

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

BLUEOVAL SK, LLC

Employer

and

Case 09-RC-358016

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

BlueOval SK, LLC (the Employer) is a joint venture between SK and Ford Motor Company based out of Seoul, Korea, and which produces electric vehicle batteries for Ford Motor Company. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (Petitioner or Union) filed the instant petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent all full-time and regular part-time production and maintenance employees employed by the Employer at its 2022 Battery Park Drive, Glendale, Kentucky 42740 facility; excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act. There were approximately 754 employees employed at the time the Petitioner filed the petition.

The issue before me is whether the Employer employs a substantial and representative complement of employees and was in the normal operation of business when the instant petition was filed. The Employer argues that the petitioned-for unit is inappropriate and the petition should be dismissed because there is not yet a substantial and representative complement of employees. It argues that, alternatively, if the petition is not dismissed, then an election should be postponed. The Union, on the other hand, asserts that there exists a substantial and representative complement of employees employed by the Employer and that an election should be directed. A hearing officer of the Board held a hearing in this matter in Cincinnati, Ohio on January 28, 2025.^{1/} The parties submitted post-hearing briefs. Based on the review of the record, relevant Board law and guidelines, and in consideration of the parties' arguments, I have concluded that the petitioned-for unit is appropriate. Accordingly, I direct an election in the petitioned-for unit.

II. FACTS

The Employer is in the business of producing battery components for vehicle electrification for its customer, Ford Motor Company, at two electric vehicle battery plants located in Glendale,

^{1/} All dates fall within 2025 unless otherwise noted.

Kentucky, namely “KY1” and “KY2.” The Employer also owns a third plant located in Tennessee.^{2/} At the time of the hearing, the Employer had not yet begun production or shipped any product from its Glendale, Kentucky facilities. In 2022, the Employer began construction of KY1 and KY2 plants and moved into the KY1 plant in the fall of 2024.

The Employer’s witness, CFO Jiem Cranney, testified that the KY1 facility will have 16 production lines, with eight lines on each side of the plant. Cranney testified that, at the end of May 2025, eight lines at the KY1 facility will be in some phase of testing and one line will be in production. The record reflects that the Employer has staggered dates and times for testing production which can take several months, but that six of the eight lines on one half of KY1 will be in production as of the fourth quarter of 2025. The record does not reflect when all eight lines will be in production, nor any details regarding production in the other half of KY1 or the KY2 facility.

The record reflects that the Employer’s first phase of production is called “prototype and product validation.”^{3/} Prototype testing runs test parts through the machines to ensure everything is running properly. The record reflects that each line is divided into four sections: (i) electrode (which manufactures battery cell components); (ii) cell assembly (which combines components); (iii) formation (which charges the cell); and (iv) module (full battery assembly). The record shows that the second part of the phase, product validation, ensures the product’s quality and that the product meets safety standards.

Cranney testified that the electric vehicle market represents just under 10 percent of market share and would represent about 20 percent of market share if it included hybrid and plug-in vehicles. Cranney testified that from 2023 to 2024, the electric vehicle market grew 25 percent.

The Employer created a document entitled, “Hourly Job Description,” which lists the following categories of employees: production operator, quality operator, maintenance technician, associate maintenance technician, safety emergency response technician I, safety emergency response technician II, and material handler, all which are included in the proposed unit, and the Union is not seeking to represent any additional classifications. At hearing, the Employer also presented a document titled, “Hourly Staffing Status/Forecast – Jan. 14th 2025” (Hourly Forecast), which reflects that as of January 14, when the petition was filed, it employed 754 employees in the proposed unit and employees in each of the classifications listed on the Hourly Job Description sheet. The Hourly Forecast reflects that as of the date of the hearing, January 28, the Employer employed 865 employees.^{4/}

Cranney testified that the Employer expects a hiring “plateau” or a slowdown in hiring in May 2025, which is when testing and validation of a prototype will conclude. The Hourly Forecast reflects the Employer expects to employ 1,402 individuals in May 2025. Customer demand beyond May 2025 is not guaranteed and Cranney testified that customer demand dictates the number of employees hired. However, Cranney believes that the Employer will employ 1,477

^{2/} The Employer has another facility in Tennessee, but the Union does not assert that it is seeking to represent employees at the Tennessee facility.

^{3/} The record does not explain the elements of the subsequent phases.

^{4/} The Hourly Staffing Forecast provides that on January 14, 2025, the Employer employed the following number of employees per classification: Production Operator – 446; Material Handler – 44; Quality Operator – 87; Maintenance Technician – 125; Associate Maintenance Technician – 20; Safety Emergency Response Tech I and II – 32.

employees in September 2025, and 1,823 employees in October. These numbers are not definite because customer demand and orders are not finalized. Cranney also testified that he expects full staffing to reach 2,500 employees.^{5/} The record does not reflect whether the 2,500 number includes employees who will work in the second half of the KY1 facility, nor any information regarding employee makeup at the KY2 facility.^{6/}

The parties are in dispute as to whether the work performed at the time of the hearing is the same work that employees will be performing once the plant is fully operational. The Employer presented a document titled, “Training Status/Progress by Month – Jan. 14th 2025” which reflects the number of employees, per month, who are in training or have completed training. The document provides that on January 14, 2025, the date the petition was filed, 607 out of 754 employees were in training, compared to 45 out of 1,402 employees who will be in training in May 2025.

Cranney testified that training includes policy and procedure orientation, introduction to the manufacturing process, and on-the-job training. The record reflects that depending on the employee’s position, training can last between 110-150 days. Cranney stated that because testing and production had not yet begun at KY1, employees were not performing the work that they will be doing once these processes begin. He testified that most of the current employees perform maintenance duties, which take place at the beginning of plant start up. He further stated that employees are working in the plant, cleaning, and involved in on-the-job training which includes running machines.

The Employer’s Hourly Job Descriptions provides that the production operator position manages the lithium-ion battery production process using computerized equipment, ensuring operations run smoothly and efficiently; conducts quality checks, troubleshoots equipment, maintains machines, and packages finished products for shipment. Duties also include adhering to protocol, inspecting equipment, monitoring processes, and collaborating effectively with a team. The Employer hired Amber Levay on November 12, 2024, and, at the time of the hearing, she was working as a production operator in cell assembly stacking. Levay testified that cell assembly stacking involves combining the cathode and anode to make the electrode to form the battery cell.^{7/} Levay testified that her shift begins with a team meeting, and thereafter Levay, and fellow employees, deep clean machines to prevent contamination, start the machines, and test different components to confirm the machine is working. To clean, she removes and weighs scrap from containers (scrap occurs when there is a problem with a product), records the data, takes magazines (or containers) in and out of the machine, and brings the old containers to cell assembly to be refilled with more electrodes. The record reflects that Levay also puts new containers in machines. Levay performs these duties for each machine on the line and expects to continue this work, in addition to operating the machine, once production begins. Levay testified that one day around the holidays,^{8/} about 12 employees ran and troubleshoot machines while an

^{5/} The record does not reflect when the Employer will reach a full complement of 2,500 employees and the Employer did not explain its basis for claiming that 2,500 employees constitutes full staffing.

^{6/} Although Cranney testified he was involved in creating Employer Exhibit 1, it is not clear to what extent Cranney participated. Cranney also testified this forecast is prepared monthly.

^{7/} The record does not reflect what kind of training Ms. Levay received.

^{8/} The record is unclear as to what holidays. However, because KY1 opened in November 2024, presumably this was the 2024 winter holidays.

OEM^{9/} showed employees what to do. Levay testified that one OEM observed four machines, and passed by to make sure everything was okay, then returned to his work. Although it appears that this was an isolated instance, the record does not make clear if Levay or other employees continued to operate any machines after the holidays. Levay testified that since she began working at the KY1 plant in November 2024, she has been offered overtime about every week. On overtime, Levay typically deep cleans machines to prepare for the next day.

The Hourly Job Description provides the following duties for the quality operator: inspects and tests lithium-ion battery products, reports quality outcomes, maintains equipment, manages non-conformance processes, and supports quality systems. Duties include validation testing, supplier quality inspections, chemical storage management, process quality control, customer quality support, and ensuring compliance with protocols and safety standards.

On October 30, 2023, Jeanie Jarboe began working for the Employer and currently works as a quality operator in the electrode area. Jarboe testified that she first attended orientation at a college campus for about 2 weeks and then attended classroom training for a few months.^{10/} She attended additional training for another few months and also received guidance from “MEs” or experts on how to perform jobs.^{11/} The record reflects that Jarboe next attended on-the-job training for 4 weeks. Since November 13, 2024, Jarboe has been working in the plant lab daily. She testified that as a quality operator, she and her coworker (whose job classification was not reflected in the record), perform a 6-hour test to find metallic impurities in the slurry, which is made up of chemicals mixed together to make the electrode. She sometimes has six to eight samples of slurry to test at one time, and she expects to perform the same work in the lab once the plant is fully operational.

The Employer hired Emily Drueke on December 6, 2023, and she also works as a quality operator in incoming quality control (IQC). Drueke testified that she first attended orientation for a month and a half, received training for another month and a half, and then went back and forth between a plant in Georgia and a school for additional training.^{12/} The record discloses that Drueke thereafter occasionally went to the Employer’s plant until she was told to report to the plant full time on November 13, 2024. The record reflects that incoming quality control operates in both the cell and module parts of the plant. Drueke testified that she reports to either a lab or the electrode cafeteria. The record reflects that when Drueke reports to the electrode cafeteria, she receives instruction on what to do, but the record does not detail what that entails. Drueke testified that in the lab she performs checks and gauge R&Rs,^{13/} 5S,^{14/} or live checks.^{15/} Drueke testified that she has been trained by “SK MEs” but lately training was “hit or miss.” The record reflects that Drueke interacts with MEs depending on which area she is assigned. Drueke

^{9/} The record does not reflect what the letters “OEM” stand for, but indicates that they are “vendors,” or a trainer. In the auto parts industry, the letters OEM stand for Original Equipment Manufacturer, and the transcript reference likely refers to an OEM representative.

^{10/} The record does not reflect what kind of training Jarboe attended.

^{11/} The record does not define “ME” but reflects they are similar to OEMs.

^{12/} The record does not explain what type of training Drueke received.

^{13/} Gauge reproducibility is where operators run three rounds on the same ten parts to make sure the gauge is calibrated correctly.

^{14/} Drueke did not explain what 5S involves.

^{15/} Live checks are performed by placing an outer part on a jig, testing the number of pieces specified on a sheet, and performing the task as though it was a regular task during production. Drueke tests anything from a part of a module to inner material that goes into a cell.

testified that she expects to perform gauge R&Rs and live checks for the rest of her career with the Employer.

The Employer's Hourly Job Descriptions provides that maintenance technicians maintain, repair, and calibrate machinery and equipment, troubleshoot issues to minimize downtime, read blueprints and schematics, fabricate components, perform preventative maintenance, and ensure compliance with safety protocols. Duties also include collaborating with engineers, contractors, and manufacturers for system optimization and documentation.

Kevin Saltsman was hired on November 6, 2023, and currently works as a maintenance technician in the electrode department. The record discloses that Saltsman attended a 2-week orientation, classroom training for a couple of months, spent time between an office and the plant during the plant's construction phase, and also participated in volunteer opportunities^{16/} until he moved to the plant full time in November 2024. Saltsman testified that, in his position, he maintains electrical and mechanical equipment, and performs daily and yearly preventative maintenance. Saltsman testified that yearly preventative maintenance is the installation of a maintenance cage and gauge calibrations, which he has performed. In order to learn how to conduct gauge calibrations, in October, Saltsman shadowed a group of OEMs to verify that the gauge lines were clear. Saltsman testified that he removed the gauges after verification, an outside contractor performed the gauge calibration, and then Saltsman re-installed the gauges. The record reflects that Saltsman worked overtime in 2025, performing the same tasks he performs on his regular shifts.

III. LEGAL ANALYSIS

In general, the Board finds an existing complement of employees to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. In re *Yellowstone Int'l Mailing, Inc.*, 332 NLRB 386 (2000); *Custom Deliveries, Inc.*, 315 NLRB 1018, 1019 fn. 8 (1994); see, e.g., *Gerlach Meat Co.*, 192 NLRB 559 (1971). However, there is no hard and fast rule for determining whether an employee complement is substantial and representative and the Board will analyze the relevant factors in each case. See, *Toto Industries (Atlanta), Inc.*, 323 NLRB 645 (1997).

The Board's principles regarding an expanding unit has two objectives: (i) to ensure that employees are not deprived of the right to select or reject a bargaining representative simply because the Employer intends to hire more employees; (ii) but also to not impose a bargaining representative on employees in the relative future based on the vote of a few currently employed individuals. *Id.* Therefore, the Board applies a "substantial and representative" test, a case-by-case approach, which analyzes the relevant factors of each case. *Id.* These factors include:

- (1) The size of the present workforce at the time of the representation hearing;
- (2) The size of the employee complement that is eligible to vote;
- (3) The size of the expected ultimate employee complement;

^{16/} Saltsman describe volunteer opportunities such as working with Habitat for Humanity on a house build.

- (4) The time expected to elapse before a full work force is present;
- (5) The rate of expansion, including timing and size of projected hiring increase before reaching a full complement;
- (6) The certainty of the expansion;
- (7) The number of job classifications requiring skills other than those currently filled;
- (8) The number of job classifications requiring different skills that are expected to be filled; and
- (9) The nature of the industry.

See, *Toto Industries (Atlanta), Inc.*, 323 NLRB 645 (citing *General Cable Corp.*, 173 NLRB 251 (1968); *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1969); *Libbey Glass Division*, 211 NLRB 939 (1974)). The issue presented in this case is whether the Employer's current employee complement is sufficiently substantial and representative to warrant holding an immediate election. Detailed in my analysis below, I find that the Employer's employee complement, at the time the instant petition was filed, is sufficiently substantial and representative to warrant holding an immediate election.

A. *Application of Current Law to Facts*

1. The size of the present workforce at the time of the representation hearing

To start my analysis, I must determine whether the Employer employed a substantial and representative complement of employees at its Glendale, Kentucky facility at the time of the hearing. Since there is no evidence in the record regarding the makeup or employee complement of the second half of the KY1 facility, or the KY2 facility, I will base my findings on record evidence reflecting employee make-up in one half of the KY1 facility, which is the only evidence presented by the parties at the hearing. Other than projections, which the Employer admitted are an estimate based on customer demand, there is no evidence in the record to establish a definitive number of employees to be hired by the Employer after May 2025.

Considering the first factor articulated in *Toto Industries*, as of January 14, the date the petition was filed, the Employer employed 754 employees. On January 28, the date of the hearing, the Employer employed 865 employees. The record evidence reflects that hiring will increase until May 2025, through which time customer demand is established, and thus, expected employee numbers are concrete. The evidence reflects that in May 2025, the Employer will employ 1,402 employees. The record further reflects that customer demand beyond May 2025 is not finalized, so although the Employer presented evidence of its predicted employee complement in October 2025 of 1,823 employees, this number is not a guarantee. In addition, the Employer never explained the basis for this projection.

The record reflects that, at the time of the hearing, the Employer employed 61 percent of the employee complement expected as of May 2025. Assuming the Employer's projections for hiring as of October 2025 are accurate, the Employer employed 46 percent of its October 2025 workforce

at the time of the hearing. See, *In re Yellowstone Int'l Mailing*, 332 NLRB 386 at 386. Although the Employer testified that it expects to be fully staffed at 2,500 employees, the record does not contain any evidence to establish when it expects to be fully staffed, or where the additional employees will be employed – whether at the second half of the KY1 facility or the KY2 facility. The Employer failed to provide documentation, or any other supporting evidence, for its claim that 2,500 employees constitutes full staffing. See, *Walnut Ridge Mfg. Co., Inc.*, 80 NLRB 1196, 1197(1948) (noting an additional reason to provide for an election in the near future is the uncertainty as to when expansion will take place, being influenced by factors somewhat outside of the Employer's control); *Foodbasket Partners*, 344 NLRB 799, 804 (2005)(finding a representative complement of employees where employer operated store for 2 weeks but was uncertain of number of employees necessary to run stores, because hiring outlook was based on store sales and that was uncertain). Therefore, I find the 2,500 number speculative and rely on the Employer's testimony, that because customer demand through May 2025 is certain, staffing through May 2025 is an accurate number. Thus, I find this first factor weighs in favor of finding a substantial and representative complement of employees as of the time of the hearing.

2. The size of the employee complement that is eligible to vote

The second factor I must analyze is the size of the employee complement that is eligible to vote in an election. See, *Toto Industries (Atlanta), Inc.*, 323 NLRB 645. As of the January 2025 hearing, the Employer employed individuals in all six classifications in the petitioned-for unit and employed 61 percent of the total number of employees it expects to employ as of May 2025. The record evidence establishes that, even after the Employer reaches its full employee complement, there will be no additional job skills or separate and distinct job classifications added to the proposed unit. Although some employees are still undergoing training and will continue to do so for a period of time in 2025, by employing 61 percent at the time that the petition was filed, the Employer employed much more than the 30 percent suggested minimum the Board considers to constitute a representative complement. There is no evidence in the record showing that any current employees are not eligible to vote in an election. Thus, all employees currently working for the Employer who fall within its six hourly job classifications are eligible to vote and constitute a substantial and representative complement of the total workforce. I therefore find this factor weighs in favor of the Employer employing a substantial and representative complement of its projected workforce.

3. The size of the expected ultimate employee complement and the time expected to elapse before a full workforce is present

The third and fourth factors in *Toto* require me to consider the size of the expected ultimate employee complement and amount of time before a full workforce is present. Noted above, the Employer's evidence suggests that it will employ 1,402 individuals in May 2025, 4 months after the petition was filed, but that the Employer cannot guarantee the total number employed thereafter due to unknown customer orders and demand. Further, the record reflects that the Employer's projections for 2025 are for only one half of the KY1 facility; the record does not reflect numbers regarding the second half of the KY1 facility or anything related to the KY2 facility. Additionally, the Employer's witness testified that it will ultimately employ 2,500 employees, but the Employer did not provide any additional evidence or testimony to support this claim. Thus, absent any objective evidence of the ultimate employee complement, I rely on the record evidence presented that because customer demand is finalized through May 2025, employee numbers through May

will not change. Therefore, as of the time of the hearing, the Employer's 865 employees represented 61 percent of the total workforce that will be working in May 2025. See, *General Engineering, Inc.*, 123 NLRB 586, 589 (1959) (noting the Board also looks at the employer's projected plans and will not dismiss a petition where the plans for expansion are mere speculation or conjecture); *Meramec Mining Co.*, 134 NLRB 1675, 1679-80 (1962); *Trailmobile, Division of Pullman, Inc.*, 221 NLRB 954 (1975). Further, I find that a 4-month period is a short period of time to elapse before the Employer employs an additional 39 percent of employees, and that holding an election would not disadvantage any employees hired in the future. See, *Rheem Mfg. Co.*, 188 NLRB 436, 437 (1971) (finding a total 55 percent of employees to be employed in a 2-month period in 64 percent of classifications sufficient to order an election); See, *Walnut Ridge Mfg. Co.*, 80 NLRB 1196, 1197 (1948)(directing election 4 to 6 months after petition filed at which point employer will have finished immediate expansion and staffed second line of production). Therefore, I find these two factors weigh in favor of finding that the Employer employed a substantial and representative complement of employees at the time of the hearing.

4. The rate of expansion, including timing and size of projected hiring increase before reaching a full complement

The fifth factor enumerated in *Toto* is the rate of expansion, including timing and size of projected hiring increase before reaching a full complement. I rely on the evidence presented by the Employer which reflects that expansion will take place across a period of 4 months, from the end of January to May 2025. I again note that the record reflects that hiring beyond May 2025 is uncertain based on customer demand, and there is no evidence in the record to suggest when the Employer's stated full complement of 2,500 employees will occur. Although the Employer presented evidence that six of its eight lines on one half of KY1 will be producing by October 2025, it admitted that customer demand beyond May 2025 can fluctuate, so employment as of October 2025 is uncertain. Therefore, absent concrete evidence to establish hiring numbers after May 2025, I rely on the numbers presented by the Employer for the period of January to May 2025.

The record reflects that from January 2025 to May 2025, the total number of employees will increase from 856 to 1402 employees, which is a 39 percent increase; thus, the Employer employed 61 percent of its total May 2025 complement in January 2025. I also note that such expansion will occur over a 4-month period – from January to May 2025 -when one line in one half of the KY1 facility will be producing.

The Employer's witness testified that one half of the KY1 facility will have a total of eight lines, with six lines in production as of the end of the fourth quarter, or October 2025. Cranney testified that he expects the Employer to have a total of 1,823 employees employed in October 2025, which is also reflected in the Employer's Hourly Staffing Forecast. As of January 2025, the Employer employed 47 percent of its estimated workforce as of October 2025. The record is devoid of any evidence to suggest the Employer intends to add any additional job classifications; therefore, positions as of January 2025 will not change. Considering the percentages enumerated in *Toto*, I find that, even using the Employer's October predictions regarding staffing, this factor leans in favor of directing an election. See, *Walnut Ridge Mfg. Co.*, 80 NLRB 1196 at 1197 (ordering an election in 4 to 6 months after second line staffed, noting that evidence presented established a minimum of 15 months before the plant was completely staffed and uncertainty as to when expansion will take place, because factors somewhat out of employer's control); see also,

Rheem Mfg. Co., 188 NLRB 436 at 437 (finding a total 55 percent of employees to be employed in a 2-month period in 64 percent of classifications sufficient to order an election.)

5. The number of job classifications requiring skills other than those currently filled, that are expected to be filled, and the nature of the industry

The seventh, eighth and ninth factors articulated in *Toto* which the Board must consider are (i) the number of job classifications requiring skills other than those currently filled, (ii) the number of job classifications requiring skills that are expected to be filled, and (iii) the nature of the industry. The Employer's Hourly Staffing Forecast reflects that as of January 14, 2025, the date of filing of the petition, the Employer employed individuals in every job classification in the proposed unit: safety emergency response technicians I and II, associate maintenance technicians, maintenance technicians, quality operators, material handlers, and production operators. Notably, there is no evidence to suggest that the Employer expects to employ any different job classifications other than those represented in its forecast and which were in existence at the time of hearing. See, *Walnut Mfg. Co.*, 80 NLRB 1196 at 1197 (noting there will be no new operations or skills added, each line is a duplicate of others, thus, the present employees are a representative group of a future anticipated complement.) In short, at the time of the hearing, the Employer employed individuals in 100 percent of its job classifications that will exist once production commences. See, *In re Yellowstone Int'l Mailing*, 332 NLRB 386.

Production Operator Amber Levay testified that she deep cleans machines, starts machines, and tests different components to ensure the machine is working; such duties are included in the Employer's Hourly Job Descriptions for the production operator position. The record reflects that quality operator Jeanie Jarboe performs tests and takes samples daily in a lab, which are duties specified in the Hourly Job Description duties for the quality operator position. Quality operator Emily Druke also works in the lab performing various checks. Maintenance technician Kevin Saltsman maintains electrical and mechanical equipment and performs preventative maintenance. Such work appears to be consistent with the Employer's Hourly Job Description for this position which specifies that maintenance technicians maintain, repair, and calibrate machinery and equipment, among other duties.

While the Employer's Training Status/Progress by Month document denotes that employees are in training from January 2025 through October 2025, the document also reflects that the number of those in training substantially decreases from January 2025 to May 2025. See, *General Cable Corp.*, 173 NLRB 251, 252, fn. 4 (1968) (noting it is immaterial that some employees may be considered trainees). Although the Employer's witness testified that certain employees^{17/} will be operating machines once production begins, which they were not regularly performing as of the date of the hearing, they are performing other job duties that are specified in the Hourly Job Descriptions. Based on the record as a whole, I find the seventh and eighth factors enumerated in *Toto* support directing an election. See, *Frolic Footwear, Inc.*, 180 NLRB 188, 189 (1970); *Redman Industries*, 174 NLRB 1065, 1066 (1969); *Revere Cooper & Brass, Inc.*, 172 NLRB 1126 (1968); see also, *Walnut Ridge Mfg. Co.*, 80 NLRB 1196 at 1197 (noting no new operations or

^{17/} The Employer did not explain which employees will operate machines, although job descriptions are provided in the Hourly Job Description exhibit. Based on Levay's testimony, and the production operator job description, it appears that production operators will operate machines. It is unclear whether quality operators will do the same.

skills added once additional lines are added; thus, present employees were representative group of future anticipated complement).

The ninth factor I must consider involves examining the nature of the Employer's industry. In its brief, the Employer argues that because the electric vehicle industry is growing, the Petitioner should not rush to an election thereby avoiding any detrimental effects to future employees' representational rights. Cranney testified that the electric vehicle market represents just under 10 percent of market share, and hybrid and plug-in vehicles represent in total about 20 percent of market share. However, there is no objective or documentary evidence to support these assertions or, more importantly, that the electric vehicle industry is, in fact, growing, and by how much. In the same vein, there is no evidence in the record to suggest that the Employer's industry and production will change in any significant way once the first half of KY1 is in operation. See e.g., *Douglas Motors Corp.*, 128 NLRB 307, 308 (1960)(nature of industry changing by eliminating production operations, thus there is a fundamental change in the nature of the employer's business operations in process). Accordingly, I find this factor also favors that the Employer employs a substantial and representative employee complement.

Upon full consideration of the factors enumerated in *Toto* I find the evidence weighs in favor of finding that the Employer employed a substantial representative complement of the petitioned-for unit at the time of the January 28 hearing. I note again that the Board will conclude that an existing complement of employees is substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. In re *Yellowstone Int'l Mailing, Inc.*, 332 NLRB 386; *Custom Deliveries, Inc.*, 315 NLRB 1018 at 1019 fn. 8; see, e.g., *Gerlach Meat Co.*, 192 NLRB 559. The record evidence demonstrates that the Employer's petitioned for workforce exceeds these minimum requirements regardless of whether May numbers or October projections are relied upon.

6. Normal Operations

I must additionally consider whether the Employer was engaged in normal operations of business at the time the petition was filed. The record reflects that, as of May 2025, the Employer will have one of eight lines in production on one half of the KY1 facility. Noted above, there is no evidence in the record regarding the second half – the other eight lines – of the KY1 facility, nor any information regarding the make-up of the KY2 facility. Further, although the Employer presented testimony that, as of the end of the fourth quarter in 2025, it expects to have six of eight lines on one half of the KY1 facility in production, it is unclear when the remaining two lines will be producing. It appears that production will not begin until later in 2025, but again, the record is silent regarding the stages of production or when the Employer will be at full production. Notably, it is evident that the nature of the Employer's business will not change once production begins in full force. Compare *Douglas Motors Corp.*, 128 NLRB 307 at 308 (nature of industry changing by eliminating production operations, thus there is a fundamental change in the nature of the employer's business operations in process); see also, *Walnut Ridge Mfg. Co.*, 80 NLRB 1196 at 1197 (no new operations or skills once additional lines are added; thus, present employees were representative group of future anticipated complement).

The Employer argues that it is not engaged in normal operations, because employees are training and setting up shop. In its brief, the Employer cites *Elmhurst Care Center*, 345 NLRB 1176, 1178-79 (2005)(noting even when employees are performing duties they may perform when

the business begins normal operations, that fact is immaterial to whether the business is engaged in normal operations and also *Ten Eyck Hotel Assoc.*, 270 NLRB 1364, 1366 (1984)(finding that even though the minimum percentage requirements were met, the employer did not employ a substantial and representative complement of its workforce because most of the hired employees had not performed a significant amount of work).

I find these two cases distinguishable from the facts presented herein. First, *Elmhurst* is a voluntary recognition case involving a nursing home, not a manufacturing facility, wherein the Board found that the Employer had prematurely accepted recognition of employees that had not yet commenced operations, determining operations begin when patients are admitted and the demands attendant thereto are felt. The Board noted that employees worked a limited number of hours and were not caring for patients. 345 NLRB 1176, 1176-77. Unlike *Elmhurst*, the Employer's employees are performing job duties they will be performing once production commences, such as testing operations, and performing quality checks and they are also working regular hours plus overtime. *Id.* In *Ten Eyck Hotel*, also a voluntary recognition case, many employees had not yet performed *any* work for the hotel, many were performing work entirely different than the duties for which they were hired, and the hotel also had to hire many more employees to fill vacant job classifications. See, 270 NLRB 1364. Here, the Employer's employees are performing some work that they will perform once production is in full swing, and the Employer has filled all job classifications. See, *id.*

Further, although the Board considers whether the employer is engaged in normal operations, it ultimately bases its analysis on the factors articulated in *Yellowstone* and *Toto*, relying instead of percentages of employees employed, classifications filled, and expected length of time to reach a full complement. See, 332 NLRB 386 (2000); 323 NLRB 645 (1997). In *Cramet, Inc.* and *Frolic Footwear*, the Board in considering whether the employers were engaged in normal operations, relied on employment numbers or ratios of current employees to full complement, and whether the employer was planning to add additional job classifications prior to assuming full production. See, 112 NLRB 975 (1995); 180 NLRB 188 (1969). The Board traditionally considers the total number of employees contemplated, the substance of the projected plans, the time consumed to reach fruition, and whether additional jobs merely involve distinct operations rather than separate and distinct job classifications in terms of types of skill required of the employees. *Scroll Casual*, 278 NLRB 10 (1986) If there are no significantly different functions or skills required, or the anticipated completion date is too distant or projected plans are mere speculation, the substantial and representative complement test is satisfied. See, *Scroll Casual*, 278 NLRB 10 at 15. Therefore, although the Employer is just ramping up production on one half of the KY1 facility, due to the lack of evidence regarding the status and timing of the second half of KY1, or any evidence of KY2 operations, and my application of the above noted test factors to the facts of the current case, I find that there is sufficient evidence that the Employer is engaged in normal operations.

Accordingly, since I have found that the Employer employs a substantial and representative complement of employees and was in the normal operation of business when the instant petition was filed, I direct an election for the petitioned-for employees.

IV. CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.^{18/}
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The parties stipulated, and I find, that there is no collective-bargaining history between the parties with regard to the employees in the appropriate unit described below, and there is no contract bar or other bar to an election in this matter.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Glendale, Kentucky facility; excluding all other employees, all professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA.

A. Election Details

The date, time, and place of election will be specified in the Notice of Election that will be issued subsequent to this Decision and after consultation with the parties.

^{18/} The parties stipulated that the Employer, a Delaware corporation, is engaged in the production of electric vehicle batteries. During the past 12 months, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 which were shipped to its Glendale, Kentucky facility directly from points outside the Commonwealth of Kentucky.

B. Voter Eligibility

Eligible to vote are those in the unit who were employed during the **payroll period ending June 21, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **June 30, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**^{19/}

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

^{19/} The Petitioner had agreed at hearing to waive "whatever's necessary" of its 10 days with the voter list to garner its initially requested election date. Since the requested election date has passed, it will be considered that the Petitioner has not waived any of the 10 days.

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

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director.

Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

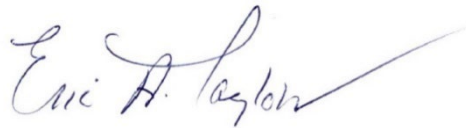
A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or

why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded.

Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: June 26, 2025

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

Eric A. Taylor, Regional Director
Region 9, National Labor Relations Board
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