UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UPPER CUMBERLAND ELECTRIC
MEMBERSHIP CORPORATION
Employer

and Case 10–RC–354986

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 429
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision on Exceptions is denied as it raises no substantial issues warranting review.

We observe that, when the parties stipulate that a disputed classification will vote subject to challenge in an election, and the Board must resolve the placement of the disputed employees in postelection proceedings, this does not alter the applicable legal standard, including the allocation of burden. Thus, the Regional Director was incorrect in stating that the Petitioner bore the evidentiary burden of proving that the Staking Technicians and Senior Staking Technicians (collectively, the Staking Technicians) share a community of interest with the other classifications in the petitioned-for unit. Rather, the Regional Director must be able to find the petitioned-for unit appropriate based on "some record evidence." See *DVA Renal Healthcare, Inc. d/b/a DaVita Vallejo*, 375 NLRB No. 2, slip op. at 2 (2026).

Furthermore, we disavow the Regional Director's suggestion that the Board has overruled its prior "fractured unit" cases. In *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 5 fn. 34 (2022),[1] the Board observed that its historical use of the term "fractured unit" was analytically imprecise, because the Board had used that terminology in a wide variety of cases where the petitioned-for unit was either not readily identifiable, did not share an internal community of interest, or was not sufficiently distinct. Accordingly, the Board encouraged Regional Directors to focus on those three fundamental elements of an appropriate unit, instead of using the broader (and less precise) "fractured unit" terminology. The Board did not, however, generally overrule "fractured unit" precedent. Thus, unless specifically overruled

[1] Chairman Murphy and Member Mayer note that they did not participate in *American Steel Construction* and express no opinion whether that case was correctly decided. They agree to apply it here for institutional reasons.

elsewhere, "fractured unit" cases remain good law to the extent those cases found that a petitioned-for unit did not satisfy one of the three fundamental elements.[2]

Here, we find that sufficient record evidence[3] supports the Regional Director's determination that the Staking Technicians share a community of interest with the other unit classifications.[4] First, we acknowledge that the factors of skills and training weigh against finding a community of interest here: the Staking Technicians perform fundamentally different work than the other unit classifications, using different skills and requiring different training, although the Staking Technicians do attend many of the same general safety trainings as the other unit employees, and also possess a general working knowledge of electrical lines.

The Regional Director found, and the parties do not dispute, that the factors of interchange, department, and supervision weigh against inclusion. However, when assessing whether employees *may* be appropriately included in a unit, the Board will take the diversity of the existing unit into account. See *MV Transportation, Inc.*, 373 NLRB No. 8, slip op. at 6–7 (2023); see also *Wheatland Electric Cooperative, Inc.*, 375 NLRB No. 16, slip op. at 3, 4 fn. 8 (2026). Here, although there is no evidence of interchange between the Staking Technicians and the other unit employees, there is no evidence of interchange within the other unit classifications, either. Moreover, the unit already encompasses classifications that are in different departments and under different supervisory structures: the Lineman classifications are each in a different district office, while the ROW Coordinators, Apparatus Technicians, and Meter Technicians fall under the Department of Operations. Accordingly, we find that these differences are entitled to less weight in the overall community-of-interest analysis, even if they weigh against inclusion.

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[2] For example, in *Bergdorf Goodman*, 361 NLRB 50 (2014), the Board ultimately found that the petitioned-for unit classifications did not share an internal community of interest. See id. at 51–53. Here, in contrast, we find that there are sufficient commonalities between the Staking Technicians and the unit employees to create *a* community of interest. And in *Odwalla, Inc.*, 357 NLRB 1608 (2011), the Board invalidated the unit on the rationale that the petitioned-for employees shared an overwhelming community of interest with the excluded merchandiser classification, without passing on whether the unit was readily identifiable or shared an internal community of interest. See id. at 1611–1613. Here, however, the Employer has not argued that the unit is "insufficiently distinct" such that excluded classifications share an overwhelming community of interest with the petitioned-for employees, and accordingly, *Odwalla* is inapposite.

[3] We have exercised our discretion to read the full record in this case, pursuant to Sec. 102.67(e) of the Board's Rules and Regulations.

[4] We note that, in its Statement of Position and at the postelection hearing, the Employer did not contend that the petitioned-for unit is not readily identifiable, or that the unit is not "sufficiently distinct" because it must include additional classifications. Thus, the sole issue deferred to postelection proceedings—and the sole issue before the Board at this juncture—is whether the Staking Technicians must be excluded from the unit because they do not share a community of interest with the other unit employees.

The factor of functional integration weighs in favor of including the Staking Technicians in the unit. This case involves a textbook example of functional integration: the Lineman classifications cannot perform their work without the work orders drafted by the Staking Technicians. See *Public Service Co. of Colorado*, 365 NLRB 1017, 1017 fn. 4 (2017) (finding functional integration based on a work-order system in which the petitioned-for employees' "work is typically preceded by [] work orders generated by unit employees[] and [then] followed . . . by [] work performed by unit employees").

The factor of contact also weighs in favor of including the Staking Technicians in the unit. Although the testimony indicates that the Staking Technicians do not usually work in the field alongside the Lineman classifications, the Staking Technicians will contact the Line Foreman or Line Crews from multiple times a week to multiple times a month, depending on the nature of the work coming in. They also assist the Line Crews by "bird-dogging" outages, which can occur frequently depending on the season. Furthermore, the Staking Technicians work in the same district offices as the Lineman classifications, the ROW Coordinators, and the Meter Technicians, using the same breakrooms and general facilities. See *Casino Aztar*, 349 NLRB 603, 605–606 (2007) (finding a strong enough community of interest to mandate the inclusion of additional employees in a petitioned-for unit where "[e]ach cocktail server does a shift in the poker room about three to five times a month" and "the bartenders, cocktail servers, and bar-backs have contact with catering and restaurant employees when they work catering events"). We observe, moreover, that the Staking Technicians have more contact with the Line Crews than some of the other unit classifications have with one another—for example, the ROW Coordinators will interact with the Line Crews only several times a year—and this is a material consideration in the community-of-interest analysis. See *Wheatland Electric Cooperative*, supra, slip op. at 4 fn. 8.

Finally, the factor of terms and conditions of employment weighs in favor of inclusion. The Staking Technicians are subject to the same general policies as the unit classifications, including the vacation policy, and are eligible for the same benefits. The Staking Technicians are hourly-paid employees, just like the other unit classifications, and make a comparable hourly wage to several classifications in the unit. They work the same hours as the unit employees, from 7:00 a.m. to 3:30 p.m., and are provided with company vehicles to use in the course of their duties, just like the Line Crews. They also wear company-branded clothing like the Linemen classifications, Apparatus Technicians, and Meter Technicians.

We find that these similarities are sufficient to demonstrate *a* community of interest between the Staking Technicians and the other unit classifications, as the Board has found a community of interest to exist in cases involving a similar overall balance of factors. See, e.g., *Wheatland Electric Cooperative*, supra, slip op. at 3–4 (finding a community of interest based on wages and other terms and conditions of employment, functional integration, and contact); *Johnson Controls, Inc.*, 322 NLRB 669, 670–672 (1996) (finding that the petitioned-for employees share a community of interest where they "work together in the interrelated process of installing and servicing the [e]mployer's systems," "share common supervision in the

[e]mployer's service group," "are provided with vans and trucks," "and are required to wear uniforms"). Accordingly, the Staking Technicians may be appropriately included in the unit here, and the Regional Director did not err in directing that their ballots be opened and counted.

JAMES R. MUPRHY,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
SCOTT A. MAYER,	MEMBER

Dated, Washington, D.C., November 20, 2026.