

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD REGION 6**

PENNSYLVANIA GRAIN PROCESSING, INC.¹

Employer

and

Case 06-RC-264280

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL NO. 19**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petition in this matter was filed by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local No. 19 (Petitioner) under Section 9(c) of the National Labor Relations Act, as amended (the Act). Petitioner seeks to represent a production and maintenance unit of all full-time and regular part-time material handlers, production operators, maintenance technicians, instrumentation and electrical technicians (INE technicians), custodians, laboratory technicians and CMMS administrator/MAPCON coordinator employed by Pennsylvania Grain Processing, Inc. (the Employer)² at its Clearfield, Pennsylvania facility. The Employer maintains that the unit sought by Petitioner is not appropriate because laboratory technicians and CMMS administrator/MAPCON coordinator should be excluded from the unit, and the unit should include the drivers.

A hearing was held via videoconference in this matter on September 1, 2020³ before a hearing officer of the National Labor Relations Board and the parties subsequently filed briefs. As explained below, based on the record and relevant Board law, I find that the unit sought by Petitioner is appropriate.

Furthermore, I will address whether to direct a manual or mail-ballot election given the current extraordinary circumstances arising from the COVID-19 pandemic. Election details, including the type of election to be held, are nonlitigable matters left to the discretion of the Regional Director, but the parties were permitted to argue their positions as it relates to the

¹ The Employer's name appears as amended at the hearing by written stipulation.

² The parties stipulated, and I find, that the Employer is a Delaware limited liability company engaged in the operation of a corn processing facility in Clearfield, Pennsylvania. During the past calendar year, a representative period, the Employer, in conducting its business operation, sold goods and materials valued in excess of \$50,000 directly to customers located outside of the Commonwealth of Pennsylvania.

³ All dates herein are in 2020, unless specified otherwise.

mechanics of this election. For the reasons discussed below, I find that a manual-ballot election is appropriate.

A. STATEMENT OF FACTS

I. The Employer's Operation

a. The supervisory hierarchy

The Employer's facility is in Clearfield, Pennsylvania, within the County of Clearfield, a community with a population of about 6,000 residents. The Employer purchases corn and produces ethanol, wet and dry distiller grains, corn oil and CO₂. A total of 88 employees work at the facility. The corn is purchased in bulk based on weight. Kevin Baughman (Baughman) is the Employer's Plant Manager and is responsible for the plant's operation, including production, logistics and maintenance. There are four managers that report directly to Baughman: Production Manager Kent Daniels, Logistics Manager Erick Clark, Maintenance Manager Denny Owens, and Lab Manager Laura Handel.

Production Manager Kent Daniels has four shift supervisors that report to him. These shift supervisors oversee all production operators. Erick Clark, Logistics Manager, is responsible for the material handlers. The Employer's maintenance and INE techs, the CMMS Administrator/MAPCON Coordinator and custodian⁴ all report to Maintenance Manager Denny Owens. Lab Manager Handel oversees the laboratory technician. The truck drivers report to Gary Lyons, the Bulk Freight Coordinator.

b. Corn Processing Procedure

The Employer purchases corn in bulk, based on weight. The corn is transported to the Employer's plant by truck drivers. The truck drivers come into the facility through the guard shack. The incoming corn is tested for moisture content, foreign materials, bugs and mycotoxins⁵. The tests are performed before the corn is unloaded from the truck. The incoming corn is handled by the material handlers that take an initial test sample that they give to the laboratory technician for the mycotoxin testing. The corn kernels that the laboratory technician received from the material handlers for testing are whole and the laboratory technician grounds them down before performing the tests. Material handlers in turn test the corn for moisture, pests, foreign materials and test weigh. The mechanism used to test for moisture content is operated by a material handler. This mechanism puts a probe into the truckload to perform the testing. There is no interaction between the material handler and the truck driver during this procedure. The truck driver pulls under the probe and when the test is completed, the material handler switches a green light to let the driver know that the testing has been completed. The truck driver hands to the material handler

⁴ The parties stipulated, and I find, that the classification of maintenance custodian falls under the classification of production and maintenance and should be included in a unit found appropriate but does not need to be specifically mentioned as a separate classification.

⁵ A mold that grows in the corn and can be harmful at high levels.

paperwork required by the FDA Food and Safety Modernization Act (FSMA).⁶

Subsequently, the truck driver proceeds to one of the two scales in the plant in the receiving building. The security guard at the guard shack is responsible for informing the truck drivers of the scale that they will each use. The scale is also operated by a material handler who, using red and green lights, communicates with the truck driver to inform them when the weighing has been completed. Once they are given the green light, the driver dumps the load of corn in what is called the receiving pit or "hopper." After the load is dumped, the truck is weighed again before the driver departs. Plant Manager Baughman was not certain if after being weighed before departure the material handler hands any paperwork to the truck driver. The driver then may get some grain mash to deliver or finishes work for the day.

The material handlers convey the incoming corn into silos. Then, the production operator, known as the board operator, conveys the corn into the process building where it is mixed with water and enzymes to produce ethanol. The board operator seats in front of multiple screens to mix different ingredients. This is known as the cook process, where the corn is heated, mixed with water and enzymes, broken down into a simple sugar and fermenters are added. CO₂ and ethanol are created during this procedure. The cook operator is also involved in this process by adding the nutrients and enzymes to complete the recipe and taking samples of the fermenters and the solid to water ratio. The cook operator gathers and interprets these samples and shares them with the board operator. The board operator, who is controlling the tanks with ingredients and their levels, takes the data provided by the cook operator and makes the necessary adjustments to the recipe. The board operator also performs tests on the corn during the cooking procedure to ensure quality. Likewise, the laboratory technician performs some of the same testing done by the board operator to ensure quality. At times the laboratory technician receives help from the custodian in the performance of her duties. They both enter the results of their testing in a data management system called Firmcast. Laura Handel, the laboratory manager, reviews the information entered in Firmcast by the laboratory technician and board operator. After fermentation is done, the conversion from corn to ethanol is complete.

Once this conversion is complete, the process of separating the ethanol from the mash begins in order to produce all of the Employer's products. The ethanol is refined to the point where it meets regulated specifications by a procedure controlled by the board operator, while the distillation operator takes samples to ensure that it meets those standards. Once more, the board operator adjusts the procedures based on the data collected and interpreted, in this instance by the distillation operator. The mash that is separated is sent to the "energy center" where it is run through a centrifuge⁷ spinning out the water.

The energy center is controlled by the energy center operator. This center has boilers, centrifuges and driers. The energy center operator also takes samples and runs tests on them to determine moisture content to dry the distiller dried grains (DDG) and is responsible for the quality of the DDGs. There is also one water operator during the process that oversees the quality of the water coming from the river.

⁶ This rule establishes requirements for shippers, loaders, carriers by motor or rail vehicle, and receivers involved in transporting human and animal food to use sanitary practices to ensure the safety of that food. 21 CFR 1.

⁷ This word is incorrectly spelled in the transcript.

In every shift the Employer has one of each type of operator, i.e. board operator, water operator, cook operator, distillation operator and energy center operator. These duties are interchangeable among the operators; in other words, a production operator can work one day as a water operator and in another instance as an energy center operator. Additionally, during the Employer's receiving hours from 5:00 a.m. to 9:00 p.m., the Employer has one material handler on the probe and one in the receiving pit, although on occasion one can manage both areas. The material handlers also interchange between working in the probe and the receiving pit. During shift changes, the Employer holds shift change meetings in which production operators and material handlers participate. While maintenance employees do not participate in these meetings, Maintenance Manager Owen is present during the meeting. Proper operation of the facility requires that material handlers, production manager and maintenance employees communicate frequently.

The maintenance technicians and the INE technicians are responsible for the maintenance and repairs of the equipment used by the production operators and the material handlers during the operation describe above. The CMMS administrator is responsible for ensuring that all the ingredients necessary to produce ethanol are delivered to the facility.

c. Truck drivers

The Employer has 17 drivers working at its facility. Drivers perform different duties, some haul bulk grains, which is the incoming corn, and the outgoing DDGs⁸ and other haul tankers, which contain the corn oil and denaturant⁹. They must all have a valid class A commercial driver's license (CDL), and some of them are also required to have a hazmat endorsement to transport certain materials. The drivers report to Gary Lyons, Bulk Freight Operator. It is unclear if Lyons is employed by the Employer. Plant Manager Baughman testified that he did not know who employed Lyons and added that he could be employed by another company, Zeeland Freight Services, a company located in Zeeland, Michigan. In this regard, he explained that some of the trucks entering the facility have the Zeeland Freight Services logo on them, and that there is some common ownership between that freight company and the Employer, but he was not privy to those details.

In addition to the 17 truck drivers employed by the Employer, there are somewhere between 20 and 30 independent contractors that work as truck drivers for the Employer performing the same duties as the Employer's own truck drivers. Except for three or four truck drivers that report directly to the Employer's facility, the rest of the Employer's truck drivers and independent contractors report to an off-site or satellite location to get their trucks and begin their workday.

⁸ The acronym DDGs was not defined on the record. <https://www.ers.usda.gov/amber-waves/2019/october/dried-distillers-grains-ddgs-have-emerged-as-a-key-ethanol-coproduct/>.

⁹ Denaturant is defined by the U.S. Energy Information Administration as a "petroleum, typically pentanes plus or conventional motor gasoline, added to fuel ethanol to make it unfit for human consumption. Fuel ethanol is denatured, usually prior to transport from the ethanol production facility, by adding 2 to 5 volume percent denaturant." <https://www.eia.gov/tools/glossary/index.php?id=Denaturant#:~:text=Denaturant%3A%20Petroleum%2C%20typically%20pentanes%20plus,to%205%20volume%20percent%20denaturant>

The Employer's Plant Manager Baughman did not know the distance between the Employer's facility and the offsite area where the trucks are stored; he has never been to the site. He was also not aware as to whether the truck repair facility was adjacent to the satellite area where the trucks are stored or who repaired the trucks. Additionally, he was not aware of how truck drivers receive or are informed of their job assignments, how the Employer keeps track of their work hours, if they are considered exempt employees under the Federal Labor Standards Act, if they take lunch breaks or receive overtime pay. He had no knowledge of the type of ongoing training the truck drivers receive from the Employer.

Within the last eight years, Plant Manager Baughman could only name one material handler that transferred to a truck driver position, and later to an operator. He did not provide details on when these transfers occurred.

i. Bulk grain drivers

There are about 12 or 13 bulk grain drivers. These drivers go to the offsite location to get their trucks and perform a pre-trip inspection of the truck and trailer, and fuel up, if needed.

If the bulk driver is going to pick up DDGs at the Employer's facility, once they arrive at the facility, they go in through the guard shack to the receiving area. The security guard informs them which of the two scales they will have to drive up on. They are weighed in by the material handlers at the receiving area, and then they drive to the flat storage where material handlers use front-end loaders to load the material into the trailers. Upon completion, the bulk truck drivers go back to the receiving building where the truck is weighed again, they receive the bill of lading from the material handler and, finally, exit the facility through the guard shack. The bulk drivers also must give the material handlers their paperwork of their last haul, sweep out or wash out, in compliance with the FMSA.

If the bulk driver is hauling corn, he or she drives from the offsite location to a farm to pick up the corn to be loaded to their truck, and then they drive back to the Employer's plant. Once the driver arrives at the plant and stops at the guard shack, the security guards enters the load information, and then they drive to the receiving building to get their paperwork and off-load the corn into the pit. While in the receiving building the material handler takes a sample of the corn. After the driver finishes unloading the corn, the truck gets weighed again and then, the driver either drives to a farm to get another corn load or the driver gets DDGs from the material handlers. Generally, a driver can get two corn loads a day, but can only complete one DDG load a day because that requires further travel.

ii. Tanker drivers

1. Corn oil tanker drivers

The Employer has corn oil tanker trailers onsite. The Employer has two to three drivers for this haul. These truck drivers arrive at the facility in their personal car and perform the pre-trip inspection of the onsite truck. Subsequently, they drive the truck to either the receiving area to get weighed or to the "wet-take scale". The material handler directs the truck driver to the

appropriate scale to use for their lightweight, probably using a CB radio¹⁰. After the truck is weighed, the material handler informs "process" that the truck driver is coming. The truck driver moves to "process" for the loading of corn oil. A production operator connects the truck and starts loading. The operator monitors the tank level and when the loading is complete the operator shuts off and disconnects the truck. The truck is driven again to the scale for the heavyweight and to receive the paperwork and/or bill of lading, before leaving the facility.

2. Ethanol tanker drivers

The Employer also has two ethanol trucks on site. Typically, at the beginning of the day these trucks already have a load. The truck driver comes into the facility and performs a pre-trip inspection of the truck. If the truck has a load, the driver must off-load it. Otherwise, the driver would proceed to load ethanol. The drivers operate the equipment that off-loads the ethanol produced by the plant into the delivery trucks. Notwithstanding, when the truck driver is new, the material handlers explain to them the plant's safety procedures, the manner to introduce their load information into the system, and requirements for connecting. From that point forward, the drivers perform the procedure on their own.

The driver must place blocks in front of the truck tires, connect the product line or hose, a vapor recovery nose and a grounding or "scully." The system will not allow for loading to begin unless the driver properly makes all these connections. After the connections are completed, the truck driver inputs into the system the trucking company, load number and the number of gallons they want. Then, ethanol flows from the hose into the truck, and the driver disconnects everything after completion and signs the required paperwork.

Drivers that deliver denaturant go to an off-site destination to load the denaturant, and then return to the plant for off-loading. They contact the guard on their way in to inform him or her about their delivery and use the facility's rear entrance. Once inside, the material handler receives the paperwork from the driver and verifies that the load is correct. Then, the driver can off-load. In sum, the incoming ethanol truck brings denaturant, the outgoing truck is loaded with ethanol.

When drivers are inside the Employer's plant, they spend between one and two hours in line for the loading or off-loading depending on the truck line.

d. Laboratory technician

There is only one laboratory technician working at the facility. The laboratory technician works in an enclosed area where her primary function is to test the incoming corn for mycotoxin levels, reports if there are problems with the testing and enters the data into the computer system. She also prepares standards for equipment and checks the equipment in the laboratory, as well as reviews and writes standard operating procedures.¹¹ The lab tests that she performs are more technical than the tests performed by the production operators and material handlers. The

¹⁰ This is incorrectly spelled in the transcript.

¹¹ The record does not contain details or explanation about these additional duties of the lab tech.

laboratory manager will fill in for the laboratory technician when she is not working.

e. CMMS Administrator/MAPCON Coordinator

The Employer employs one CMMS administrator/MAPCON coordinator (referred herein as CMMS administrator). This employee reports to Denny Owens, the Maintenance Manager. The CMMS administrator's primary role is to maintain an inventory of parts at the facility. She procures and reorders new items, after getting competitive quotes, issues the purchase orders and receives parts. The inventory of parts and the issuance of purchase orders is done using a software system called MAPCON. Work orders of maintenance techs are also issued and closed after completion by the CMMS administrator. She also maintains inventory of chemicals and orders office supplies.

Most of the work of the CMMS administrator is performed in a computer, therefore, recently she has been able to work remotely because of the COVID-19 pandemic. When unable to work, an administrative assistant fills in for the CMMS administrator.

f. Plant shutdown

The Employer closes twice a year in April and September for four to five days for maintenance purposes. During the shutdown, production operators, material handlers, and maintenance employees work double shifts. The CMMS administrator works with Maintenance Manager Owens, and Production Manager Daniels organizing work orders for the tasks to be performed, and she also issues purchase orders for the work performed by outside contractors during the shutdown. The truck drivers do not work during the shutdown, and Plant Manager Baughman does not know whether they are paid during the shutdown. The record is silent on whether the laboratory technician works during the shutdown.

II. Wages and Conditions of Employments, Skills and Qualifications

a. Job qualifications

The current laboratory technician and CMMS administrator each have a four-year degree. Notwithstanding, these positions do not require a four-year college degree. Rather, the CMMS administrator position requires a high school diploma or GED, and the laboratory technician position also requires a high school diploma, but prefers a BA/BS in chemical engineering, business administration, or a 4-year degree in a related discipline. The material handlers, maintenance technicians, production operators and truck drivers are also not required to have a 4-year college degree.

b. Work hours

i. Material handlers

Material handlers alternate between two shifts every two weeks from 5:00 a.m. to 1:00 p.m. and 1:00 p.m. to 9:00 p.m. In addition, there are some material handlers that work three 12-hour shifts one week, and then four 12-hour shifts the second week.

ii. Production operators

The production operators work three 12-hour shifts one week and four 12-hours shifts the following week.

iii. Maintenance techs and INE techs

There are three maintenance techs and the two INE techs that work Monday through Friday from 6:00 a.m. to 4:00 p.m. Two maintenance techs work from 2:00 p.m. to 12:00 midnight Monday to Friday.

iv. Laboratory technician and CMMS administrator

The laboratory technician and the CMMS administrator work Monday to Friday from 7:00 a.m. to 3:00 pm.

v. Truck Drivers

The record does not reflect information regarding the work hours of drivers.

c. Wages

Drivers are paid commissions based on the gross value of the truck's freight. Thus, the bigger the load, the more income the driver generates. If the driver is waiting because the truck broke down or is in maintenance, or the driver is participating in training, the Employer would pay them based on an hourly wage. Bulk Freight Coordinator Lyons would enter the drivers' time if they are going to be paid hourly. The record does not reflect the hourly pay rate paid to drivers in these situations. Also, Plant Manager Baughman did not know whether drivers were paid for overtime work performed, if any, or how the Employer recorded their hours of work.

The material handlers, operators and maintenance employees are all paid on an hourly basis and they receive overtime pay at a time and a half of their hourly pay rate. The record does not reflect the hourly rate of pay for these employees. The CMMS administrator and the laboratory technician are also hourly employees, but their rate of pay was not discussed on the record¹². All of these employees are required to punch the same time clock located at the Employer's facility in the process building.

d. Benefits and Other Terms and Conditions of Employment

Plant Manager Baughman explained that the employee handbook dated January 1, 2017, is applicable to all of the Employer's employees, including the Employer's truck drivers. The handbook includes information regarding policies, compensation, benefits, and employees' responsibilities.

The guide details the Employer benefits package offered to all its employees. Some of the

¹² The parties did not assert a significant discrepancy between the hourly pay of these classifications.

fringe benefits offered are medical insurance, life insurance, short- and long-term disability worker's compensation insurance, educational assistance, 401(k) savings plan, health savings account, and flexible spending account. The Employer also offers paid holidays, paid vacation, paid sick/personal days, bereavement leave, and military leave among others. The handbook also speaks to drug and alcohol use, drug testing, personal appearance, smoking, cellular phone policy, among other topics.

Material handlers and production operators receive performance reviews; the drivers do not receive one.¹³

The CMMS administrator and laboratory technician, production operators, material handlers and maintenance employees receive fire retardant uniforms, and they are required to wear them to work. The Employer uses a third party to launder the uniforms. Plant Manager Baughman explained that material handlers, maintenance employees and production operators each have a locker in a designated area where they receive their uniforms after they are laundered, and they can drop off their dirty laundry to be taken on a weekly basis. The truck drivers also receive uniforms, of similar color¹⁴, but these are not fire retardant and not all of them are required to use them. According to Baughman, the laundry service is also available to truck drivers, but he is not aware of any truck driver that uses the service. There was no reference to whether the CMMS administrator or the laboratory technician use the laundry service or if it is available to them for use. The Employer also offers a yearly \$100 boot allowance to material handlers, maintenance employees, production operators and truck drivers. There was no mention of whether the CMMS administrator and laboratory technician also receive this benefit.

All employees receive a voucher for a holiday ham, including the Employer's truck drivers. There is also a winter party for all employees and a bi-annual meeting held regarding the state of the business.

Material handlers participate in monthly safety training/meetings conducted over computers, except twice a year when this safety meeting is held at the Employer's training room. For the computer training, the Employer has designated computers within its facility for employees to do their training. All employees can use the computers for training, including the drivers, although Plant Manager Baughman indicated that he did not know what kind of training drivers received and whether it was the same that the rest of the employee had to take. Regarding the live meetings, production operators, maintenance technicians, the CMMS administrator and the lab technician also participate in these bi-yearly meetings with the material handlers. Plant Manager Baughman was evasive regarding the participation of truck drivers in these meetings by stating that they could attend the meetings, and that he did not participate in all meetings, therefore, he could not tell whether truck drivers attended the meetings. In response to questions from the hearing officer, Baughman stated that he did not know if safety meetings were held for truck drivers.

¹³ The record does not reflect whether the maintenance techs, INE techs, lab technician or CMMS administrator receive performance appraisals.

¹⁴ The record does not discuss the color of the uniforms.

The Employer also trains material handlers, production operators and maintenance technicians in the operation of rough terrain forklifts, eight-foot man lifts, 30-foot man lifts, scissor lifts and traditional industrial lifts, specific type equipment that is used in its operations. Drivers are not trained to use this equipment.

III. BOARD LAW

Where, as here, a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is necessary to apply the three-step analysis set forth in *The Boeing Company*, 368 NLRB No. 67 slip op. at 2 (2019): (1) whether the petitioned-for employees share an internal community of interest; (2) whether the petitioned-for employees are “sufficiently distinct” from the excluded employees; and (3) consideration of any industry-specific guidelines. Steps one and three of *Boeing*, the requirement that any appropriate unit have an internal community of interest, and that consideration must be given to the Board's decisions on appropriate units in the particular industry involved, reference broad principles that are generally applicable to unit determinations. Step two considers “whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit,” *ibid.* (internal quotations omitted.) “The relevant inquiry under the second step is whether the petitioned-for employees have a sufficiently distinct community of interest, not whether petitioned-for and excluded employees have *any* community of interest.” *Audio Visual Services Group*, 05-RC-232347, fn. 1 (February 26, 2020) (Unpublished order).

To assess community of interest, the Board considers its traditional factors, such as whether employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work (including job overlap between classifications); are functionally integrated with other employees; have interchange and frequent contact with other employees; have distinct terms and conditions of employment; and separate supervision. *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), slip op. at 11 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). *Accord Boeing Co.*, 368 NLRB No. 67, slip op. at 3. No one factor is dispositive. *Id.*

IV. Application of Board Law to the Facts of the Case

a. The petitioned-for unit employees share a community of interest sufficiently distinct from the truck drivers to constitute an appropriate unit.

The job duties of the material handlers, production operators, maintenance technicians, custodian, CMMS administrator and laboratory technician focus on the production of the ethanol and its byproducts. They are functionally integrated as they work as a cohesive unit to complete the production of the Employer's main product. They all report to work at the same facility and punch at the same timeclock, are paid on an hourly basis, are provided and required to use the same fire-retardant uniforms, are subject to the same employee handbook, work rules, and safety training requirements and undergo training together, are subject to performance appraisals and receive the same fringe benefits, including a holiday voucher for a ham. They also share overall common supervision as Plant Manager Baughman oversees the work performed by all

of the petitioned for unit employees and is not involved in overseeing the work of the drivers. Specifically, the first line supervisors who directly supervise the work of the petitioned for unit employees report directly to Plant Manager Baughman while the drivers are supervised by ... Gary Lyons, the Bulk Freight Coordinator and the record is not clear as to whether Lyons reports to Plant Manager Baughman.

Although the individuals who presently occupy the positions of the CMMS administrator and laboratory technician each have a 4-year degree, the Employer only requires a high school education, much like for the positions of material handler, production operator, maintenance technician, and custodian. The INE technician is the only classification that, in addition to the high school diploma, or equivalent, the Employer also requires an associate degree.

Additionally, the material handlers, production operators, and maintenance employees are all trained on how to operate rough terrain forklifts, man lifts, scissor lifts and traditional industrial lifts. Production operators, maintenance technicians and material handlers receive a \$100 year allowance for boots. It is unclear whether the laboratory technician and CMMS administrator also receive this benefit, as the record is silent about this benefit with respect to them.

• Proper operation of the facility requires that material handlers, the production operators and maintenance employees communicate frequently. Material handlers and production operators participate alongside the maintenance manager in shift change meetings every day to discuss issues regarding production. Because maintenance technicians are responsible for the upkeep and repair of the machines being used, they communicate frequently with material handlers and the operators.

The laboratory technician performs functions closely allied to the production process. The tests she does are also performed by the production operator, and they both enter the test results in the same data management system, Firmcast, which is reviewed by the laboratory manager. The laboratory technician also receives some of her test samples from the material handlers, such as the sample for mycotoxins. On occasion, when there is a need, the custodian would help the laboratory technician in the performance of her duties. Additionally, the material handlers, like production operators and the laboratory technician, are responsible for performing tests on the corn. Thus, not only does the laboratory technician have daily contact with the material handlers, production operators and a maintenance employee who helps her in her job duties, but also her duties overlap with those of the production operator and the material handlers. Also, as previously mentioned, they share the same fringe benefits, subject to the same rules, punch the same timeclock, receive the same training and wear the same uniform as the rest of the employees in the unit.

In *Electronic Research Company*, 214 NLRB 587 (1974), the petitioning labor organization was seeking to represent a broad unit combining production and maintenance employees and technicians. The Board noted that although the technicians worked in areas isolated from the production and maintenance employees, all performed functions which were closely related to the production process and most of their time they were adjacent to the production areas and had common working conditions. In *Dewey Portland Cement Co.*, 137 NLRB 944 (1962), the employer argued that the laboratory technicians were technical employees, and as such should

be excluded from the production and maintenance unit. The Board found that their primary function was to conduct tests of the product's quality, and in so doing, they took samples from employees in the production area. They reported the results of their findings to the plant chemist for further action. The Board held that the tests they performed were highly repetitive and routine, and that since the job classification required no special training or educational background, the laboratory technicians were not technical employees, but rather production and maintenance workers, and included them in the unit. In this case, the record evidence shows that the lab technicians have a strong community of interest with the rest of the employees in the petitioned-for unit and should therefore be included in the same unit. See *Sheffield Corp.*, 134 NLRB 1101 (1961) (overruling *Litton Industries of Maryland, Incorporated*, 125 NLRB, 722, concerning the automatic removal from a production and a maintenance unit of technical employees and held that the placement of technical employees would be determined upon an analysis of their community of interest with other employees.). See also *Dynallectron Corp.*, 231 NLRB 1147 (1977), *Airesearch Mfg. Co. of Arizona*, 137 NLRB 632 (1962).

The CMMS administrator performs plant clerical functions directly relating to the production of the Employer's products. Her work is critical to the entire Employer's manufacturing process since she maintains the inventory of parts and chemicals necessary to produce the Employer's finished products. She has her office in the same facility and is supervised by the maintenance manager, who also supervises the maintenance and INE technicians. As previously mentioned, the record indicates she is also an hourly employee, and enjoys the same fringe benefits as the regular production and maintenance employees, participates in the same training meetings, and wears the same uniform. Thus, she should be included in the production and maintenance unit.¹⁵ In *Ulrich Manufacturing Co.*, 127 NLRB 239, the Board found an inventory control clerk that worked in the plant building in an office partitioned from the main production area to be part of the production and maintenance unit. The clerk was responsible for assisting in the preparation of purchase requisitions and check inventories. Although the employee spent most of the time at his desk, the Board found it to be a plant clerical employee and included it in the overall production and maintenance unit. See also *Mead-Atlanta Paper Company*, 123 NLRB 306- 308 (1959); *Girton Mfg. Co., Inc.*, 129NLRB 656 (1960).

There are some differences among the classifications in the petitioned-for unit. The work hours of each classification vary, except for the laboratory technician and the CMMS administrator who share the same work hours of 7:00 a.m. to 3:00 p.m. The production operators, material handlers, laboratory technician, maintenance technicians and CMMS administrator each report to different first line supervisors. Also, the CMMS administrator works primarily by herself in an enclosed office. Notwithstanding, these differences do not outweigh the community of interests shared by these employees. For the most part they share identical terms and conditions of employment, have frequent daily contact with each other, share common supervision at the plant manager level, and they have, in some instances, similar job functions, belong to the same overall department, and they have a high degree of functional integration.

¹⁵ Moreover, excluding the lab technician classification from the bargaining unit would deprive that employee of the rights to collective bargaining as it would constitute a residual unit of one employee. The same could arguably be said for the CMMS administrator.

b. The petitioned-for employees are “sufficiently distinct” from the truck drivers

It is undisputed that the production and maintenance employees have distinct job duties from the truck drivers. The production and maintenance employees petitioned for by the Union are engaged in the production and manufacturing of the Employer’s products, while the truck drivers are engaged in the transportation of those products. The production and maintenance employees perform their job duties at the Employer’s plant where they report every day, unlike the truck drivers that spend part of their workdays driving and most of them report to an off-site location. None of the truck drivers perform the duties of the production and maintenance employees. The drivers are required to have a CDL driver’s license and are paid commission based on the weight of the freight. Because their job functions are so different, they have little to no contact with the production and maintenance employees. In this regard, the truck driver’s direct interaction with the material handlers is limited to the exchange of documents. Other instances of limited interaction are when the production operator connects a hose to the trucks for the loading of corn oil, and when a truck driver is picking up ethanol for the first time and the material handlers explains to them the procedure for the off-loading. *See Elec. Data Sys Corp. v. NLRB*, 938 F.2d 570, 574 (5th Cir. 1991) (“sporadic” contact and interchange with other employees may support separate unit); *Inverrary Country Club, Inc.*, 251 NLRB 1143, 1145 (1980) (same); *Courier Dispatch Grp.*, 311 NLRB 728, 732 (1993) (limited and ambiguous evidence of employee interchange does not compel conclusion “that the separate identity of the petitioned-for unit has been negated”).

There is no evidence of interchange between the production and maintenance employees and the truck drivers. Interchangeability refers to temporary work assignments or transfers between two groups of employees. Truck drivers do not receive the training on how to operate forklifts and the other lifts that members of the production and maintenance unit receive. The evidence of permanent transfers into and out of truck driving classification is similarly limited to only one instance in eight years.

Truck drivers share company policies and other terms and conditions with the production and maintenance employees, but the overall similarities between the two groups’ terms and conditions of employment are offset by the truck drivers’ significant and distinct method of remuneration as compared to the rest of the production and maintenance employees. *See Rhino Northwest*, 867 F.3d at 102-03 (2017) (significant difference in applicable wage range and use of different equipment supports appropriateness of separate unit); *United Operations*, 338 NLRB at 125 (2002) (hourly wage differential of \$5 sufficient to establish different terms and conditions of employment); *accord Hilton Hotel Corp.*, 287 NLRB 359, 359 (1987).

The uniform used by the production and maintenance employees is different from the one used by the truck drivers, and unlike the truck drivers, the production and maintenance employees are required to use the uniform. Also, distinct from the production and maintenance employees, the drivers do not receive performance reviews, and do not participate in the Employer’s shutdown activities.

Moreover, the Employer’s Plant Manager Baughman admitted that he does not know the details of the day-to-day work of drivers. He was not sure whether the truck drivers’ direct

supervisor is employed by the Employer. He was also did not know the location of the offsite facility where most of the Employer's trucks are stored or the distance between the Employer's facility and this offsite facility.

In sum, having compared the production and maintenance employees' interests to those of the excluded truck drivers, the differences between the two groups outweigh the commonalities. Specifically, as just described, the drivers use different equipment than most of the production and maintenance employees to perform their job, the work performed is primarily outside of the plant driving, the compensation system is different, there is a possibility that the truck driver's direct supervisor is not an employee of the Employer, the functional integration present among the production and maintenance employees is not shared with the truck drivers and their central job responsibility is different.

c. Industry specific guidelines

The Board in *Boeing* specifically held that there are no industry-specific guidelines applicable in manufacturing plants and refused to adopt the employer's contention that the Board has established a presumption in favor of a plantwide unit for integrated manufacturing facilities that must be rebutted by a union seeking a smaller unit. It added that it was cognizant that a plantwide unit has been found to be presumptively appropriate under the Act, and therefore, a community interest inherently exists among such employees, citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (refusing to sever truck drivers from existing production and maintenance unit). But concluded that neither "*Kalamazoo Paper Box* nor any other case establishes that a less-than-plantwide manufacturing unit is presumptively inappropriate, or that a petitioner seeking such a unit bears any heightened burden of proving that it is appropriate." *Boeing Co.*, 368 NLRB No. 67, slip op. at 6.

Based on substantial evidence in the record, I find that the production operators, material handlers, maintenance technicians, INE technicians, custodians, CMMS administrator and laboratory technician share a community of interest amongst themselves, and their shared interests are sufficiently distinct from the interests of the excluded truck drivers. No established industry standard compels rejection of the unit as petitioned.

B. Type of Election Manual or Mail

The determination over the method of election rests within the sole discretion of the Regional Director, and therefore, it was not an issue subject to litigation. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228 and Section 11301.2. However, as previously mentioned, the positions of the parties were solicited during the hearing in order to aid the Regional Director in deciding the mode of the election. The Employer requested a manual election. The Petitioner did not express a preference and deferred to the exercise of my discretion. For the reasons set forth below I will conduct this election by manual ballot. The specific election arrangements will be contained in the Notice of Election which will issue subsequent to this Decision and Direction of Election and after further consultation with the parties.

I take administrative notice of, the pandemic health situation that currently exists in the United States, and continues to affect the way that individuals, businesses, organizations, and

governments conduct their daily operations. The virus that causes COVID-19 is infecting people and spreading easily from person-to-person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. On March 13, President Donald Trump proclaimed that the COVID-19 outbreak in the United States constituted a national emergency. I am cognizant that this situation poses a serious public health risk.

On April 20, Pennsylvania Governor Tom Wolf announced a plan for the phased reopening and easing of restrictions using a system of colored phases – red, yellow, and green – to apply to individual counties as they reached milestones in lowering their incidence of positive cases.¹⁶ To date, all Pennsylvania counties have moved into the “green phase” of reopening. Under that phase, all businesses must continue to adhere to both CDC and Pennsylvania Department of Health guidance.

Pennsylvania currently has about 155,000 confirmed COVID-19 cases and about 8,049 deaths. However, Clearfield County, where the Employer’s facility is located, has accounted for only about 308 of those of those confirmed cases and two of those deaths.¹⁷ The Employer has been operating throughout the pandemic, and none of its employees have yet tested positive for COVID-19. The Employer establishes that it can meet every guideline suggested by the General Counsel in Memorandum 20-10 regarding conducting manual elections amidst the current pandemic.¹⁸ It has a large 20 x 30 conference room with separate entry and exit doors that allows for social distancing. It will install plexiglass barriers to separate the Board Agent and observers from voters and each other, and will make available masks, hand sanitizer, gloves, and disinfectant wipes. Finally, because it is considered critical infrastructure, employees report to work at the facility.

I have considered the accommodations and arrangements offered by the Employer, and the small number of cases in the county where the Employer’s facility is located, and the parties’ positions, in finding that a manual election is appropriate.

CONCLUSION

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.
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.

¹⁶ <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>

¹⁷ This information is current as of September 19.

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

¹⁸ *Suggested Manual Election Protocols.*

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:

Including: All full-time and regular part-time material handlers, production operators, maintenance technicians, instrumentation and electrical technicians (INE technicians), laboratory technicians and CMMS administrator/MAPCON coordinators employed by the Employer at its Clearfield, Pennsylvania facility.

Excluding: All other employees, truck drivers, office clerical employees, professional employees, guards and supervisors as defined under 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 Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local No. 19.

A. Election Details

The election will be held on a date and at a time to be determined in the conference room at the Employer's facility. These election arrangements will be contained in the Notice of Election which will issue separately following the issuance of this Decision and Direction of Election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **September 12, 2020**, 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; (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, 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 **September 25, 2020**. 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, which will issue separately and 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.

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: September 23, 2020

/s/ Nancy Wilson

Nancy Wilson Regional Director
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