**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 14**

**Wolf Creek Nuclear Operating Corporation**

**Employer**

**and** **Case 14-RC-361029**

**International Brotherhood of Electrical Workers, Local 403**

**Petitioner**

# DECISION AND ORDER

Wolf Creek Nuclear Operating Corporation[1] ("Employer") operates a nuclear power facility located in Burlington, Kansas ("Employer's Facility"). On February 26, 2025, the Petitioner, International Brotherhood of Electrical Workers, Local 403 ("Petitioner"), filed a petition with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent a unit of Component Engineers in the Employer's Strategic Engineering workgroup, in the Employer's Engineering Division. There are approximately five employees employed in the petitioned for unit. On March 12 and 13, 2025, a hearing officer conducted a hearing in this matter.

The Regional Director of Region 14 of the Board directed that the issues to be litigated are whether the petitioned-for unit of Component Engineers only is an appropriate unit, and whether the Component Engineers are managerial employees within the meaning of the Act. The Employer opposes the Petition on the grounds that the petitioned-for unit is not an appropriate unit as Component Engineers share an overwhelming community of interest with other Engineers in the Engineering Division. The Employer further urges that the petitioned-for Component Engineers are managerial employees.

## I. FACTS

### *A. The Employer's Operation*

Employer's nuclear power plant, generating about 1,200 megawatts of electricity, provides electrical power to customers in portions of Missouri and Kansas. The Employer employs approximately 735 employees at its facility across several divisions: operations, maintenance, engineering, chemistry, and radiation protection. The nuclear power plant is operated under a license from the Nuclear Regulatory Commission (NRC) which has 2 full-time onsite inspectors at the facility.

A nuclear power plant is a large integrated system which requires multiple engineering disciplines to ensure power is generated reliably and safely. Employer's facility includes the nuclear plant reactor and multiple buildings. A turbine building contains power generation

[1] Employer is a subsidiary of Evergy Corporation, an electric utility company operating in Missouri and Kansas.

equipment including turbines and generators, and cooling equipment. A containment building houses a reactor and cooling systems. An auxiliary building contains safety systems that operate in the event the plant loses cooling capacity or loses power. A radioactive waste facility contains processing systems for radioactive water and radioactive materials. A control building between the turbine and auxiliary building houses the control room from where operators operate the plant. About 100 yards from the plant is the Clyde Cessna Building in which the Engineering Division is located. Engineers occupy the entire second floor of the building, with Engineers from the same work groups seated in the same areas. The petitioned-for Component Engineering Group of Component Engineers occupy the southeast corner of the Engineering floor.

The top official at the facility is Cleve Reasoner, Chief Nuclear Officer and President. The Employer's Engineering Division is headed by Michael Boyce and consists of approximately 100 Engineers employed across several engineering disciplines, including nuclear engineering, mechanical engineering, electrical engineering, civil engineering, industrial engineering, and other engineering disciplines. Twenty of these engineers are admitted supervisors under the Act.

The Engineering Division is split into three broad departments: Strategic Engineering[2], Design Engineering, and Nuclear and Regulatory Affairs.[3] There are approximately 32 engineers in the Strategic Engineering Department, 31 in the Design Engineering Department, and 17 in the Nuclear and Regulatory Affairs Department. Each engineering department is headed by a director. Each engineering department owns[4] and specializes in certain systems, components, equipment and programs that are based on codes and standards, nuclear regulations, federal regulations, and the Employer's engineering practices and procedures. Engineers are generally responsible for systems, components, equipment and programs focusing on health reporting, trending and monitoring, preventative maintenance, life cycle management and long-range improvement planning, reviewing industry standards and guidelines and operating experience to ensure compliance, and supporting refueling outage work. There are basic engineering tasks that all engineers are qualified to perform. In some select areas engineers require additional specialized knowledge to perform certain tasks. All engineers across the Engineering Division are subject to the Employer's Conduct of Engineering which provides principles and guidance in various technical tasks and activities associated with engineering work. The Code of Conduct for engineers addresses responsibilities of engineers; procedures; principles and expectations; communications; performance; corrective action program for addressing issues identified by engineers in operations; plant, system and component performance; plant modification control; equipment reliability; work management; configuration

[2] Strategic Engineering was previously Systems Engineering. The change was made consistent with changes in the industry.
[3] A 4th department under the Engineering Division, the Project Engineering Department, includes project managers and does not have engineers performing hands-on engineering work.
[4] I have adopted the parties' use of own throughout reflecting responsibility and assignment of functions and operations.

management; technical rigor; technical conscience; and records. The engineering principles in the Code of Conduct apply to engineers to various degrees depending on the specific tasks being performed. Engineers in the Engineering Division regardless of workgroup work with the same engineering products, i.e., documents and records produced by engineers. These include design change packages, configuration change packages, temporary modification, calculations, basic engineering dispositions, engineering operability evaluations, performance improvement request evaluations, and drawings.

### 1. Strategic Engineering

Strategic Engineering, responsible for reliability of equipment, monitors and manages systems, components, programs, and equipment at the facility, including overall plant performance. Strategic Engineers comprise System Engineers and Component Engineers. Components exist within systems in the plant and there are as many as 200,000 components in various systems across the facility. Engineers in Strategic Engineering are assigned systems, components, equipment and programs which must be monitored and reported on regularly, so performance discrepancies or negative trends are timely identified and issues placed in corrective action for resolution. These engineers own and specialize in systems and components that qualify them as subject matter experts on the particular systems and components they work on. In performing their duties engineers in Strategic Engineering may consult and work with employees in the Operations and Maintenance Divisions to diagnose negative equipment trends and to develop solutions for issues. Strategic Engineering comprises 5 workgroups: Electrical Instrumentation & Control Group, Balance of Plant Group (BOP), Nuclear Steam Supply System Group (NSSS), Component Engineering Group, and an Engineering Fix-it-Now Group (EFIN). BOP Engineers own systems such as power generation equipment, including turbines, generators, heating and ventilation equipment that use steam to generate electrical power. EIC Engineers own the electrical side of the plant and are responsible for monitoring and trending of the electric power systems and instrumentation and control systems. EIC Engineers own instrumentation around the plant that show flows, temperature, and pressure. The NSSS Engineers own all the safety systems designed to keep the reactor core safe and cool and to safely shut down the plant. NSSS Engineers also own systems that convert steam from the nuclear reactor to secondary applications, and they handle the lake water system.[5]

The EFIN group is a team that is put together to fix a specific problem anywhere in the facility. This may include work for an extended period of time by the team, that may include identifying and isolating a problem and then finding solutions to the problem. The EFIN group is unique in that it does not seat on the engineering floor due to the nature of their job that requires them to be in the field. They work with a separate Maintenance Site Fix-it-Now team that is based in the Walter P. Chrysler Building, the maintenance building. An EFIN team may be augmented with and draw expertise from outside Strategic Engineering depending on the particular system, component, equipment or program at issue. Lance Lane is Director of

[5] The lake water system was previously handled by BOP Engineers.

Strategic Engineering. Each of the work groups comprising Strategic Engineering is headed by a Manager of Engineering[6] reporting directly to Director of Strategic Engineering Lane. There are approximately 35 engineers in Strategic Engineering.

*a. Petitioned for Component Engineering Group within Strategic Engineering*: A component is a constituent part of a larger system at the facility. Components exist with similar applications in multiple systems at the facility. The Component Engineering Group within Strategic Engineering, comprising 5 Engineers, own certain components distributed throughout systems in the plant.[7] Component Engineers ensure that program requirements are met on their assigned components, as they engage in monitoring, trending, testing and maintenance of assigned components. Component Engineers monitor components and generate program health reports, track health and performance of components, devise maintenance strategies and advocate for maintenance on components. Component Engineers identify and specify scope of work to be done on their components. Components include Motor Operated Valves (MOV) and Air Operated Valves (AOV), pumps and motors that are contained in multiple systems at multiple locations in the facility. They are also responsible for program areas including testing on HVAC, vibration, oil analysis and other areas. Components in Component Engineering are typically non-electrical components that are handled by mechanical engineers. There are, however, electrical control systems that remain in Component Engineering. The Component Engineering Group includes 4 Engineering Technicians that are not part of the petitioned-for unit.[8] Engineering Technician's jobs focus on specific field-oriented tasks around testing and inspections. Laura Corcoran is the Manager of Components Engineering who took up the position in February 2025 due to a promotion from her position as a diesel engineer in Electrical Instrumentation and Controls Group in Strategic Engineering.

Not all components reside in Components Engineering, however. There are engineers working on components in other engineering divisions performing identical functions to those performed by Component Engineers in the Component Engineering Group managed by Corcoran. In Design Engineering, Bill Patterson owns motor components, Paul Wagner owns steam generator components, and Maadh Al Saad owns generators and the exciter components. Kameron Wood in the EFIN workgroup in Strategic Engineering owns the Cathodic Protection Program which involves working on the related components as a Component Engineer. Allen Thomas is an engineer in EIC in Strategic Engineering and works on breaker systems and components, any systems or components requiring more than 480 volts. These components and their owners are outside of the Component Engineering Group managed by Corcoran. Components are assigned to engineers outside the Component Engineering Group because the

[6] Managers are sometimes referred to as just managers without specifying their specific department and workgroup.
[7] Component Engineering was in the past a part of a now defunct Support Engineering Department, a department that also included Programs, Fire Protection, and a Components and Predictive workgroup. After Support Engineering ceased to exist as a separate department the workgroups were placed in different departments with Component Engineering placed in Strategic Engineering.
[8] Engineering Technicians are not qualified engineers. They have engineering degrees that are not accredited by the Accreditation Board for Engineering and Technology (ABET).

Employer tries to have no more than 5-7 engineers reporting to a manager, and the Employer attempts to assign electrically-oriented components—pumps, valves, relays and breakers—to groups that are largely made up of electrical engineers. Also contributing to some components and programs being outside Component Engineering is that in some cases when engineers transfer to other workgroups they continue to work on those components and programs in their new positions. So also, legacy of prior reorganizations and mergers have factored into some particular components and programs staying together. While engineers working on components outside Component Engineering are not designated formally by the Employer as Component Engineers, Employer considers any engineer who is a primary owner of a component to be a Component Engineer.

Component Engineers have ample opportunities to work with engineers outside of the Component Engineering Group. For example, given a more than 40-year-old plant, and technological advancements, Component Engineers work with Procurement Engineers in Design Engineering to source out and procure updated components, also working with Systems[9] Engineers to ensure components are compatible with systems. Should a component fail in one system there is a likelihood that same component is in other systems. Component Engineers address such issues with the System Engineers. Component Engineers have worked with BOP Engineers on such tasks as addressing problems with AOVs in the plant and problems with the high-pressure heater level controls. In about July 2024, an issue with an MOV on a residual heat removal system required engineers in the NCCC and Component Engineering groups to work together over several weeks, work that included mock-ups aimed at assessing the components and systems in different configurations.

**2. Design Engineering**

Design Engineering is primarily responsible for maintaining design documents and records which are used by all engineers. They are responsible for drawings and calculations, analysis and specifications that define design parameters for proper operation of the nuclear facility. Design Engineering handles plant modifications and change packages, including upgrades and improvements to the plant. Design Engineering has to work with Strategic Engineering on system, component, and equipment updates. Any engineer across the Engineering Division can be qualified and assigned to handle a design change project. Any modification handled by Design Engineering would typically have a stakeholder such as a system or component owner who works with the Design Engineer. The subgroups under Design Engineering include Civil and Mechanical Engineering, EIC[10], Procurement Engineering, Cyber Security, and Engineering Programs. Engineers in the EIC group in Design Engineering focus on design changes for electrical systems and components. Design changes when they occur require a significant investment of time as they may take anywhere from several months to a couple of years. The Employer attempts to keep electrical components within this group as the

[9] The term Systems Engineer and Strategic Engineers are often used interchangeably by the Employer. Systems Engineer or Strategic Engineer denotes an engineer who works on systems. Systems Engineer is an older term.
[10] There are 2 EIC groups. There is one in Strategic Engineering and another in Design Engineering.

group typically has a deep bench of electrical engineers, as opposed to the Components Engineering Group with primarily mechanical engineers. A program is a specific initiative or area where more formal monitoring and oversight is required, typically based on regulatory or industry requirements. Engineering Programs include Engineering Code Engineers that own certain components around the plant. They own components including steam generators, pumps, valves and piping. They also own components around the facility that are susceptible to erosion and corrosion. An In-Service Testing (IST) program owned by Program Engineers is key to required testing of MOVs and AOVs and necessitates Component Engineers working with Program Engineers. Component Engineers and Program Engineers work together on proper coding of components which have to be coded as either active or passive components. The Civil and Mechanical Engineering Group handles design changes focused on civil and mechanical systems and components. At time of the hearing, Kendra Henry, a Component Engineer in Component Engineering, was actively working on modifications to AOVs and was being supported by a Design Engineer in the Civil and Mechanical Engineering Group. The Cyber Security Engineers' work focuses on ensuring systems, components, equipment and programs, with programmable controls or electronic controls are safeguarded from interference or being compromised. Dustin Wirth is Director of Design Engineering.

### 3. Nuclear and Regulatory Affairs

The Nuclear and Regulatory Affairs Division is split between engineers focused on regulatory compliance and engineers focused on nuclear engineering. Nuclear and Regulatory Affairs also includes a Probabilistic Risk Assessment Group which includes a Fire Protection, Licensing and a Risk Initiatives Group. The Licensing Group under Regulatory Affairs interfaces with the Nuclear Regulatory Commission (NRC) on behalf of the Employer and is the point of contact between the NRC and engineers across the Engineering Division. Should an issue arise that needs an answer to the NRC, engineers in Nuclear and Regulatory Affairs contact and work with engineers to obtain and coordinate responses. There may be as many as 500 such inquiries yearly from the NRC, across the entire Engineering Division. This may pertain to an issue regarding a component being handled by a Component Engineer or a system handled by a Strategic Engineer. It may also raise a question that must be addressed by both classes of engineers. The Component and/or System Engineer will work with engineers in Regulatory Affairs to respond. Furthermore, where there are changes to how any plant components or systems work or are operated, the engineer assigned the component or system will work through Regulatory Affairs to update the Final Safety Analysis Reports. These reports document the most current account of how components work and are deployed. Nuclear Engineering focuses on reactor engineering, managing the design, maintenance and the systems surrounding the reactor core and nuclear fuel. Dustin Hamman is Director of Nuclear and Regulatory Affairs.

### *B. Community of Interest Factors*

#### 1. Hiring and Training of Engineers

The Employer generally hires engineers into the Engineering Division from multiple engineering disciplines including nuclear engineering, electrical engineering, mechanical engineering, civil engineering, and other engineering disciplines. It requires candidates to have a Bachelor of Science degree in any engineering discipline accredited by the Accreditation Board for Engineering and Technology (ABET). In limited situations it may require a specific degree. For example, a Design Engineering engineer who will work on electrical duties must have an electrical engineering degree. The Employer may hire engineers for a specific engineering department or workgroup, or it may hire an engineer and assign that engineer to work in a specific area based on operational need. The entry level position for an engineer in the Engineering Division is Engineer I. Depending on work experience, engineers may be hired into other higher positions like Engineer II, Staff Engineer, Senior Engineer and Lead Engineer.[11] All engineers follow this progression after hire depending on work performance and experience. Engineers regardless of their department or workgroup progress through the same promotion and pay scale. The highest nonsupervisory position for an engineer is principal engineer. Few engineers attain this position.

Upon hire all engineers participate in an initial 3-week training within their assigned workgroup coordinated by their managers. Newly hired engineers across departments and workgroups then take a 5-week Pressurized Water (PWR) training class together that introduces engineers to nuclear plant systems and operations. Engineers in every department and workgroup are subject to continuing education requirements. Engineers are required to attend at least 2 training classes every year where they are instructed on plant issues, industry developments, operations issues, and topical matters. Some training classes are facilitated by engineers based on their proficiency, knowledge and experience on certain systems, components and programs that are the subject of the training. The most recent all-engineer training before the hearing in this matter was on turbine engineering and was conducted for all engineers by the BOP group within the Strategic Engineering Department.

#### 2. Terms of Employment of Engineers

Engineers across the entire Engineering Division are salaried employees who enjoy the same health, dental and vision benefits, as well as incentives package. They start work between 5 a.m. and 7:30 a.m. Engineers across the Engineering Division have the option to work 4 10-hour days or 5 8-hour days. Most engineers opt to work 4 10-hour days. All engineers have the option to work remotely on Mondays. They also enjoy the same holiday, vacation and sick time benefits. All engineers share the same 401(k) retirement plan.[12] Engineers qualify for overtime

[11] A lead engineer position requires a professional engineer qualification.
[12] Some longer-serving engineers have a pension plan which was in place from a prior owner of the nuclear plant but is no longer available and was available regardless of the engineer's workgroup or placement.

if they work more than 2 hours beyond their regular quitting time or if an emergency is declared that requires additional staffing at the facility. Employer offers some reimbursement for certain engineering certifications, available to all engineers. The EFIN group, in contrast to other engineers, are required to work onsite and do not participate in remote work which is available to all other engineers.

### 3. Work Activities of Engineers

Engineers working on systems, components, equipment and programs typically have to do walkdowns. Walkdowns involve going into the plant to observe systems, components, equipment and programs. Walkdowns may require multiple engineers from different workgroups to perform a walkdown since systems, components, and programs interrelate. This is also the case because engineers assigned systems and components have backups who are also qualified on the system, components and equipment. Backups for systems and components are not always in the same workgroups. For example, the steam generator owner works in Programs which is in Design Engineering, but the backup to do that work is an NSSS engineer in Strategic Engineering. So, Strategic Engineers will visit the plant to observe certain parameters for verification systems, components, and equipment are functioning properly. These Strategic Engineers, including Component Engineers, engage in trending and monitoring duties to decipher certain trends in operations. Walkdowns of systems, components and equipment may require participation of the engineers assigned the systems and components, and even employees in maintenance. In contrast to other engineers whose work tasks require they go into the plant for walkdowns, Design Engineers, Procurement Engineers, and Engineers working in Regulatory Affairs and Licensing work primarily at their desks and have less need to go into the plant. Design Engineers may do walkdowns but these are typically limited to work related modifying systems, components, and equipment or relocating them. Reactor Engineers in Nuclear and Regulatory Affairs would typically only do walkdowns to the control room to monitor instrumentation and controls.

Change packages regularly occur to upgrade and modify systems and components to address obsolescence and improve reliability. These tasks often require engineers to work across their own workgroups with other engineers. Change packages go through a Plant Health Committee (PHC) which reviews recommendations from engineers and can approve or deny recommendations. At the time of hearing, Component Engineer Kendra Henry was involved in no less than 4 ongoing change packages involving components. While any engineer may work on a change package a special qualification is required to sign off on change packages. Engineers not yet qualified to work on a change package may ghostwrite one, by doing the work-up and having a qualified engineer sign off on it. This engineer signing off will not necessarily be in the same group or department.

**4. Joint Work of Engineers on Outages and on Teams**

The Employer's nuclear plant has planned outages every eighteen months where the nuclear reactor and systems are taken offline for refueling and extensive maintenance. In addition to planned outages there are unplanned outages that occur due to emergent situations. The eighteen-month planned outages are seminal events that take 40-45 days to complete with a second shift added to operations. During planned outages three groups of activities are completed: (1) preventive maintenance tasks, (2) corrective maintenance tasks, and (3) plant modifications. All engineers receive a pre-outage training PowerPoint presentation two months prior to the outage. There are no less than forty milestones that have to be reached before the refueling can occur, with specific tasks set to be completed by each division weeks and months in advance of refueling. Planned or unplanned, outages create regular opportunities for engineers to work across their departments and workgroups. About 50%-60% of an engineer's daily work is related to outage work, preparing for the next outage or handling post outage matters.

Particularly with respect to eighteen-month outages, where power is generated temporarily through auxiliary systems, the Employer takes an all-hands-on-deck approach arranging employees in groups and teams, irrespective of their regular work assignments, so outage operations and tasks are completed as quickly as possible and regular operations resumed. The Engineering Division is temporarily reorganized so that the refueling is run out of an Engineering Support Center on the Engineering Floor. Engineers across the Engineering Division, irrespective of their workgroups, are organized by engineering discipline, i.e., mechanical engineers, electrical engineers, nuclear engineers, civil engineers, etc. Engineers in Component Engineering are assigned outage duty typically with the mechanical group of engineers and the valve teams. Teams are then created for each discipline, and further teams are created such as a Test Team, Turbine Team, Refueling Team, Valve Team, Safety Team, Fire Protect Team, and others. Engineers are assigned to teams based on qualifications and availability of the engineer to serve for the duration of the outage. When engineers complete certain tasks during the outage they may be pulled off their assigned teams to support other teams. For example, when Component Engineers Justin Weseloh and Kendra Henry complete their work on the Valve Team, they are typically assigned to support the Test Team where they work with engineers outside their Component Engineering workgroup, including Engineers from Nuclear and Regulatory Affairs. Engineers, well ahead of the outage, based on their work with systems, components, equipment and programs, make the case for the scope of work to be completed and their priority during upcoming outages as work is planned out even multiple outages into the future. Where there is uncertainty as to the scope of work to be undertaken the issues can be escalated to an Outage Review Board. Engineers are free to make their pitch to the Outage Review Board on the scope of work to be completed during outages. From the Outage Review Board the scope of work is elevated for director level approvals of the outage scope of work.

High Impact Teams (HIT) present further regular opportunities for engineers to work across workgroups and departments. HIT teams are typically put together to handle major and complex projects and issues that require special attention. A HIT team is a systematic approach to solve a problem, and involves putting a team together, led by an engineer, to engage in inspection, testing, investigation, and analysis to address problems. The HIT team may contain multiple engineers[13] from across the Engineering Division, and include employees outside the division, such as maintenance employees. HIT team assignments, which may potentially last weeks and months, can be related to outage work or regular operations at the Employer's facility. Engineers also get to serve in Area Coordinator (AC) roles. This role requires engineers to serve as point of contact and coordinator of activities for projects that may or may not relate to outages, but are related to areas or plant systems of lesser priority than HIT teams.

**5. Qualification on Specialized Tasks**

There are certain specialized tasks around the plant that may only be performed by pre-qualified engineers. The Employer maintains lists of engineers for each task regardless of their engineering workgroup or department. Some of the tasks pertain to systems, components, equipment, and programs, and may include testing. Certain tasks have to be performed after outage work is complete or as part of addressing emergent situations in operations. For example, after outage work, pressure tests must be run by engineers certified to operate hydro pumps to ensure valves are properly seated and performing properly on reactor coolant systems, and to ensure valves were closed. Some qualifications need to be periodically recertified. The engineers with required certifications are in different workgroups and departments within the Engineering Division. For example, nine engineers qualified to operate test equipment for RCS pressure boundary valve leakages are in BOP, EFIN, Probabilistic Risk Assessment, Programs, Fire Protection Risk Informed Initiatives group. These engineers span Strategic Engineering, Design Engineering, Nuclear and Regulatory Affairs, and any of them could be called upon to perform the task. The Employer also maintains lists of engineers qualified to perform certain engineering calculations regardless of their workgroup or department. For example, there are approximately 28 engineers from across the Engineering Division that are qualified to perform design analysis calculations and evaluation calculations. If a need arises to perform such calculations, such as in the context of introduction of a new component, any engineer from the list is assigned to perform the calculations no matter their workgroup or department. Calculations are integral to the work of engineers as systems, components and equipment must work within certain parameters. Engineering calculations performed by engineers will often be peer reviewed by other engineers across workgroups prior to submission to supervisors and managers. For example, in July 2022, Component Engineer Justin Weseloh performed a design analysis calculation that was peer reviewed and verified by Jason Pankaskie, an engineer in the Civil and Mechanical Engineering Group in Design Engineering. In June 2022, Weseloh performed a thrust-torque calculation on an MOV design that was reviewed by Jason Knust, a Licensing Engineer in Nuclear and Regulatory Affairs. These are in-depth engineering

[13] There may be as many as 4 engineers assigned to a HIT team project.

calculations that require a significant investment of time working on the issue. The Employer maintains a uniform roster of engineers qualified to be mentors to other engineers, with mentors drawn from the workgroups within Strategic Engineering, Design Engineering, and Nuclear and Regulatory Affairs.

### 6. Engineers' Ability to Transact Business with Vendors

The Employer procures products from vendors and hires vendors to supplement its engineering staff when needed. Vendors provide specialized products and services to the Employer. All engineers work with vendors to ensure that product engineering is correct and technically accurate, and consistent with the design of that plant. The process of obtaining products and services from vendors often proceeds from engineers who fill out the initial order worksheets and contract forms, providing technical parameters and specifications. The engineers work with their managers, engineers in Procurement, and others outside the Engineering Division such as Buyers in Purchasing. Procurement Engineers will work with Component or System Engineers on the finer details of purchases, honing in on specifications, compatibility, and safety. Engineers will have contact with vendors in obtaining bids and quotes and facilitating purchases. The actual contract to purchase vendor products or services is issued by Purchasing. Engineers have available to them a roster of vendors that have been used before and are approved by management. While Employer witnesses testified engineers may on their own spend up to $25,000 to make purchases, Engineer Justin Weseloh testified he was not aware of such discretion to expend funds. Engineers are responsible for initial determinations on the scope of work and purchases, where services or equipment would be obtained, since they are the subject matter experts on the particular systems, components, and programs. Buyers ensure that bids for vendor services comply with Employer's policies and procedures for purchases. Engineers are required to justify their recommendations on products and services before purchases from vendors.

### 7. Engineer Transfers within Engineering Division

There is a history of engineers seamlessly transferring to other engineering positions within the Engineering Division. For example, there were significant transfers in 2020 due to a reorganization that included downsizing and elimination of certain workgroups. Engineers also transfer within the Engineering Division when vacancies arise. The Employer attempts to fill engineer vacancies from within. Engineers may transfer to different positions within their groups, such as taking a position that would require working on a different system, component, or equipment, or to a separate department within the Engineering Division. The 2020 reorganization saw about 12 engineers in Strategic (Systems) Engineering transfer to Nuclear Engineering, Engineering Programs, and Cyber Security. Going back to 2021, many more engineers transferred to other positions including transfers from System Engineering to Licensing, Design Engineering to Engineering Programs, Strategic (System) Engineering to Nuclear Engineering, Engineering Programs to Strategic (System) Engineering, Design Engineering to Procurement Engineering, and Cyber Security to Design Engineering. The ease

with which engineers have transferred within workgroups and the Engineering Division is exemplified by Engineer Mark Barraclough who in March 2023 went from Strategic (System) Engineering to Design Engineering overseeing the leak rate test program, and in October 2023 went on to take a position in Procurement Engineering, and later again transferred to Nuclear and Regulatory Affairs performing a similar function. At the time of the hearing, Barraclough was slated to take up a position in Licensing within Nuclear and Regulatory Affairs. Engineer Kendra Henry in Component Engineering, owner of the AOV components, previously was in BOP as a feedwater engineer. In about March 2025, a newly created Plant Liability Engineer position in Strategic Engineering was filled from within. The 5 engineer applicants were from the Mechanical and Civil Design group, EFIN, BOP, and the Component Engineering group.

## II. ANALYSIS

### *A. Board Law on Appropriate Units*

The Act does not require a bargaining unit sought by a labor organization to be the only appropriate unit, the ultimate unit, or even the most appropriate unit. The unit sought need only be an appropriate unit able to safeguard to employees the fullest freedom in exercising rights guaranteed by the Act. *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnight Transportation Co.*, 322 NLRB 723 (1996). The starting point for an inquiry on unit composition is whether the petitioned-for unit is an appropriate unit. If the unit petitioned for is an appropriate unit, the inquiry terminates. *Boeing Co.*, 337 NLRB 152, 153 (2001). The Board has long recognized that there is often more than one way employees of a particular employer may be organized and represented for collective-bargaining. See, *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-423 (4th Cir. 1963), cert. denied 375 U.S. 966 (1964). A petition's preference as to unit composition, while relevant, is not determinative. *International Bedding Co.*, 356 NLRB 1336, 1337 (2011).

Where a petition seeks to represent a unit of employees and an employer contends the appropriate unit must be a larger complement of employees, the framework to be applied was set forth by the Board in *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), wherein the Board returned to the prior standard set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), 357 NLRB 934 (2011). *American Steel* holds that a petitioned-for unit is appropriate where employees: (1) share an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and, (3) is sufficiently distinct. Id., slip op. at 13. Where a party urges that the petitioned-for unit is not sufficiently distinct because the smallest appropriate unit must include additional employees, the Board will apply traditional community of interest factors to determine whether there exits an "overwhelming community of interest" between the petitioned-for employees and employees a party would exclude. Id. When a party contends the smallest appropriate unit includes a larger complement of employees it challenges the third prong of *American Steel*, i.e., the proposed unit is not sufficiently distinct. Id. The Board went on to state in *American Steel*:

> " But if a party contends that the petitioned-for unit is not sufficiently distinct—i.e., that the smallest appropriate unit contains additional employees—then the Board will apply its 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. If there are only minimal differences, from the perspective of collective-bargaining, between the petitioned-for employees and a particular classification, then an overwhelming community of interest exists, and that classification must be included in the unit. As the Board noted in *Specialty Healthcare*, this test does not disturb or displace any preexisting rules or presumptions applicable to specific industries or occupations." *American Steel*, supra.

The Board has considered the following factors in evaluating whether groups of employees share a community of interest:

> "[W]hether the employees are organized in a separate department; have distinct skills and training ; have distinct job functions and perform distinct work, including inquiry into the amount and type of work 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." *United Operations, Inc*., 338 NLRB 123, 123 (2002).

In applying these community of interest factors, the Board focuses on whether the interests of the group petitioned for are sufficiently distinct from the interests of other employees to warrant a separate unit. *Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 2 (2010). The manner in which an employer has chosen to organize its workforce and utilize employee skills are significant factors in determining appropriateness of a petitioned-for unit. *Gustave Fisher, Inc*., 256 NLRB 1069 fn.5 (1981). Where only minimal differences exist, from the perspective of collective bargaining, between petitioned-for employees and employee classifications to be left outside the unit an overwhelming community of interest exists and the classifications left out are appropriately included in the unit. *American Steel*, 372 NLRB No. 23, slip op. at 17. The Board eschews arbitrary or irrational bargaining units that constitute haphazard groupings of classifications of employees or that represent arbitrary segments of broader groups with indistinguishable interests. Id. slip op. at 5.

### *B. The Petitioned-for Unit of Component Engineers, while Readily Identifiable, does not have a Community of Interest that Distinguishes it from other Engineers*

The first two prongs of *American Steel* require that a proposed unit share an internal community of interest and be "readily identifiable" based on job classifications, departments, functions, work locations, skills, or similar factors. The petitioned-for unit must not be a "clearly

arbitrary" unit composed of random classifications with no coherent organizing principle. *American Steel*, supra; *Johnson Controls, Inc*., 322 NLRB 669, 672 (1996).

It is readily evident, and neither party contends, that the petitioned-for unit of Component Engineers within Component Engineering is not a readily identifiable workgroup. The parties' disagreement centers around what the group is called, *i.e.,* whether they are component engineers as the Petitioner urges or whether they are engineers who work on components in the Component Engineering Group and report to Manager Laura Corcoran, as the Employer contends. The precise nomenclature used does not matter here as it is clear that a group of engineers working on certain components are identifiable as a workgroup reporting to Corcoran. The requirement that a petitioned-for unit be readily identifiable goes to whether the proposed unit can "logically and reasonably be segregated from other employees for the purpose of collective bargaining." *American Steel*, 372 NLRB No. 23, slip op. at 3 (quoting *Champion Machine and Forging Co.,* 51 NLRB 705, 708 (1943)). The readily identifiable question goes to whether the description of the petitioned-for unit "is sufficient to specify the group of employees the petitioner seeks to include." *DPI Secuprint*, 362 NLRB 1407, 1410 fn. 10 (2016).

While the petitioned-for Component Engineers share job functions, training, immediate supervision, terms and conditions of employment which point to having a community of interest, any community of interest they enjoy is outweighed by evidence of other engineers outside the petitioned for unit who cannot be meaningfully distinguished on the same community of interest factors, as fully discussed below. The five engineers in Component Engineering reporting to Corcoran working on specific components and/or duties are identified in the Component Engineering Group provision, Section 6.3.5 of the Responsibilities of the Organization: Heat Exchanger Performance, Pumps and Motors, HVAC Testing, Valves (MOV, AOV, Check, Relief), Vibration, Oil Analysis, and Snubbers.[14] (ER Exh. 11) These 5 engineers sit together in the southeast corner of the Engineering Floor, sharing their immediate work area with Engineers in the Risk Initiatives Group in Nuclear and Regulatory Affairs, and the Codes Engineering Group and Configuration Management Group in Design Engineering.

### *C. The Engineers Across the Engineering Division the Employer will Include Share an Overwhelming Community of Interest with the Engineers in the Component Engineering Unit Sought by Petitioner*

A finding that the petitioned for unit of Component Engineers reporting to Manager Corcoran are identifiable and have attributes of a community of interest is insufficient, however, to support a finding that the petitioned for unit of Component Engineers is an appropriate unit for collective bargaining in the circumstances here. It remains to analyze whether the petitioned-for unit is "sufficiently distinct" within the meaning of *American Steel* such that the larger group required by the Employer must be part of the unit found appropriate. This third prong of the

[14] Thermography tests are handled in the field by Engineering Technicians who are not part of the petitioned-for unit and are already represented in collective bargaining.

*American Steel* analysis remains just as vital. The "sufficiently distinct" requirement recognizes that even where a petitioned-for unit appears to have employees with a mutuality of interests and a coherent organizing principle, the sought unit may yet be inappropriate because it excludes employees who cannot rationally be separated from the petitioned-for employees on community of interest grounds. *American Steel*, 372 NLRB No. 23, slip op. at 5; See, also, *Brand Precision Services*, 313 NLRB 657 (1994). The presence of some overlapping interests between the petitioned-for unit and excluded employees, often the case, will not by itself render a petitioned-for unit inappropriate even where overlapping interests makes the larger unit also appropriate for collective bargaining. *American Steel*, 372 NLRB No. 23, slip op. at 5, citing *Engineered Storage Products Co*., 334 NLRB 1063, 1063 (2001). To require inclusion into a petitioned-for smaller unit, excluded employees must share "strong", "substantial", "overwhelming", "significant" or "extremely close" interests with the petitioned for employees. *American Steel*, supra. This is to say there must be an overwhelming community of interests between the petitioned-for employees and those an employer will include. A party proposing inclusion of additional employees because of an "overwhelming community of interest" with petitioned-for employees bears the burden of establishing that there are only minimal differences between petitioned-for employees shared interests and the interests of the larger employee complement. *American Steel*, 372 NLRB No. 23, slip op. at 7.

For the following reasons, I find that the petitioned-for unit of Component Engineers is not sufficiently distinct, and Component Engineers share an overwhelming community of interest with Engineers across the Engineering Division and there are only minimal differences between both sets of Engineers. Here, the petitioned-for unit is limited to 5 Component Engineers in the Strategic Engineering Department of the Engineering Division leaving outside the unit approximately 75 Engineers in the Design Engineering Department, and the Nuclear Engineering and Regulatory Affairs Department. It cannot be denied the Component Engineers share many elements of an internal community of interest. However, these are not so salient as to require that other Engineers in the Engineering Division be excluded where it is evident that all engineers share an overwhelming community of interest and evidence establishes only minimal differences between engineers in Engineering as a whole.

**1. Departmental Organization**

All Engineers the Employer will include in the unit work under the umbrella of the Engineering Division which is headed by the Vice President of Engineering. The Engineering Division is split into Strategic Engineering, Design Engineering, and Nuclear and Regulatory Affairs, each headed by a Director. The Engineering Division is headed by the Vice President of Engineering. Strategic Engineering workgroups include Electrical Instrumentation and Controls, Balance of Plant, Nuclear Steam Supply, Component Engineering, and the Engineering Fix-it-Now Group. Design Engineering includes Civil and Mechanical Engineering, Electrical Instrumentation and Controls, Procurement Engineering, Cyber Security, and Engineering Programs. Nuclear and Regulatory Affairs includes Nuclear Engineering, Licensing, Probabilistic Risk Assessment, Fire Protection, and Risk Initiatives Group. These workgroups

are headed by Managers who report to the Department Director. These Engineers, except EFIN in Strategic Engineering, all work out of cubicles on the same floor in the designated areas for their workgroup, in the same building with their Managers and Directors. Based on this organization of the Engineering Division, I find that there exists a common departmental organization in the Engineering Division.

**2. Skills, Training and Job Functions**

Evaluation of skills, training, and job functions in a community of interest analysis that go to whether petitioned-for employees and others may be distinguished. If they cannot be distinguished, this factor weighs in favor of including disputed employees in the unit. Evidence that disputed employees meet similar requirements for employment with the employer, have similar job descriptions and license requirements, participate in the same training programs, or use similar equipment support a finding that the employees have similar skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Service*, 313 NLRB 657 (1994). Evidence that employees perform the same basic functions or have the same duties, that there is a high degree of overlap in job functions or perform each other's work, or that disputed employees work as a crew, support a finding of similarity of functions. *Casino Aztar*, 349 NLRB 603.

The record here establishes that Engineers across the Engineering Division bring to their positions similar skillsets as engineers in different disciplines within engineering. The Employer hires engineers who have baccalaureate engineering degrees in multiple engineering disciplines like mechanical engineering, electrical engineering, nuclear engineering, industrial engineering and other disciplines. These employees across engineering attend five weeks of training and attend the PWR course for engineers. Beyond this, engineers participate in some trainings together and complete similar continuing education requirements together. Each department typically has quarterly meetings, i.e. Strategic Engineering, Design Engineering, and Nuclear and Regulatory Affairs. There is a history of some joint meetings across classifications. Every morning, managers attend managerial meetings and then breakup to have daily meetings with their workgroups. Engineers are also pulled from across the Engineering Division to teach some classes and mentor other engineers. Engineers take certain core training together that are required for all engineers.

Whether they are in Strategic Engineering, Design Engineering, or Nuclear and Regulatory Affairs, Engineers perform engineering functions using very similar skillsets. The key distinction, actually the only distinction, between engineers across the Engineering Division is in the finer details of the type of engineering tasks and work they perform in their workgroups at a granular level. This type of difference in a community of interest analysis appears insignificant. Component Engineers focus on the upkeep of certain assigned components, equipment, and programs that the Employer has placed in the Component Engineering Group while other Engineers focus on systems, programs, and equipment and perform other types of engineering tasks. There are engineering tasks that all engineers, regardless of workgroup or

department, have to be proficient in, such as understanding and working with drawings and designs, and performing complex calculations. Engineers assigned systems, components and equipment have backup Engineers that are not always in their workgroups or even their Engineering Department. All Engineers in performing their duties are required to follow common engineering principles set forth in the Employer's Conduct of Engineering. Engineering tasks common to all departments include developing plans and monitoring of equipment, fulfilling program and technical requirements, ensuring updated station procedures, engaging in online and outage scoping of work, completing inspections, tests and replacements, and maintaining engineering program documents. Engineers across all departments share these duties with respect to the engineering programs they work on. It is common for engineers performing certain calculations to have other engineers look over their calculations without regard to engineering department or workgroup. So, certain calculations performed by Component Engineer Justin Weseloh were reviewed by Engineers in Strategic Engineering and Nuclear and Regulatory Affairs.

The ease with which Engineers have transferred across engineering positions in all 3 departments is testament to having significantly similar skills. Reorganizations and voluntary transfers establish that these Engineers have similar skills and can perform as Engineers in all 3 Divisions. These transfers facilitate the Employer being able to keep lists of Engineers able to perform certain engineering tasks and calculations, regardless of their workgroup. As need arises, depending on availability these Engineers can be assigned various tasks regardless of their particular Department and workgroup in Engineering. Engineers across the entire Engineering Division serve on HIT teams that are put together to address plant issues. These assignments to HIT teams could require weeks, months, and even longer working on an issue.

The work on eighteen-month outages, critical to operation of the nuclear plant, is clear demonstration of similar job skills and job function. Engineers pool together into ad-hoc workgroups to complete the refueling and maintenance work that is undertaken over a period of 40-45 days. Work outside of outage work in all three Divisions, and the constituent workgroups, is geared towards preparing for and supporting the next outage or handling duties in the aftermath of completion of outage work. The evidence amply demonstrates that all Engineers have similar skills, training and job functions.

### 3. Functional Integration

The evidence further demonstrates a high degree of functional integration with all Engineers working towards the goal of safely operating a nuclear power plant in compliance with extensive laws and regulations to generate electrical power. Operation of nuclear power plant is by design operation of a functionally integrated, highly technical system for generation of power. There is functional integration when all employees in a sought-after unit work on different phases of the same product or a single service as a group. *Transerv Systems*, 311 NLRB 766 (1993); *Avery Corp*., 170 NLRB 35 (1968).

Evidence of functional integration in the context of a nuclear plant is particularly strong. Components exist within systems, and neither can operate independent of the other. The Employer's systems, components, equipment and programs are all designed to aid the production and distribution of electric power. Engineers in Design Engineering handle the designs and technical parameters that inform the work of Engineers in Strategic Engineering who work on systems, components, equipment, and programs. The work of Engineers in Strategic Engineering and Design Engineering directly support the work of Engineers in Nuclear and Regulatory Affairs. The plant cannot operate out of compliance with regulatory requirements. Licensing is key to the functioning of the entire Engineering Division. None of the constituent departments under Engineering can function independently of the other. Here, functional integration weighs heavily in favor of a unit comprising all Engineers of the Employer.

**4. Frequency of Contact and Interchange**

The evidence demonstrates regular contacts between all Engineers across all Departments. Engineers in Strategic Engineering, Design Engineering, and Nuclear and Regulatory Affairs work out of the same building, on the second floor. The only work group not on the floor is the Engineering Fix-it-Now Team which is a workgroup within Strategic Engineering, a workgroup with few Engineers based in the plant. Engineers work similar hours and, working on the same floor, share conference room, breakrooms and conveniences. Engineers are generally onsite during the same hours. Besides the day-to-day contacts inherent in working on the same floor, Engineers as detailed above have work contacts that come up in a variety of ways as they support each other's work in the Engineering Division. Engineers are pulled from all workgroups to serve on HIT teams to investigate and address emergent issues that come up in operations. The eighteen-month outages to refuel the reactor and perform maintenance tasks and upgrades give Engineers the opportunity to work outside of their workgroup and specific Department. So also, walkdowns of systems, components and equipment bring Engineers together to work across their workgroups to address issues. Nuclear and Regulatory Affairs Engineers regularly interface with Engineers in Strategic Engineering and Design Engineering to address and provide comprehensive responses to inquiries from the NRC. Engineers attend training and certain meetings together, including an all-hands meeting at periodic intervals. The record establishes strong and continuing contacts between Engineers as a group.

Interchange pertains to temporary work assignments or transfers between two groups of employees. Frequent interchange between employees "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills. *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that "frequency of employee interchange is a critical factor in determining whether employees who work in different [groups] share a 'community of interest' sufficient to justify their inclusion in a single bargaining unit." *Executive Resource Associates*, 301 NLRB 400, 401 fn. 10 (1991), citing *Spring City Knitting Co*., v. NLRB, 647 F.2d 1011, 1015 (9th Circ. 1981).

Due to the nature of the jobs of Engineers across the three Engineering Departments, where Engineers master certain systems, components, equipment, and programs, and become subject matter experts and "own" their own programs, Engineers are not necessarily always able to interchange jobs. However, there are clearly instances of interchange. This much is clear given that the Engineering Division maintains a roster of Engineers qualified to perform certain tasks and may pull Engineers to perform those tasks when the need arises, regardless of the Department or workgroup of the Engineers. For example, nine engineers are qualified to operate a test equipment for RCS pressure boundary leak packages. These engineers are spread out in workgroups in each engineering department. Certain tasks require licenses which a limited number of Engineers have, i.e., operating certain pumps and valves or performing certain engineering calculations. Furthermore, as noted above, the Engineering Division uses a backup system where if an Engineer who owns a task is not available a qualified backup is tasked to perform the duty. Moreover, there is clear evidence of interchange inherent in the operation of the eighteen-month outages where Engineers are pooled together to service the outage and they invariably perform duties outside their regular duties. There is evidence of contacts and interchange, and these militate in favor of an all-Engineer unit.

**5. Terms and Conditions of Employment**

The record establishes uniform pay and wage progression in the entire Engineering Division for Engineers. The record further establishes all Engineers receive the same benefits. The starting entry level for Engineers is Engineer I, and Engineers based on time, experience, and performance ascend not just on the same wage scale but on the Engineering Division classifications. Engineers no matter their workgroup or Department follow the same progression to Engineer II, Staff Engineer, Senior Engineer, and Lead Engineer. All Engineers benefit from the same menu of healthcare, dental, and vision benefits, and have the same 401(k) plan. Some Engineers employed dating back to a predecessor participated in a pension plan which has since been discontinued. Participation in the pension was open to all Engineers. In addition, Engineers have the same vacation, sick benefits, and are exempt, salaried employees. After more than 2 hours over and above a forty-hour work week, the Employer will pay overtime to all Engineers on the same basis. Engineers are also entitled to work remotely on the same basis and have the same option to do so on Mondays. Moreover, Engineers across the Engineering Division work the same four, ten-hour days typically, with others electing to work eight-hour days, five days a week. There is no difference whatsoever in the terms and conditions of employment across the Engineering Division and this strongly favors a single Engineering unit.

**6. Common Supervision**

The approximately eighty Engineers in the Engineering Division ultimately report to the Vice President of Engineering, the first level at which their chain of command merges. Each Department in Engineering, Strategic Engineering, Design Engineering, and Nuclear and Regulatory Engineering has its own Director. Engineering workgroups within these Engineering Departments are supervised by Managers, their first level of supervision. The Directors and

Managers all sit on the same second floor Engineering Floor. Given the numbers of Engineers, the Employer attempts to have no more than 5-7 Engineers being supervised by a Manager. There is no immediate common supervision of the Engineers as a group. It should be noted, however, that during the eighteen-month outage operations, Engineers are supervised by other than their regularly assigned Managers from the Outage Control Center. Furthermore, Engineers will interface with other Managers in the event that they have to engage with a committee, such as the Outage Scope Team that addresses scoping issues. So, while there is separate supervision at the Manager and Director level for Engineers, there are clear opportunities for Engineers to interact with other than their own regular direct supervision.

Based on the record as a whole, I find that the petitioned for unit of Component Engineers do not share a community of interest sufficiently distinct from the other Engineers in the Engineering Division that the Employer seeks to include in the unit. I further find that Engineers in the Engineering Division, across Strategic Engineering, Design Engineering, and Nuclear and Regulatory Affairs share an 'overwhelming community of interests' within the meaning of *American Steel*, supra. A weighing of community of interest factors, including departmental organization, skills, training and job functions, functional integration, contact and interchange, terms and conditions of employment, and supervision, decidedly favor an all-Engineering unit.

I further find based on the above analysis that a unit limited to the Strategic Engineering Department, which the Petitioner is willing to proceed to an election on, suffers the same infirmity as a Component Engineering only unit, and is equally not an appropriate unit in the circumstances here, given the overwhelming community of interest Strategic Engineering Engineers have in common with Engineers in Design Engineering, and Nuclear and Regulatory Affairs.

### *D. Managerial Status of Engineers*

It is the Board's longstanding policy to exclude managerial employees from coverage under the Act. See *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). Employees are managerial employees when they formulate, determine, or effectuate high-level employer policies and when they have discretion in the performance of their jobs independent of their employer's established policy. *Republican Co.*, 361 NLRB 93, 95 (2014). A managerial employee is one representing management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *NLRB v. Yeshiva University*, 444 U.S. at 682. Where employee decision-making amounts to no more than routine discharge of professional duties, that evidence falls short of establishing managerial status. Id. at 690. The party seeking to exclude employees from a unit bears the burden of establishing their managerial status. *LeMoyne-Owen College*, 345 NLRB 1123, 1128 (2005); *Waste Management de Puerto Rico*, 339 NLRB 262, 279 (2003), enfd. 359 F.3d 36 (1st Circ. 2004).

There is a complete lack of evidence to support the Employer's contention that Engineers in the Engineering Division are managerial employees. Employer presented very tenuous evidence on this issue, asserting that Engineers are managerial employees because they purportedly, in working with vendors, may make purchases of goods up to $25,000 based on their own judgement, and it further suggests that Engineers work in defining the scope of work is exercise of managerial authority.

While the evidence establishes Engineers play a significant role in working up orders to requisition products from vendors, the evidence also demonstrates that Engineers' role involves identifying a suitable vendor, initiating the purchase order, filling out forms and completing technical details and specifications and, significantly, obtaining approvals including from Managers and others, such as Procurement Engineers and Buyers. No written policy was produced on the purported authority of Engineers to solely in their judgement make purchases of up to $25,000. Products are typically obtained by Engineers though vendors with a longstanding history with the Employer and that have been approved by the Employer. There was no evidence presented of any specific Engineer making a purchase solely on his own judgement. Justin Weseloh, the sole nonsupervisory Engineer testifying at hearing, employed since 2006, testified he had made purchases of products from vendors but never with the type of discretion the Employer attributed to Engineers. He testified to obtaining managerial approvals prior to any purchases. Authority in these types of situations to commit funds of an employer to make purchases after receiving approval does not establish managerial status. See, e.g., *Washington Post Company*, 254 NLRB 168, 189 (1981) (assistant manager who determined need for stock and solicited vendor bids and selected vendor based on price and quality not a managerial employee).

With respect to authority of Engineers to define scope of work and prioritize certain work, the evidence establishes Engineers, particularly those maintaining systems and components, as part of their work generate a recommended scope of work to be performed on systems and components during outages and during regular operations. However, an Engineer's determination as to scope of work is not final, and still goes through reviews, and in many cases systems, components, and equipment operate within set guidelines on when certain testing and maintenance tasks have to be performed such that they are placed in a scope of work. Engineers' prioritization of work in maintaining these systems, components and equipment, which necessarily impact the work of other Divisions and employees, speaks to integration of the nuclear plant, not exercise of any managerial authority. These Engineers are highly educated and skilled professionals working in an area as technical as the operations of a nuclear plant. The work of Engineers in a nuclear power plant naturally involves exercise of professional judgement and discretion aimed at efficient and safe generation of power. No evidence indicates Engineers exercise any executive level decisions in the scoping and prioritization of work and in the manner in which systems, components, equipment and programs are maintained. See *General Dynamics Corp.*, 213 NLRB 851, 857 (1974) (employees who exercise discretion on the basis of their technical expertise are not managerial employees). Accordingly, I find that the

evidence fails to establish that Engineers exercise the types of authority and discretion that would qualify them as managerial employees.

## III. CONCLUSIONS AND FINDINGS

In determining the smallest appropriate unit, I have carefully weighed the community of interest factors cited in *United Operations*, 338 NLRB 123, 123 (2002). I conclude that the unit sought by Petitioner of only Component Engineers in the Component Engineering Group is not an appropriate unit, where record evidence establishes that the balance of the Engineers in the Employer's Engineering Division share an overwhelming community of interests with the petitioned-for Component Engineers, with the only difference between both sets of employees being the mundane details of the engineering work they perform. The overwhelming community of interest is clear given the manner in which Engineers are organized in the Engineering Division, similarity of skills, training, and job functions, apparent functional integration, frequent contact and interchange of Engineers, same terms and conditions of employment, and coalescing supervision at the Department and Division level. While Petitioner is willing to proceed to an election in a unit of Strategic Engineers only, this position is equally unavailing since all Engineers continue to share an overwhelming community of interest. The smallest appropriate unit is an all-Engineer unit in which the Petitioner is unwilling to proceed to an election.

I find that the Employer, as the party asserting managerial status, failed to meet its burden to establish that Engineers are managerial employees under the Act.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is 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 herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employee(s) of the Employer with the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The petitioned-for unit of the Employer shares an overwhelming community of interest with excluded employees and therefore does not constitute an appropriate unit.

## IV. ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on May 21, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on May 21, 2025.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement

that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: May 7, 2025

Andrea J. Wilkes, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
Saint Louis, MO 63103-2829