

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25**

**DILLING GROUP, INDUSTRIAL AND COMMERCIAL
SOLUTIONS**

Employer

and

Case 25-RC-366365

PLUMBERS AND PIPEFITTERS UA LOCAL 440

Petitioner

DECISION AND DIRECTION OF ELECTION

On May 27, 2025,¹ Plumbers and Pipefitters UA Local 440 (“Petitioner”) filed a representation petition under Section 9(c) of the National Labor Relations Act (“Act”) seeking to represent certain employees employed by Dilling Group, Industrial and Commercial Solutions (“Employer”). Specifically, Petitioner seeks a unit of pipefitters, welders, pipefitter apprentices, and welder apprentices employed by the Employer at its facility located at 5010 West 81st Street, Indianapolis, Indiana (“Indianapolis facility”).²

The parties agree that the appropriate unit should include all pipefitters, welders, pipefitter apprentices, and welder apprentices and should exclude all other employees.³ However, the Employer contends the scope of the appropriate unit must include all employees in those classifications working throughout the state of Indiana, including temporary employees supplied by Kodiak Labor Solutions, LLC (“Kodiak”).

A hearing was held on June 5 and 6, before a hearing officer of the National Labor Relations Board (“Board”). At the outset of the hearing, the hearing officer noted a single-facility unit is presumptively appropriate under Board law, and the party seeking to rebut the presumption bears the burden of proof and, similarly, a party seeking to include additional employees has the burden of showing the excluded employees share an overwhelming

¹ All dates are in 2025 unless otherwise noted.

² The face of the petition states “at its facility located [sic] 5010 W. 81st Street, Indianapolis, IN 46268” while Petitioner’s post-hearing brief states “who are based out of Dilling’s Indianapolis, Indiana facility.”

³ The parties explicitly stipulated the following classifications share a community of interest and constitute an appropriate bargaining unit within the scope determined to be appropriate by the Regional Director:

Included: All full-time and regular part-time pipefitters, welders, pipefitter apprentices, and welder apprentices.

Excluded: All maintenance employees, office clerical employees, HVAC employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

community of interest with the employees in the petitioned-for unit.⁴ The hearing officer also set forth the Board's standard of specific detailed evidence. The parties were provided an opportunity to present their positions, call, examine, and cross-examine witnesses, and to introduce into the record evidence of the facts that support their contentions. Both parties timely filed post-hearing briefs.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and relevant Board law, I find that the petitioned-for employees are a readily identifiable group based out of a single facility and that the Employer has failed to rebut the Board's single-facility presumption. Additionally, the Employer not demonstrated that jointly-employed employees supplied by Kodiak must be included in any appropriate bargaining unit.

Accordingly, I shall direct an election among the pipefitters, welders, pipefitter apprentices, and welder apprentices solely employed by the Employer and based out of its Indianapolis facility.

I. THE EMPLOYER'S OPERATIONS

The Employer is an industrial and commercial contractor with a particular focus on piping, electrical, and HVAC (heating, ventilation, and air conditioning) services. Its industrial work, also referred to as mechanical, typically involves manufacturing facilities, steel mills, refineries, ethanol plants, and other heavy industry while its commercial work, also referred to as plumbing and HVAC (PHVAC), typically involves places like office buildings, medical facilities, and schools.⁵ Michael Thrush is the Vice President of Construction and oversees the Employer's Indiana leadership team, a group of Directors and Regional Managers, who themselves oversee various project managers and superintendents.⁶ Human Resources (HR) Manager Michael Brickley also reports to VP Thrush and is responsible for manpower, hiring, separations, and discipline.

The Employer's operations are administratively divided into four different geographic regions in the state of Indiana—Fort Wayne, Indianapolis, Logansport, Warsaw—and to a certain extent along its service types—mechanical and commercial. Relevant to the instant case, VP Thrush testified that Regional Managers Brock Neher and Tony Brown oversee teams of project

⁴ To the extent the hearing officer explicitly described the Employer's burden as proving "an overwhelming community of interest" between the petitioned-for employees and the jointly-employed temporary employees, I find this was at most non-prejudicial error given both the overwhelming standard and the Board's heightened standard for inclusion of jointly-employed employees with petitioned-for directly-employed employees are based on traditional community-of-interest factors. See *Engineered Storage Products Co.*, 334 NLRB 1063, 1063 (2001) ("the test is whether the community of interest [jointly employed employees] share with the solely employed employees is so strong that it requires or mandates their inclusion in the unit").

⁵ For consistency and readability, I generally use the terms "mechanical" and "commercial" throughout this Decision.

⁶ The record shows the Employer uses the Project Manager and Superintendent titles somewhat interchangeably and people in those positions frequently work as Superintendents, Project Managers, Leads, and Working Foremen.

managers and superintendents whereas Director Jeremy Dennis oversees Fabrication and Detailing.⁷

For the Employer's mechanical operations, Neher is the Regional Manager in charge of the Fort Wayne Mechanical team and the Indianapolis Mechanical team while Brown is the Regional Manager in charge of the Logansport Mechanical team and Warsaw Mechanical team. Brown is also the Regional Manager for the Employer's commercial operations in all four geographic regions. VP Thrush specifically identified an Indianapolis Commercial team and a Logansport Commercial team.⁸ Each team is generally embodied in the Employer's various manpower schedules, which are discussed in Section B2, below.

Regional Manager Neher oversees Indianapolis & Fort Wayne Project Manager Nathan Sites,⁹ Indianapolis Superintendent Alex Burke, Indianapolis Senior Project Manager Don Givens, and Fort Wayne Project Manager Tracy Clement. Similarly, Regional Manager Brown oversees Project Managers and Superintendents covering commercial clients in the Employer's four geographic regions and industrial clients in Logansport and Warsaw, specifically Indianapolis PHVAC (Commercial) Senior Project Manager Loren Huffman,¹⁰ Fort Wayne PHVAC (Commercial) Project Managers Steve Berning and Jon Crisp,¹¹ Logansport PHVAC (Commercial) Project Manager/Estimator Mark Rager, Logansport PHVAC (Commercial) Superintendent Andy Shedron, Logansport Project Manager Raistlin Coppemoll,¹² and Warsaw Project Manager Tony Bennett.¹³

⁷ While the Employer's organizational chart also lists VP Thrush as directly overseeing PHVAC (Commercial) Service Director Ted Shay, Electrical Regional Manager Dustin Dillman, Senior Project Manager Scott Potter, and Executive Project Assistant Vanessa Rose, the record contains minimal details regarding their roles at the Employer, including no specifics regarding any relevance to the unit at issue—pipefitters, welders, pipefitter apprentices, and welder apprentices.

⁸ The Employer's organizational chart appears to use shortened or truncated job titles, such that Brown is listed as PHVAC/Warsaw & Logansport Regional Manager on one page and Regional Manager of Indiana Team – PHVAC/Warsaw/Logan on another. Although "Mechanical" and "Industrial" are not listed as part of Brown's job titles in the Employer's organizational chart, VP Thrush testified that Brown "handles all of our Plumbing and HVAC Commercial Group" and "is also in charge of our Warsaw Industrial Group ... [and] Logansport Industrial Group," (Tr. 27-28) and that "[Brown]'s Logansport team covers industrial clients, and then he has another Logansport commercial team that covers commercial clients. He has a Warsaw industrial team. ... He has an [] Indianapolis commercial team." (Tr. 136.) The organizational chart lists Neher as Indy/FW Regional Manager and Regional Manager of Indiana Team – Indy/FW Mechanical.

⁹ According to the Employer's organization chart, Indianapolis Superintendents Josh Albaugh and Caleb Everidge report to Sites.

¹⁰ According to the Employer's organization chart, Indianapolis PHVAC (Commercial) Project Manager Jeff Hoeltke and Indianapolis Superintendent "JP" report to Huffman. The record does not identify JP's full legal name.

¹¹ According to the Employer's organization chart, Fort Wayne PHVAC (Commercial) Superintendent Joe Kuntz reports to Crisp.

¹² According to the Employer's organization chart, Superintendents Nolan Wood and Brian Miller report to Coppemoll.

¹³ According to the Employer's organization chart, Zimmer Lead John Landis and Biomet Lead Terry Correll report to Bennett. There is no record evidence specifying the focus of Coppemoll or Bennett; however, elsewhere the chart

On the fabrication side of the business, Director Dennis has three Fabrication Shop Managers reporting to him, including and relevant to the instant case Jay McManaway in the Indianapolis facility and Ryan Parmeter in the Logansport facility.¹⁴

A. Facilities & Regions

Each of the Employer's four geographic regions contains one facility, except Fort Wayne which contains two—a north facility and a south facility. VP Thrush testified that offices generally house staff that support the Regional Managers, Project Managers, and Superintendents in their areas (e.g., estimators, engineers, accountants, clericals). Both the Indianapolis facility and the Logansport facility also house training centers used as part of the Employer's apprenticeship program for newly hired, inexperienced employees and fabrication shops that produce material needed for use at and distributed to its various jobsites.¹⁵

Fab Shop Manager Jay McManaway oversees the fabrication shop in the Indianapolis facility. VP Thrush testified that there are about 10 to 15 pipefitters and welders that report to the shop in the Indianapolis facility every workday on a regular basis.

The chart below shows the driving distance in miles between the Indiana facilities according to Google:¹⁶

	Indianapolis	Logansport	Fort Wayne (S)	Warsaw	Fort Wayne (N)
Indianapolis	—	58	94	97	102
Logansport	58	—	64	45	68
Fort Wayne (S)	94	64	—	40	10
Warsaw	97	45	40	—	37
Fort Wayne (N)	102	68	10	37	—

According to VP Thrush, the Indianapolis facility is approximately 60,000 square feet, with 10,000 square feet dedicated to office space and the remaining 50,000 square feet for structural and pipefitting fabrication and warehousing. The record contains no or minimal additional information on the structural layout of any of the other facilities.

generally specifies employees with a commercial role with a job title including “PHVAC.” Neither Coppemoll nor Bennett have PHVAC in their title.

¹⁴ According to the Employer's organization chart, Shop Leads Jeremy Shock and Jesse Stokes report to Parmeter while McManaway has no Shop Leads. As noted above, the Employer also has a fabrication shop in Charleston, Tennessee that is not directly involved in this case; Melvin Nay is its Fabrication Shop Manager.

¹⁵ The Employer also has a fabrication shop at its facility in Charleston, Tennessee, which is not directly involved in this proceeding.

¹⁶ See generally, *Bud Antle, Inc.*, 359 NLRB 1257, 1257 fn. 3 (2013) (taking administrative notice of distance between two locations based on Google Maps), reaffd. and incorporated by reference 361 NLRB 873 (2014); see also *United Services of California, Inc.*, 369 NLRB No. 137, slip op. at 5 fn. 24 (2020). Actual travel distance by vehicle between the facilities would be slightly longer, depending on the route taken.

VP Thrush testified that PHVAC (Commercial) Senior Project Manager Huffman and PHVAC (Commercial) Project Manager Hoeltke have offices at the Indianapolis facility. Regional Manager Brown has an office in Logansport

VP Thrush also testified that field staff, including the unit employees, are not assigned to a particular office and do not report to an office. A 9-month pipefitter apprentice testified that he lives nearly equidistant from the Employer's Fort Wayne and Indianapolis offices and, when he was hired, the Employer asked his preference on working out of Fort Wayne or Indianapolis. Although he expressed a preference for Fort Wayne, he "was put into the Indy office and was working out of the Indy office,"¹⁷ (Tr. 398) after which texted Indianapolis & Fort Wayne Project Manager Nathan Sites that he "would prefer to stay at the Indianapolis office" (Tr. 399). Since being hired, the 9-month apprentice has consistently been scheduled on the Indianapolis Mechanical manpower schedule except for two times, between 5 and 7 days each, when he worked under the Fort Wayne Mechanical team. A 3-year pipefitter testified that he has never worked outside the Employer's Indianapolis region and that he has picked up tools from the Indianapolis facility, which he sometimes calls "home base."

B. Pipefitters and Welders

The parties agree the classifications of pipefitters, welders, pipefitter apprentices, and welder apprentices share a community of interest. As a general description, pipefitters work in the field installing a variety of piping systems while welders work in unison with the pipefitters to weld out the fit-ups. Pipefitters and welders in the fabrication shops prepare materials that are sent out to the field for installation. It is hard from the record to determine precisely the number of unit employees statewide; the number appears to range anywhere from 37 employees to in excess of 200.¹⁸

Newly hired experienced pipefitters and welders (i.e., not apprentices), including those newly and jointly employed from Kodiak, usually report to a training center where they must successfully complete testing in pipefitting and/or welding before receiving orientation. HR Manager Brickley testified that orientation may take place at the training center but can occur at any of the Employer's facilities, including the closest to the assigned jobsite or the closest to the employee's residence. The record does not indicate how often orientation occurs at a facility other than the Indianapolis or Logansport training centers or how often the orientation is held at the facility closest to the assigned jobsite or the employee's residence. VP Thrush testified that the Employer and Kodiak share a "traveling trailer" that can be brought to a jobsite if there are a

¹⁷ The record does not specify why he was initially assigned to Indianapolis (e.g., because he was also in the apprenticeship program).

¹⁸ Petitioner asserts on brief that, consistent with its petition, there are 26 employees that perform work in the Indianapolis region under the mechanical (industrial) team with an additional 11 employees that work in the Indianapolis region under the commercial (PHVAC) team. The Employer's statement of position submitted in response to the instant petition lists 186 employees in its proposed bargaining unit, which includes both workers employed directly by the Employer as well as those from Kodiak working in the four Indiana regions. The parties stipulated that there are approximately 79 Kodiak employees. It is not clear whether either party's projected unit number takes into account the approximately 10-15 employees working in the Indianapolis fabrication shop, or whether the Employer's position takes into account the approximately 25 employees working in the Logansport fabrication shop, but who appear to generally fall within the scope of the stipulated unit of pipefitters and welders.

large number of new hires for a particular project, but the record does not indicate how often this happens, if it happens in all four Employer regions, or when it most recently happened.

It is undisputed that pipefitters and welders typically report straight to the jobsite and do not often visit the Employer's facilities. The Employer's standard schedule is 7:00 a.m. to 3:30 p.m., Monday through Friday, unless dictated otherwise by a customer. The 3-year pipefitter, who has consistently worked in the Employer's Indianapolis region, testified that he typically orders needed materials and tools through his Foreman. If his Foreman is not available, then the pipefitter orders through Indianapolis & Fort Wayne Project Manager Sites or Indianapolis Superintendent Burke. If there is a problem on the jobsite, the pipefitter testified that he contacts Burke or Sites.

He also testified that Sites or Burke issue discipline because a Foreman does not have the authority. VP Thrush testified that all discipline goes through HR Manager Brickley to ensure the Employer is consistent with application. Brickley testified that all levels of employees, supervisors, and managers report potential infractions to him. He discusses all infractions with the person who reported it, and then determines what discipline is appropriate. Similarly, a Project Manager or higher can recommend termination. Once they contact Brickley, he discusses the circumstances with them and, if it is something questionable, then he will investigate the situation. Brickley testified that he processes separations that are "blatantly obvious," which he did not define or specify, without investigation.

Employee worktime is recorded by job in a program called Pacific Timesheet. VP Thrush testified that worktime is entered by an employee's Foreman, Superintendent, or Project Manager. Timesheets in the record for a second-year apprentice show he worked several weeks on a job in Lubbock, Texas, and that time was approved by Indianapolis & Fort Wayne Project Manager Sites. A 3-year pipefitter and a 9-month apprentice, who consistently work in the Indianapolis region for industrial customers, both testified that they do not submit leave requests to their site lead. The pipefitter submits his leave requests to either Sites or Indianapolis Mechanical Superintendent Burke while the 9-month apprentice submits his requests to Sites. On one occasion, when Sites and Burke were on leave, the pipefitter submitted his leave request to HR Manager Brickley.

The employee handbook covers work rules and other policies, among other things, attendance, leave, wages, per diem, benefits, discipline, and safety, and applies to pipefitters, welders, pipefitter apprentices, and welder apprentices.

For an employee's annual performance evaluation, HR Manager Brickley begins by filling in existing information like the employee's credentials, hire date, and current wage rate, along with their last raise. Next, the employee's project management team rate the employee on various items like work quality, attendance, and safety. The project manager recommends a specific raise and returns the completed evaluation to Brickley, who "red flags" anything that seems inappropriate for the situation. Brickley gave the example of a recommended \$5 raise because he tries to keep wage adjustments within \$1 to \$2 range. Finally, Brickley submits the evaluations to the "higher-ups." Brickley did not identify anyone above himself in the hierarchy other than VP Thrush nor did he expound on what the "higher ups" did with the evaluations. Brickley and VP Thrush discuss and then implement the appropriate wage adjustments for that

year. The 3-year pipefitter testified that he receives his annual performance evaluations from Project Manager Sites.

The Employer provides pipefitters, welders, and pipefitter and welder apprentices with field kits (clothing or uniforms) twice a year, and employees can purchase additional Employer-branded clothing and equipment through the company store. HR Manager Brickley testified that employees are not required to wear Employer-provided uniform. The employee handbook requires “a neat and clean appearance” but does not require an Employer uniform, noting “clients may have independent requirements for your work appearance.”

1. The Employer’s Apprenticeship Program

Most of the Employer’s pipefitters developed their skills through the Employer’s internal apprenticeship program. The program uses a curriculum created by the National Center for Construction Education and Research (NCCER) and is approved by the U.S. Department of Labor. Welders also go through a similar apprenticeship/training program. Many pipefitters also receive welding certifications through the apprenticeship program and can perform either task; they are referred to as “combo employees.”¹⁹ Apprentices begin the Employer’s program as a “class” around May of each year. Employees hired before May typically work as helpers (or general laborers²⁰) until that year’s apprenticeship class begins.

Experienced pipefitters and welders do not go through the Employer’s apprenticeship program but instead their qualifications are examined upon hiring through a test given by the Employer designed to confirm that the employee’s skills match the Employer’s (and customers’) requirements.

The apprenticeship program for pipefitters is a four-year program wherein pipefitters, after their third year, are considered to be journeypersons. The training consists of both book learning and hands-on experience. Employees in the apprenticeship program generally attend the apprenticeship program one or two days per week and perform work for the Employer the other days. One apprentice noted that, for his first-year apprenticeship, he spent one day a week learning pipefitting and a second day was spent on welding. Training centers for the apprenticeship program are located at the Employer’s Indianapolis and Logansport facilities. Pipefitter apprentices and welder apprentices report to either the Indianapolis facility or the Logansport facility for the hands-on training classes and can complete “book work” at any of the Employer’s facilities.

Andrew Brown is the manager of the apprenticeship program and oversees all the apprenticeship training regardless of location. While Andrew Brown conducts some of the apprenticeship training, there is evidence that some of the Employer’s experienced journeymen

¹⁹ The record also references “combo welders,” who can weld both carbon and stainless steel.

²⁰ One witness, a 3-year pipefitter, used the terms “helper” and “apprentice” interchangeably while a 9-month apprentice testified that helpers are employees who have not yet entered the apprenticeship program. The Employer and Petitioner agree that the stipulated unit includes only apprentices—those employees in the Employer’s apprenticeship program—not helpers, who the Employer characterizes as general laborers.

also conduct training for apprentices at the Indianapolis facility. The record does not indicate whether journeymen also conduct apprenticeship training at the Employer's Logansport facility.

2. Manpower Schedules and Interchange among Regions

Each Friday, HR Manager Brickley holds a weekly "manpower meeting" among the superintendents and managers to coordinate and set employee schedules for the following week. These leaders talk about their needs for the upcoming week and Brickley prepares the manpower schedules, which are maintained as an Excel spreadsheet with different tabs for each region and service type. VP Thrush testified that he sometimes attends the manpower meetings. He also testified that Regional Managers do not always attend the meetings but the project managers and superintendents directly under them are at the meeting. They all "have access to [the spreadsheet] throughout the week to update it coming up to the meeting, and then they talk about on the meeting ... each group has a layer of people that manages the manpower specific for their jobs" (Tr. 66-67).

The record does not contain any examples of the full Excel spreadsheet. Brickley testified that the Employer maintains nine manpower schedules. Partial copies of three of these are in the record²¹—Indianapolis Mechanical (frequently referred to simply as Indy Manpower), Indianapolis Commercial, and Fort Wayne Mechanical (referred to simply as Fort Wayne Manpower).²²

Brickley described the spreadsheet as "a living, breathing document" that is adjusted each week based on the manpower meeting. However, Brickley and VP Thrush agreed that some last-minute changes or short-term moves of 1 to 2 days or less are not reflected on the manpower schedules. The format of each schedule may vary slightly depending on the preferences of the Regional Manager overseeing the team, but the schedules generally list all the employees in the service region (including those provided by Kodiak to assist the Employer), the jobsite to which they are assigned each day, the project managers and superintendents for the region, and the primary contact for each jobsite, including supervisors or working foremen. Beyond the weekly manpower schedules, Pacific Timesheet maintains the time billed by the Employer each day for each project for each employee.

Only a limited number of weekly manpower schedules were introduced into the record, including about 15 for Indianapolis Mechanical, one for Indianapolis Commercial, and 17 for Fort Wayne Mechanical. Petitioner introduced a collection of 11 Indianapolis Mechanical schedules covering March 1 through June 6, which show weekly maximums of 30 to 36 employees and a core group of approximately the same 28 employees that were not assigned to work outside of the Indianapolis Mechanical team during that three-month period. The Employer introduced 17 Fort Wayne Mechanical schedules covering February 8 through June 6, which show weekly maximums ranging between 25 to 30, and a core group of approximately the

²¹ For example, VP Thrush testified that he "took all the Fitters off" of the Indianapolis Mechanical schedule (Emp. Exh. 5) and "didn't include HVAC Sheet Metal guys or something because they're not a part of this" (Tr. 90). It is unclear if classifications not at issue were removed from other schedules in record evidence.

²² HR Manager Brickley testified that there are two Fort Wayne manpower schedules (Tr. 216) and that the one introduced as evidence was overseen by Regional Manager Neher (Tr. 316), who oversees the Fort Wayne Mechanical team. The Employer did not produce the other Fort Wayne manpower schedule.

same 20 employees that were not assigned work outside of the Fort Wayne Mechanical team during that four-month period. Throughout this same period, one Indianapolis employee regularly worked with Fort Wayne Mechanical for 15 of the 17 weeks, and 11 Indianapolis employees²³ worked a two-day outage at SDI Butler with Fort Wayne Mechanical on April 29 and 30. A review of transfers in the other direction during the same four-month period shows 7 Fort Wayne employees transferred to Indianapolis for periods of 1 to 4 weeks, with one Fort Wayne employee working a total of 8 weeks out of 17 in Indianapolis. This is a total of 26 instances of interchange, including the 10 involving only SDI Butler, among the Fort Wayne Mechanical and Indianapolis Mechanical teams.

The Employer introduced into the record an Excel spreadsheet it created solely for the hearing which contained a selection of 14 employees it chose from one recent Indianapolis Mechanical schedule.²⁴ The spreadsheet identifies a single work location for each two-week interval per employee since January 2024 although the identified location is, as testified to by VP Thrust, “a generality of where they were in that timeframe based off job numbers that are associated with their name in our timekeeping system” (Tr. 74). VP Thrust did not explain why this spreadsheet generalizes employee locations in a biweekly fashion when the Employer’s timekeeping system records time in hourly and daily increments and its manpower schedules are issued weekly and list daily job assignments or how the employer chose which location to identify in its spreadsheet when the employee worked in more than one location during the biweekly period. The Employer did not introduce the timesheets or related manpower schedules underlying its spreadsheet (Employer Exh. 6) into evidence. According to Thrush, this document shows 72 instances of the selected employees performing work somewhere other than its Indianapolis region during the roughly 17 months since January 2024. The same Employer Exhibit 6 also includes a self-selected collection of employees from a Fort Wayne Mechanical manpower schedule who performed some work in other regions, including Indianapolis; however, the Employer only analyzed these employees over a much shorter period of time than the Indianapolis employees. A similar analysis was also included for Indianapolis commercial employees, including some who were occasionally assigned to work on the Indianapolis Mechanical manpower schedule. No such sample collection was provided by the Employer for its Logansport- or Warsaw-based employees that it contends must be included in the unit; nor were most of the underlying manpower schedules or timekeeping data ever introduced into evidence.

The Employer has long-term contracts where it operates on a consistent daily basis with the customer.²⁵ Larger projects may, on occasion, need significantly more manpower which may require moving the Employer moving employees from its other Indiana regions. For example, in its Fort Wayne region, the Employer has a long-term contract with SDI Butler. Twice a year that SDI facility has a scheduled outage which requires substantial manpower from the Employer. In other instances, maybe once or twice a month, SDI Butler will have a “down day” that may also require additional manpower from the Employer. In these situations or other urgent

²³ This includes the one who worked 15 of 17 weeks under the Fort Wayne Mechanical team.

²⁴ Employer Exh. 6 is the only Excel spreadsheet introduced into evidence. As noted above, the Employer did not produce any version of its Excel spreadsheet containing tabs of all manpower schedules.

²⁵ Referred to in the record as the Employer being a “nested contractor.”

circumstances depending on the client, HR Manager Brickley testified that the Employer may have to go to each manpower schedule “and steal one or two guys” to help handle the emergency (Tr. 210). Brickley further testified that when other unexpected situations arise that do not require quite as much manpower, Regional Managers “can maneuver the guys in their areas” without notifying him (Tr. 215). And even Project Managers have the ability to move employees to different jobsites within the same area for “something mundane ... [that]’s a couple hours, couple days” situations (Tr. 215). When Superintendents or Project Managers are not able to staff a project or situation internally within the region, they submit a labor request form to Brickley and other managers. Brickley then attempts to provide the requested staff either from the Employer’s other regions or bringing in employees from Kodiak.

As noted previously, a 3-year pipefitter testified that he has never worked outside the Employer’s Indianapolis region. He receives his weekly manpower schedule via e-mail from either Indianapolis & Fort Wayne Project Manager Sites or Indianapolis Superintendent Burke.

C. Kodiak and Its Employees

Kodiak has the same parent company as the Employer, Comfort Systems USA, Inc. (“Comfort”),²⁶ and uses office space on the second floor of the Employer’s Indianapolis facility. The record does not contain any details or specifics regarding Kodiak’s use, including by its pipefitters, welders, pipefitter apprentices, and welder apprentices, of the Employer’s facility beyond their initial testing and orientation discussed herein. HR Manager Brickley estimated that 98 percent of Kodiak’s work is for Comfort companies. The parties stipulated, and I find, that the Employer and Kodiak are joint employers of the approximately 79 pipefitters, welders, pipefitter apprentices, and welder apprentices, who are provided by Kodiak to the Employer to perform pipefitting and welding work.²⁷

When the Employer identifies a shortage of labor for a job and HR Manager Brickley determines it cannot be met with the Employer’s own employees, he works with contacts at Kodiak to provide the necessary people. Newly provided Kodiak employees go through the Employer’s standard orientation process, including a drug screen, much like one of the Employer’s own employees. Kodiak employees also must have the same minimum skillset as the Employer’s employees, so Kodiak pipefitters and pipefitter apprentices must pass the Employer’s initial fit test while welders and welder apprentices must pass the Employer’s initial weld test. As noted above, the Employer and Kodiak share a trailer that can be taken to a jobsite to provide testing for employees onsite before they begin their work.

²⁶ I take administrative notice of the website for Comfort Systems USA, Inc., whose “About Us” page states is “composed of more than 45 operating companies in over 170 locations across the United States” and lists, among others, the Employer and Kodiak. See <https://comfortsystemsusa.com/our-companies/> (accessed Sept. 17, 2025).

²⁷ The parties stipulated that “the Employer and Kodiak Labor Solutions, LLC, are a joint employer of 79 employees within the classifications of pipefitters, welders, pipefitter apprentices, and welder apprentices in Indiana.” The record evidence indicates Kodiak controls the wages and benefits paid to those employees while the Employer provides daily supervision, including application of much of its employee handbook, over those employees. Thus, both Kodiak and the Employer exercise substantial direct and immediate control over the employees and qualify as joint employers under Sec. 103.40 of the Board’s Rules and Regulations currently in effect.

Kodiak employees who are assigned to one of the Employer's jobsites perform the same work as the Employer's employees; there is no differentiation of work on the jobsite between what is the Employer's or Kodiak's work. Kodiak employees will also report to the same onsite supervision as the Employer's employees when working on the jobsite. The Kodiak employees are also subjected to many, if not most, of the Employer's employee handbook and other employee policies. The Employer provides the Kodiak employees with Dilling gear to wear on the jobsite so there is no distinction between Kodiak and the Employer's own employees as far as the customer is concerned. It is unclear in the record whether Kodiak employees are *required* to wear Employer-branded clothing since there is no requirement for the Employer's employees to wear an Employer uniform.

No record evidence was presented about wage rates for the Kodiak employees or how those wage rates compare to the Employer's own employees—the record contains no evidence of the Employer's or Kodiak's wage rates. Likewise, not much information was entered into evidence about the benefits Kodiak employees are eligible for or how they compare to the Employer's benefits. The main benefit that was discussed was per diem when an employee is assigned to a jobsite away from their home. The Employer has a per diem policy that applies to its own employees, while Kodiak has a separate policy (although the details of that policy were largely not presented during the hearing). Further, for some projects, the Employer provides lodging for its own employees while, according to HR Manager Brickley, Kodiak employees must provide their own lodging but are eligible for a higher per diem rate. There is no indication in the record that Kodiak employees are eligible to enroll in the Employer's apprenticeship program or that they attend the Employer's skills trainings.²⁸

No current Kodiak employee testified at the hearing. The Employer indicated that some employees who work for Kodiak may ultimately be directly hired by the Employer. The record does not detail the process by which a Kodiak employee can become a solely employed employee of the Employer. A 3-year pipefitter testified that he worked as a Kodiak employee for about 90 days before being permanently hired by the Employer but, in his experience, such a temp-to-hire conversion is not very common. He only recalled it happening one other time in his three years of employment. Other Kodiak employees may remain with Kodiak despite being assigned to work on the Employer's jobsites, even for a number of years.

II. BOARD LAW REGARDING APPROPRIATE UNITS

As set forth by the hearing officer at the outset of the hearing, the instant case involves two of the Board's community-of-interest standards: (1) the multifacility standard, and (2) the heightened standard for including jointly-employed employees with a petitioned-for unit of solely-employed employees.

It is well-established that the Act does not require the Board to approve the most appropriate or comprehensive unit, but simply an appropriate unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). “More than one appropriate bargaining unit logically can be

²⁸ To this end, other than stipulations referencing pipefitter apprentices and welder apprentices, it is unclear whether Kodiak actually has such apprentices.

defined in any particular factual setting.’ ... No more clearly are these principles illustrated than in cases where the Board has found a petitioned-for single location unit appropriate, even though a broader unit may be the *most* appropriate unit” (emphasis in original, internal citations omitted). *Overnite Transportation Co.*, 322 NLRB 723, 726, fn. 6 (1996) (quoting *Operating Engineers Local 627 v. NLRB*, 595 F.2d 844, 848–849 (D.C. Cir. 1979)). See also *Haag Drug Co.*, 169 NLRB 877, 877 (1968) (“It is elementary that more than one unit may be appropriate among the employees of a particular enterprise”). “[T]he Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees.” *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001) (citing *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967)).

A. Single-Facility versus Multifacility Bargaining Unit

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the petitioned-for single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, for example, *Trane*, 339 NLRB 866 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

“Moreover, the Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted.” *Catholic Healthcare West*, 344 NLRB 790, 790 (2005) (citing *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Heritage Park Health Care Center*, 324 NLRB 447, 451 (1997), *enfd.* 159 F.3d 1346 (2nd Cir. 1998)).

“[W]hen the unit sought is presumptively appropriate, the burden is on the employer to show that the unit is inappropriate.” *Allen Health Care Services*, 332 NLRB 1308, 1309 fn. 3 (2000) (citing *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999)).

B. Inclusion or Exclusion of Jointly-Employed Employees

Where the petitioned-for unit is solely-employed employees of an employer and the employer seeks to add jointly-employed employees, “the test is whether the community of interest they share with the solely employed employees is so strong that it requires or mandates their inclusion in the unit.” *Engineered Storage Products Co.*, 334 NLRB 1063, 1063 (2001). The fact that the solely- and jointly-employed employees may share a community of interest “does not mean that they must be included in the unit or that the petitioned-for unit is inappropriate.” *Ibid.* See also *Miller & Anderson, Inc.*, 364 NLRB 428, 435 (2016) (explaining for situations involving groups of solely- and jointly-employed employees the Board first determines whether the petitioned-for unit is appropriate).

III. APPLICATION OF BOARD LAW TO THIS CASE

The parties stipulated to an internal community of interest among the Employer's pipefitters, welders, pipefitter apprentices, and welder apprentices, but disagreed as to the scope—that is, whether the only appropriate unit must include pipefitters and welders and their apprentices employed by the Employer in all four of its geographic regions and those supplied by Kodiak.

As explained below, the record evidence fails to show the petitioned-for Indianapolis-based employees have become so effectively merged or so functionally integrated with employees in the Employer's other regions that they have lost their separate identity; thus, a unit scope of employees working under the Employer's Indianapolis Mechanical and Commercial teams and at the its Indianapolis fabrication shop is appropriate. The unit consists of approximately 47 to 52 employees. Further, the record indicates the community of interest between employees solely employed by the Employer and the employees supplied by Kodiak is not so strong that it requires the Kodiak-supplied employees inclusion in the unit.

A. Single-Facility Bargaining is Appropriate

Under the Board's multifacility community-of-interest standard, a petitioned-for single-facility unit is presumptively appropriate. While acknowledging it has multiple facilities, the Employer contends there is no presumption in this case because the petitioned-for employees based out of Indianapolis do not report to any of its facilities "on a regular, day-to-day basis," rather they "report to jobsites which fluctuate from day-to-day, week-to-week, and month-to-month, as do the supervisors they report to, the employees they work alongside, and even the geographic regions where their jobsites are located." However, these contentions are all duly considered under the Board's standard because, if true, the evidence will show the interests of the petitioned-for employees have been effectively merged or so functionally integrated with those of the pipefitters, welders, and apprentices outside of Indianapolis that they have no separate identity. See *Trane*, 339 NLRB 866, 868 (2003) (applying multifacility community-of-interest standard and single-facility presumption, where "employees are dispatched from their homes, only occasionally go into their respective offices, and the two areas are only loosely defined by fluid lines of demarcation"). Compare *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002) (finding inappropriate two petitioned-for single-facility units because they were part of a five-store group that had no local management, that drew inventory from a single fleet of rental cars requiring employees to communicate multiple times per day, and that relied on the same mechanics based out of a single store).

Absence of evidence supporting the presumption is not to be construed as affirmatively presenting evidence to rebut the presumption. *J & L Plate*, 310 NLRB at 429. Thus, the Employer bears the burden to show, through record evidence, the petitioned-for employees have no separate identity from its other pipefitters, welders, pipefitter apprentices, and welder apprentices employed in Indiana.

Here, as explained below, the evidence fails to rebut the single-facility presumption. Unlike *Budget Rent A Car*, above, and *Trane*, above, the evidence fails to show the petitioned-for employees have substantial interchange or regular daily contact with employees outside the Indianapolis region. Nor does the record show employees throughout the Employer's four

regions rely on a single facility for anything. Rather, the evidence indicates each facility has its own administrative and support staff, along with offices for managers over the area's teams, while field employees have minimal direct contact with upper management versus the regular interaction employees have with lower-level Project Managers and Superintendents. While employees have similar skills and working conditions and there is some centralization of labor relations, these factors do not outweigh the level of local autonomy and lack of interchange. The distance between the various facilities involved in this case is a neutral consideration, as is the lack of any bargaining history. Thus, on the whole, the record establishes that single-facility bargaining is appropriate in this case.

1. Central Control over Daily Operations and Labor Relations, including Extent of Local Autonomy

"[C]entralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." *Hilander Foods*, 348 NLRB 1200, 1203 (2006). See also *California Pacific Medical Center*, 357 NLRB 197, 198 (2001) ("the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption"). Even limited local autonomy is sufficient to weigh in favor of the single-facility presumption. See, for example, *North Hills Office Services*, 342 NLRB 437, 437 fn. 3 (2004). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

While the Employer's four regions are all subject to the same personnel policies, employee handbook, wage and benefit programs, and training and apprenticeship program, each region has distinct supervision and significant local-level autonomy. While Regional Managers Neher and Brown oversee at least two geographic regions apiece, VP Thrush described lower-level Project Managers and Superintendents as being "in the trenches ... managing projects" (Tr. 33). Even Foremen handle the day-to-day supervision on the Employer's various jobsites within each region. A 3-year pipefitter testified that he receives his assignments from his Foreman, and that requests for tools and materials go through his Foreman.

The Project Managers and Superintendents rate employee performance in annual evaluations and recommend specific amounts for raises because "they're dealing with them every day so they know how they're performing," according to Thrush (Tr. 147). The recommended raise is reviewed by HR Manager Michael Brickley to make sure it is within a typical range; however, the record does not indicate that Brickley has ever changed a recommended raise amount or give any non-hypothetical examples of such changes. Although higher levels of management may be involved in creating weekly manpower schedules, as Regional Managers do not always attend, the primary input is from Project Managers and Superintendents, who are regularly at jobsites and know the demands of projects. Project Managers and Superintendents also distribute the schedules to employees. If employees have concerns about their schedule, they bring those concerns to either the Project Manager or Superintendent. Importantly, Project Managers and Superintendents can move employees from

one jobsite to another within their schedule for “mundane ... a couple hours, couple days” situations (Tr. 215). See, for example, *New Britain*, 330 NLRB at 397 (finding local autonomy in labor relations where “dispatchers determine the need for and make decisions regarding employee schedules and assignments, including making temporary transfers, ... handle problems encountered by drivers during their routes, ... [and]are authorized to buy supplies on credit and oversee paycheck distribution to employees at their facilities”).

As for discipline, Brickley oversees the process to ensure consistent application across the company, but it is the Project Managers or Superintendents who are regularly reporting disciplinary concerns, including recommending terminations, to Brickley and collaborating with him on the appropriate response. While Brickley tries to make weekly visits to jobsite, one employee who has been working for the Employer for 9 months testified to never having seen Brickley on a jobsite.

Given the minimal direct contact employees have with upper management contrasted against the regular contact they have with the local project managers and superintendents in their assigned region, this factor weighs in favor of finding a single-facility unit. As the Board has recognized, the centralized control of many labor relations functions is given less emphasis than the direct contact employees have with their immediate supervisor that controls their day-to day-working conditions. *Emporium-Capwell*, 273 NLRB 621, 622–623 (1984) (finding local autonomy where “day-to-day supervision is necessarily performed, in large measure, by the local [] managers” and employers did not show “day-to-day supervision of unit employees is done solely by central office officials”).

2. Similarity of Skills, Functions, and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits among employees at the facilities the Employer contends should be in the unit has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) (“This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit”).

Petitioned-for employees at the facilities in dispute share largely identical skills, functions, and working conditions. While the pipefitters may be performing different types of work depending on the nature of the jobsite to which they are assigned and the work to be performed, their work all generally falls within the scope of the pipefitter trade. Similarly, welders may be using different tools or techniques depending on the needs of the jobsite, but their work is still a part of the welding trade. The Employer ensures all employees meet a standard experience and skill, either by placing inexperienced employees into its apprenticeship program or testing newly hired but more experienced employees to verify that they can consistently perform the required work. And while working conditions may vary from jobsite to jobsite, overall the record fails to establish that employees working in one Indiana region have significantly different working conditions than those working in a different region. As discussed

above, pipefitters and welders across the Indiana regions are working under the same policies, wage structure, and benefits.

3. The Degree of Employee Interchange

Employee contact is considered interchange where a portion of the workforce of one facility is involved in the work of the other facilities through temporary transfer or assignment of work. However, a significant portion of the workforce must be involved and the workforce must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). “[A]lthough frequent and regular interchange supports finding a community of interest, it is well-established that infrequent, limited, and one-way interchange do not require finding a shared community of interest.” *Starbucks Corp.*, 371 NLRB No. 71, slip op. at 1 (2022) (citations omitted). For example, the Board has found interchange established and significant where during a 1-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. See *Dayton Transport Corp.* 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unknown both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary.

As an initial matter, like in *Cargill*, above, and *New Britain*, above, evidence in the instant case lacks significant context. In *New Britain*, the Board found the employer’s evidence in favor of interchange to be lacking. In that case, the employer presented evidence of 200 instances of temporary employee interchange over a five-month period; however, the Board noted that the evidence lacked any context and was of little evidentiary weight because one could not discern percentage of interchange, either by looking at the total workload or total number of employees. *Id.* at 398. The same is true of the evidence here.²⁹ The Board in *New Britain* also noted that voluntary interchange is given less weight. *Ibid.* There is minimal evidence indicating whether any of the instances of interchange in the record were voluntary or required by the Employer.³⁰

²⁹ I give little weight to the Employer’s spreadsheet of 14 randomly selected employees indicating 72 instances of interchange outside of Indianapolis over a 17-month period (including outside the state of Indiana and all four regions at issue here), as it was created solely for the purpose of the hearing and the underlying documents, which were readily available to the Employer during its creation, were not introduced as evidence. Even assuming I count these purported instances, I still find the instances insignificant in light of the overall numbers and lack of context, among other things, whether any of the interchange was voluntary or permanent or one-way.

³⁰ A former employee testified that some work he performed outside of his assigned Logansport region was voluntarily requested to earn extra overtime. Although nothing directly contradicts this testimony, I do not give this testimony much weight since these instances occurred several years ago and before the Employer underwent some organizational changes.

The record contains no manpower schedules for Logansport or Warsaw and no timesheets for Fort Wayne-, Logansport-, or Warsaw-based employees. There is minimal, if any, evidence of interchange with or among employees working under the Indianapolis Commercial team or the Logansport or Warsaw teams. Instead, to the extent evidence of interchange was introduced at the hearing, it is largely focused on Indianapolis Mechanical and Fort Wayne Mechanical teams overseen by Regional Manager Neher (and to a lesser extent Project Manager Sites), neither of whom testified at the hearing.

As discussed above, the record contains only two manpower schedules for continuous periods of time—Indianapolis Mechanical from March 1 through June 6 and Fort Wayne Mechanical from February 8 through May 31. While those schedules demonstrate some variation from week to week among those employees, ranging between 30 to 36 overall for Indianapolis Mechanical and 25 to 30 (37 during the two-day SDI Butler shutdown) for Fort Wayne Mechanical, the schedules also show a core group of approximately 28 employees under the Indianapolis Mechanical team who were not assigned to work outside of the Indianapolis Mechanical team during that three-month period and approximately 20 employees who were not assigned to work outside of the Fort Wayne Mechanical team.

Moreover, the record does not always clarify which Employer region, much less which direct supervisor, an Indianapolis-based employee may be reporting to during some of the instances when they are assigned outside of the Indianapolis region. For example, Indianapolis employees have been assigned to Springfield, Illinois; Lansing, Michigan; Mansfield, Ohio; and Lubbock, Texas, without reference in the record to who they may have actually been reporting to when fulfilling those assignments.

In addition, some of the temporary transfers are actually from one Indianapolis regional supervisor to another supervisor who is also performing work in the Indianapolis region, such as employees transferred to the Indianapolis fabrication shop or under the Indianapolis Commercial team.³¹ The record does not indicate whether the same is true for the instances that the Employer relies upon to establish interchange. Nor does the record establish a pattern of permanent transfers of employees between the Employer's regions. As for its assertion that employees are not assigned to any particular office or region but are treated as part of an overall pool available to be sent anywhere, the evidence does not fully support that assertion. One employee testified that since he lives halfway between the Indianapolis and Fort Wayne regions, he was offered his choice of which region he would work out of once he started his employment. Although he initially preferred Fort Wayne, once he started working in Indianapolis he requested to remain in that region and his request was approved.

³¹ Some Fort Wayne Mechanical Schedules and the Employer-created spreadsheet (Employer Exh. 6) also reference an Indianapolis Service team. It is unclear from the record whether this is, in fact, the Indianapolis Commercial team or a separate Indianapolis-based team.

In addition to the lack of context, and unlike *New Britain*, above, the record evidence only concretely shows 26 instances over a 17-week period and falls woefully short of exhibiting significant interchange.³²

On the whole, I find that the Employer has failed to carry its burden of proving that this factor weighs in favor of an Indiana-wide bargaining unit.

4. Distance between Locations

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and when there is evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills duties, and other terms and conditions of employment, as well as are in contact with one another. *Trane*, 339 NLRB at 868.

The distance between the Employer's Indiana facilities range from 37 miles (Fort Wayne North to Warsaw) to 102 miles (Fort Wayne North to Indianapolis). However, reliance on distance from shop to shop is largely inapplicable to the Employer's operations since most employees report directly to a jobsite rather than to one of the Employer's physical offices. Even some of the jobsites *within* a region are a comparable distance apart. For example, during one week the Indianapolis manpower schedule showed jobsites in Morristown and Terre Haute which are approximately 94 miles apart. Recognizing that some employees may have to commute a decent distance to get from their home to an assigned jobsite, regardless of where either is located, the Employer provides a per diem payment to employees based on the mileage they travel so long as it exceeds 40 miles. Nothing in the record indicates the payment of per diem is limited only to employees who are transferred from one region to another; rather, it appears an employee receives per diem any time their work travel exceeds 40 miles.

Given these factors, and in view of my conclusions regarding the first three factors, I conclude that the distance between locations is a neutral factor and does not outweigh the general rule that a petitioned-for single-facility unit is presumptively appropriate.

5. Bargaining History

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, 339 NLRB at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by Petitioner.

³² The majority of the interchange as explained by the evidence in the record overlaps temporally, with the 17 Fort Wayne Mechanical schedules covering Feb. 8 through June 6, and 11 Indianapolis Mechanical schedules covering March 1 through June 6.

B. Exclusion of Kodiak Labor Solutions Employees

The Employer argues that any appropriate bargaining unit must include pipefitters, welders, pipefitter apprentices, and welder apprentices³³ supplied by Kodiak for use by the Employer because the Kodiak employees share the necessary community of interest with the petitioned-for bargaining unit. The Employer uses Kodiak to supplement its own labor force on an as-needed basis. The parties stipulated that the Employer and Kodiak are joint employers of the approximately 79 employees who are supplied by Kodiak to the Employer to perform pipefitting and welding work. While there is no question some community of interest exists between the petitioned-for employees and Kodiak's, the evidence is not so strong as to mandate their inclusion in the petitioned-for unit.

There is at times a dearth of specific evidence in the record regarding the Kodiak employees, but it does appear that the Employer's own employees and those of Kodiak perform work side-by-side on the same jobsites. They use the same tools, skills, and types of work experience to complete their tasks. Kodiak and the Employer's employees also report to the same onsite supervision (provided by the Employer) while on the jobsite. The record demonstrates that Kodiak employees are subject to many of the same employee policies and handbook as the Employer's own employees. Kodiak employees have the same orientation and must pass the same initial testing as newly hired Employer employees before they can begin performing work on one of the Employer's jobsites.

However, there are also significant differences between the jointly-employed Kodiak employees and those solely employed by the Employer. The Employer may provide lodging and provides per diem to its own employees pursuant to policy while Kodiak employees do not receive lodging and have a different per diem policy, the terms of which are not in the record. The record also does not clearly establish that Kodiak employees are paid the same or similar wage rates as those in the petitioned-for bargaining unit. Nor are Kodiak employees eligible for the same benefits that the petitioned-for employees are able to select from after 90 days of employment.

There is no direct evidence that a Kodiak employee disciplined by the Employer suffers any consequences at Kodiak, or that a Kodiak employee terminated by the Employer is also terminated from Kodiak employment. Similarly, there is no evidence Employer supervisors or managers are involved with the performance evaluations of Kodiak employees. HR Manager Brickley's testimony includes his speculations about disciplinary consequences for Kodiak employees, but the record does not identify what direct information, events, or experiences he is relying upon in making those speculations (Tr. 251-252).

Although there are many similarities between Kodiak's employees and the petitioned-for bargaining unit, the Employer has failed to demonstrate that the two groups share such a strong community of interest that Kodiak employees must be included in the bargaining unit. See, for example, *Lanco Construction Systems, Inc.*, 339 NLRB 1048 (2003) (finding petitioned-for unit limited to solely-employed employees appropriate where jointly-employed employees "were

³³ As noted above, other than stipulations referencing Kodiak pipefitter apprentices and welder apprentices, it is unclear whether Kodiak actually employs apprentices since its employees do not appear eligible for the Employer's apprenticeship program and the record does not indicate Kodiak employees attend any apprenticeship program.

subject to different hiring and firing criteria, had different wage rates and benefits, were carried on separate payrolls, and had different pay dates”); *Engineered Storage Products Co.*, 334 NLRB 1063 (2001) (finding that a petitioned-for unit limited to the employer's solely employed employees was an appropriate unit where supplier-employer hired and fired and set the wage rates of jointly-employed employees). Kodiak’s employees will be excluded from the bargaining unit.

IV. CONCLUSION

In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In particular, I rely on the separate direct supervision provided to employees within each region and the lack of regular interchange among the Employer’s regions in reaching my conclusion that the single-facility unit sought by Petitioner is appropriate. I further find that temporary employees employed by Kodiak do not share the requisite community of interest with the unit found appropriate herein to mandate their inclusion. Therefore, based on the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³⁴
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. 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.
5. 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:

Included: All full-time and regular part-time pipefitters, welders, pipefitter apprentices, and welder apprentices employed by the Employer based out of its facility located in Indianapolis, Indiana.

³⁴ The Employer, Dilling Group, Inc., an Indiana corporation with an office located at 5010 W. 81st Street, Indianapolis, Indiana, and a principal place of business located at 111 East Mildred Street, Logansport, Indiana, provides industrial and commercial contracting services. During the past 12 months, a representative period of time, the Employer provided services valued in excess of \$50,000 directly to customers located outside the state of Indiana.

Excluded: All maintenance employees, HVAC employees, office clerical employees, temporary employees supplied by Kodiak Labor Solutions, guards, professional employees, and supervisors as defined in the Act, and all other employees.

At hearing, Petitioner agreed that it is willing to proceed to an election in any unit found appropriate herein. The original petitioned-for unit was identified by the Petitioner as consisting of approximately 26 employees and the Employer's statement of position listed 25 employees. Since the appropriate unit determined herein is greater in number of employees than originally believed, encompassing approximately 47 to 52 employees, Petitioner will be permitted to provide a sufficient showing of interest within two business days of the issuance of this Decision. If Petitioner fails to provide a sufficient showing of interest in the appropriate unit, I will issue an Order Cancelling the Direction of Election and Dismissing the Petition. To facilitate the check of an adequate showing of interest in the enlarged unit, the Employer is requested to submit to the Regional Director within two business days of the issuance of this Decision an alphabetized payroll list of employees in the unit found appropriate herein for the payroll period ending September 12, 2025.

V. 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 Plumbers and Pipefitters UA Local 440.

A. Election Details

The election will be held on **Tuesday, September 30, 2025**, from 5:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5:00 p.m. at the Employer's Indianapolis office in a space to be determined by the Regional Director.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Friday, September 12, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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 (that employees use at work), 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.

Pursuant to Section 11312.1(d) of the NLRB Casehandling Manual (Part Two) Representation Proceedings, the Region will notify the Employer if Petitioner has submitted an adequate showing of interest in the enlarged unit. The Employer must then submit the voter list within two business days of such notification. To be timely filed and served, the list must be *received* by the regional director and the parties within those two business days. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.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. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, that will issue subsequent to 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.

VI. 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, 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.

Dated: September 19, 2025



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