an employer's production process or business." *Ikea Distribution Services, Inc.*, 370 NLRB No. 109, slip op. at 16 (2021). Further explained, functional integration exists when all employees in the petitioned-for unit work on different phases of the same product or work together to provide a single service as a group. *Id.* Another example of functional integration is when all members of the petitioned-for unit are involved in the employer's workflow. *Id.* Evidence showing that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems Inc.*, 311 NLRB 766 (1993).

Bulk delivery drivers and field service technicians generally do not work in concert to fulfill customer needs, but they do work together to provide a single service. Bulk delivery drivers do not perform any service functions, they merely deliver product to customers and pickup raw material from suppliers. Meanwhile, field service technicians spend much of their time on service functions such as installation and maintenance. Thus, the classifications are not involved in the same workflow. There is little contact with one another, and they do not necessarily perform similar functions. However, the Employer markets its business as an ammonia service. Customers may often merely receive deliveries, but they will also turn to the Employer for maintenance and repair services for the ammonia and ammonia systems they have purchased from the Employer. In this sense, the bulk delivery drivers and field service

technicians do combine to provide a single service as a group. Moreover, infrequently there are jobs that require both bulk delivery drivers and field service technicians to complete.

Overall, the type of work is not so integrated that it is part of the same process or service. The vast majority of customer needs are filled by either a bulk delivery driver or a field service technician with no interaction between the two. In fact, it would be entirely feasible for two separate business entities to perform these discrete functions with some degree of coordination. The instances where the two classifications work together to complete a job are rare. Based on these findings, I find this factor to weigh against a finding that the field service technicians share an overwhelming community of interest with the petitioned-for unit.

#### 4. *Contact Amongst Employees*

The record reflects that the bulk delivery drivers and field service technicians rarely interact with each other. Though the classifications share a parking lot, office space, and break room, the nature of the jobs necessitates so much travel that employees spend very little time in these shared areas. Bulk delivery drivers get their work assignments from Rapp and get started with their deliveries. Field service technicians receive their work assignments from Hunter, who works remotely, so there is no need for them to enter the office space to get their assignments. Additionally, field service technicians work jobs across the country and are traveling the vast majority of the time. They may go long periods of time without being on the premises. Indeed, testimony from a bulk delivery driver reflects that they can go weeks or months at a time without seeing a field service technician. Field service technicians and bulk delivery drivers also rarely work the same job together. Though there might be an occasional job that requires both to be present, this is the exception rather than the rule.

Bulk delivery drivers and field service technicians have minimal interaction, such that they may go long periods of time without seeing each other, and the vast majority of their work duties can be completed without the other classification's help. For these reasons, I find this factor weighs heavily against finding the field service technicians share an overwhelming community of interest with the petitioned-for unit.

#### 5. *Interchange*

Interchange refers to temporary or permanent work assignments or transfers between employee classifications. 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). Permanent interchange is given less weight in a community-of-interest analysis. *Id.* Frequent temporary employee interchange is a critical factor in determining whether employees who work in different groups share a community-of-interest sufficient to justify their inclusion in a single bargaining unit. *Executive Res. Assoc.*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9<sup>th</sup> Cir. 1981)).

There is no evidence of permanent interchange. As discussed earlier, when analyzing the overlap between bulk delivery drivers and field service technicians, any interchange is almost exclusively in the form of field service technicians performing bulk delivery driver

duties. Field service technicians cover for bulk delivery drivers by performing deliveries and pickups when the Employer is understaffed or otherwise short on coverage for deliveries. This mostly occurs during the Employer's busy season, in the summer. As mentioned previously, bulk delivery driver Schafer testified that he estimates field service technicians spend only about 5 percent of their time making deliveries and pickups.

Bulk delivery drivers do not engage in any significant interchange with field service technicians because bulk delivery drivers are not permitted to perform most field service technician job duties. The only exception is when the Employer has large jobs that require bulk delivery drivers to travel and assist field service technicians. These jobs are so rare that they may happen only once every few years.

In short, temporary interchange between the classifications at issue is limited and there are no examples of permanent interchange. Field service technicians may occasionally cover for bulk delivery drivers when necessary in busy times, and bulk delivery drivers only perform field service technician duties in the rarest of circumstances. For these reasons, I find that this factor weighs against field service technicians sharing an overwhelming community of interest with the petitioned-for unit.

#### *6. Terms and Conditions of Employment*

Bulk delivery drivers and field service technicians do share some terms and conditions of employment. The classifications share the same or similar medical and pension benefits. They have the opportunity to earn the same safety and referral bonuses. Both receive a sign-on bonus, though the record does not clarify whether this bonus is of the same value. Both are eligible for overtime. However, there are significant differences. The most crucial is the hourly wages. Bulk delivery drivers' starting salary is \$29.35 per hour, while field service technicians begin at \$34.13 per hour. In addition to the large starting pay gap, field service technicians have four levels to their classification while bulk delivery drivers have just one.<sup>2/</sup>

Another significant difference is geographic coverage and travel. Bulk delivery drivers cover a 250-mile radius of the Jeffersonville facility, while field service technicians may be called to jobs nationwide. Since field service technicians cover the entire country, they spend 75-95 percent of their time traveling. Due to field service technicians' frequent travel, their ceiling for per diem compensation is approximately \$8,500 higher than it is for bulk delivery drivers. The field service technician job description also requires availability to work overnight, holidays, and weekends.

Some terms and conditions may be shared, but the differences are far more critical. The disparity between starting wages, the extra levels in the field service technician classification, and travel requirements lead me to find that this factor weighs against field service technicians sharing an overwhelming community of interest with the petitioned-for unit.

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<sup>2</sup> While the record indicates that advancement through the levels of field service technician is based on development of knowledge or skills, it does not contain information on corresponding benefits or pay increases associated with the advanced levels.

*D. Alternative Analysis Using the Traditional Community-of-Interest Standard*

Prior to the decision in *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), the Board followed the *PCC Structurals, Inc.*, 365 NLRB 1696 (2017), traditional community of interest test to determine whether a petitioned-for unit is appropriate. This analysis required the Board to determine:

whether the employees are organized into separate departments; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *PCC Structurals*, 356 NLRB 1696, 1700, citing *United Operations, Inc.*, 338 NLRB 123 (2002).

The Board later clarified in *The Boeing Company*, 368 NLRB no. 67 (2019), that the traditional community-of-interest test, as articulated in *PCC Structurals*, involves a three-step analysis:

First, the proposed unit must share an internal community of interest. 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.

*The Boeing Company*, 368 NLRB 1696, slip op. at 3. "[T]he traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit." *Id.*, citing *Saks & Co.*, 204 NLRB 24, 25 (1973) and *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, "the 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.'" *The Boeing Company*, 368 NLRB no. 67, slip op. at 4. "[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit." *Id.*

Applying the traditional community of interest test to these facts, the first step is to determine whether the petitioned-for unit shares an internal community of interest. This step is the same as the first step in the overwhelming community of interest test. Having already performed this analysis under the overwhelming community of interest test and using the same conclusions from this previous discussion, I find that the petitioned-for unit of bulk delivery drivers share an internal community of interest and that this shared community of interest is not disturbed by the separate and distinct community of interest that the field service technicians share amongst themselves.

The second step in the traditional test is to determine whether the petitioned-for unit comprised of bulk delivery drivers shares a sufficiently distinct community of interest from the field service technicians. Under the traditional community of interest test, the Board considers the same factors as those used in the overwhelming community of interest test. See *PCC Structurals Inc.*, 365 NLRB 1696, 1700 (2017) (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). As I found in the overwhelming community of interest analysis, nearly every factor weighs against finding field service technicians share an overwhelming community of interest with the petitioned-for unit. As a result of these nearly universal conclusions, it is clear that the petitioned-for employees also share a sufficiently distinct community of interest from the field service technicians such that the bulk delivery drivers and the single dual function employee constitute a separate appropriate unit. Therefore, this step weighs in favor of finding that the petitioned-for unit of bulk delivery drivers and dual function employee share a sufficiently distinct community of interest from the field service technicians.

The third and final step of the traditional analysis is to consider any industry-specific guidance the Board has given regarding similar units in the same industry. Specifically, *Boeing* instructs “consideration of guidelines the Board has established for specific industries with regard to appropriate unit configurations.” *The Boeing Company*, 368 NLRB no. 67, \*1 (2019). In this case, there is no such industry-specific guidance. Accordingly, I find that this step neither favors nor disfavors finding that the petitioned-for unit of bulk delivery drivers shares a community of interest with the field service technicians. Further, considering each step of the traditional test, I conclude that the petitioned-for unit does not share a community of interest with the field service technicians and that the petitioned-for unit would be found appropriate under the traditional test or the overwhelming community of interest test.

#### *F. Conclusion*

Reviewing the record as a whole and weighing each factor accordingly, I find that the petitioned-for unit does not share an overwhelming community of interest with the field service technicians under *American Steel Construction*, 372 NLRB No. 23 (2022). Although there is marginal evidence of functional integration, the remaining factors weigh strongly against an overwhelming community of interest. Indeed, the result would be the same even under the traditional community-of-interest test. Accordingly, I find the petitioned-for unit to be a unit appropriate for purposes of collective bargaining, and I direct an election for the petitioned-for employees.

#### IV. CONCLUSIONS AND FINDINGS

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

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

2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>3/</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The parties stipulated, and I find, that there is no collective-bargaining history between the parties with regard to the employees in the appropriate unit described below, and there is no contract bar or other bar to an election in this matter.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time bulk delivery drivers, including the dual function bulk delivery driver, employed by the Employer at its 5133 Maritime Rd., Jeffersonville, IN 47130 facility; excluding all field service technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.**

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 89.

#### **A. Election Details**

The election will be held **Friday, February 21, 2025** from **6 a.m. to 7 a.m.** at 5133 Maritime Rd., Jeffersonville, Indiana in the Employer's break room.

#### **B. Voter Eligibility**

Eligible to vote are those in the unit who were employed during the **payroll period ending February 1, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>3/</sup> The parties stipulated that the Employer, a Delaware corporation, is engaged in the sale and distribution of ammonia and other specialty chemicals at its Jeffersonville, Indiana facility. During the past 12 months, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 from its Jeffersonville, Indiana facility directly to points outside the State of Indiana.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) employees engaged in a strike who have been discharged for cause since the commencement thereof 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 **February 10, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**<sup>4/</sup>

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.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.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.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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<sup>4/</sup> The Petitioner had agreed at hearing to waive "whatever's necessary" of its ten days with the voter list to garner its initially requested election date. Since the requested election date has passed, it will be considered that the Petitioner has not waived any of the ten days.

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

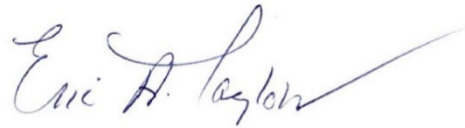
#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington DC 20570-0001, 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: February 6, 2025

A handwritten signature in blue ink, reading "Eric A. Taylor". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eric A. Taylor, Regional Director  
Region 9, National Labor Relations Board  
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Cincinnati, Ohio 45202-3271