

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

In the Matter of

KAYEM FOODS, INC.

Employer

and

LOCAL 1445, UNITED FOOD AND
COMMERCIAL WORKERS UNION, AFL-CIO

Petitioner¹

Case 1-RC-21508

DECISION AND DIRECTION OF ELECTION²

Local 1445, United Food and Commercial Workers Union, AFL-CIO (Union) filed the petition in this matter, in which it seeks to represent a bargaining unit of production, maintenance, and warehouse employees employed at Kayem Foods' Chelsea, Massachusetts plant. Kayem maintains that the smallest appropriate unit must also include the production, maintenance, and warehouse employees at its Woburn, Massachusetts facility. Kayem asserts that the team leaders and assistant supervisors at each plant should be excluded as statutory supervisors, while the Union asserts that they

¹ The Petitioner's name appears as amended at the hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 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 in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 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.

should be included as nonsupervisory employees. Finally, Kayem seeks to include quality control technicians, a research and development coordinator, and a safety coordinator in the unit, all of whom the Union seeks to exclude.³

I find that Kayem has failed to overcome the presumption that a single-plant unit is appropriate and shall direct an election in a unit limited to employees at the Chelsea facility. I find that the team leaders and assistant supervisors are nonsupervisory employees who shall be included in the unit. I conclude that the quality assurance technicians, research and development coordinator, and safety coordinator do not share a sufficient community of interest with the petitioned-for unit to require their inclusion in the unit.

Appropriateness of the petitioned-for single-location unit⁴

³ The Union also seeks to exclude production schedulers and industrial engineers. Kayem does not appear to take issue with these exclusions.

⁴ I note that I have issued Decisions in three prior representation cases involving Kayem in the last few years. In 1997, Teamsters Local 25 filed a petition in Case 1-RC-20668, in which it sought to represent a unit of drivers at the Chelsea location. I found that a unit limited to the Chelsea location was appropriate, notwithstanding Kayem's position that the smallest appropriate unit must include its facilities in Chelsea, Springfield, and Woburn, Massachusetts and Portland, Maine and that certain other classifications must be included in the unit. The Board denied the Employer's Request for Review.

In 1999, the UFCW, the petitioner here, sought an election among Kayem's production, maintenance, and warehouse employees in Chelsea in Case 1-RC-20985. Kayem did not contest the appropriateness of a single-location unit at that time, but the parties disputed the unit placement of a number of positions, including the quality control employees, ISO employees, and manufacturing engineer, whom Kayem sought to include. The Board subsequently denied Kayem's Request for Review of my Decision, but noted that there was a substantial issue with respect to my decision to exclude the quality control employees, ISO employees, and manufacturing engineer and amended the Decision to permit them to vote subject to challenge. I take administrative notice of the fact that the Union lost the election that was subsequently conducted in the unit found appropriate and that the status of the quality control and ISO employees was never resolved through the challenge process.

In 2000, the Union filed a petition in Case 1-RC-21243 in which it again sought to represent the production, maintenance, and warehouse employees in Chelsea. In that case, Kayem took the position that the smallest appropriate unit was a multi-location unit including the Chelsea and Woburn plants, and it again sought to include, among other employees, the quality control and ISO employees. I found that the petitioned-for single-location unit was appropriate and again determined to exclude the quality control and ISO employees. I take administrative notice of the Board's Order in Case 1-RC-21243, in which it found that Kayem's Request for Review of my Decision raised a substantial question solely with respect to my exclusion of the quality control employees and concluded again, however, that the issue would be best resolved through use of the challenge procedure. I also take administrative notice of the fact that the Board denied Kayem's Request for Review of my determination to approve a single-location unit. Kayem did

Kayem is engaged in the production and distribution of deli meats and related food products to warehouses and stores throughout New England. Its headquarters and primary production facility is located in Chelsea, Massachusetts. It also operates a plant in Woburn, Massachusetts, about 14 to 15 miles away, sometimes referred to as the Genoa Sausage plant.⁵ The Chelsea plant produces items such as cooked sausage, hot dogs, roast beef, pastrami, salamis, bologna, and spiral hams. The Woburn plant primarily produces fresh (uncooked) Italian-style sausage. There are approximately 440 individuals employed at the Chelsea plant, including 285 to 290 in production and 45 in the warehouse. There are 130 individuals employed at the Woburn plant, including 118 in production and five in the warehouse.⁶

Kayem's corporate officers and Board of Directors continue to govern both the Woburn and Chelsea plants. Ray Monkiewicz is the president of Kayem. Vice President of Operations John Gary, who reports to Monkiewicz, is responsible for manufacturing operations in both Chelsea and Woburn.⁷ There are several layers of supervisors and managers at both facilities. In Chelsea, Peter Monkiewicz, vice president of manufacturing/first shift production manager, reports to Gary, and Thad Tomaszewski, second shift production manager, reports to Peter Monkiewicz. Supervisors of the facility's various departments report, in turn, to Peter Monkiewicz and Tomaszewski.⁸ The supervisors oversee team leaders, who oversee the production employees. Warehouse/Distribution Manager Will Cleary, who reports to Gary, heads the warehouse operation. Supervisors for the first, second, and third shifts report to Cleary, and each shift supervisor has an assistant supervisor who oversees the warehouse workers.

not seek review of my determination to exclude the ISO employees. I take administrative notice of the fact that the Union lost the election that was subsequently conducted in the unit found appropriate and that the challenged ballots were not determinative, so that the status of the quality control employees was never resolved through the challenge process.

The record in Cases 1-RC-20985 and 1-RC-21243, my Decisions in the three earlier cases, and the Board's Order in Case 1-RC-20985, were incorporated into the record in this matter.

⁵ The facts regarding general operations at the two facilities and the duties of the production, maintenance, and warehouse employees remain the same and were amply set forth in the two earlier decisions involving this group of petitioned-for employees. Copies of those decisions are attached. I shall not reiterate those facts in detail, except to note any significant changes since my last Decision issued on October 27, 2000.

⁶ These figures include managers and supervisors. Kayem no longer employs seasonal employees, as was the case at the time of the last hearing in 2000. It does employ some temporary employees from an agency.

⁷ Gary has held this position since December 2000. Prior to his arrival at Kayem, manufacturing managers reported directly to the president.

⁸ These departments are CT kitchen/slicing, muscle meat/smokehouse, pizza/slicing, kitchen, packing, and sanitation.

Maintenance supervisor Alonso Munera reports directly to Gary and supervises the maintenance mechanics.

In Woburn, the highest authority is Vice President Mike Monkiewicz. He reports to John Lunde, the vice president of sales and marketing, whose office is in Chelsea. Plant Manager Ted Stopyra, who is responsible for the production and maintenance employees, reports to Gary. A first shift production supervisor, second shift production supervisor, and third shift sanitation supervisor report to Stopyra. Various team leaders report to the production supervisors, and the team leaders oversee the production workers. First shift supervisor Peter Szwarc, who reports to General Manager Jack Sullivan and oversees the first shift warehouse workers, heads warehouse operations. A team leader on the second shift reports to Szwarc and oversees the second shift warehouse workers. Maintenance supervisor Jeff Brooks, who reports to Stopyra, oversees the maintenance mechanics. Vice President of Operations Gary testified that he visits Woburn every seven or eight days. He communicates with Stopyra, the Woburn plant manager, daily and with Sullivan about once a week regarding matters such as production, meat purchasing, and scheduling.

Quality Assurance Manager Jon Trelfa is responsible for quality assurance in both plants. Various quality assurance technicians in Chelsea report to him. In Woburn, Quality Assurance Supervisor Cynthia Marchand has a dual reporting relationship to both Trelfa in Chelsea and to General Manager Jack Sullivan in Woburn. Two quality assurance technicians report to Marchand.

The production, maintenance, and warehouse classifications and the duties associated with the positions remain the same as set forth in my 2000 Decision, with the exception that there is a new classification called CT high tech operator in Chelsea.⁹ With regard to integration between the two facilities, the record reveals that employees who work in the spice room in Chelsea weigh, bag, and label spices that are used in production in both Chelsea and Woburn, as Woburn has no spice department. Kayem has a broker that handles sales of the products made at both plants. Carl Colson, director of procurement, negotiates contracts for the purchase of materials such as meat, spices, packaging supplies, and boxes for both plants, although Woburn has its own buyer who takes inventory and calls vendors to reorder products for Woburn. Kayem has a computer network that connects the two sites and is maintained by Kayem's information technology department in Chelsea. Two drivers based in Woburn drive back and forth between the two plants multiple times a day. The mechanics at the two facilities continue

⁹ As noted in the 2000 Decision, Chelsea has some positions that do not exist in Woburn, i.e., class 2 and class 3 sanitation, pickle mixer, smoker, and, now CT high tech operator. Woburn has the unique position of stuffer. Pay is generally similar between the two facilities, although employees in certain classifications in Chelsea continue to earn \$.20 per hour more than those in the same classifications in Woburn after 24 months of service, due to a difference in the profit margins between the plants.

to run parts back and forth between the two facilities and to assist each other in working on equipment with the same frequency as they did at the time of the last hearing.¹⁰

The human resources department located in Chelsea services both facilities. Personnel records for Woburn employees are maintained in Chelsea. Human Resources Specialist Wendy Hernandez does recruiting for both facilities, although the supervisors at each plant interview applicants and make final hiring decisions.¹¹ New hires from both facilities attend a monthly benefits orientation held in Chelsea and receive the same employee handbook. Employee Relations Specialist Sarah Gemba mediates employee problems at both sites and rechecks I-9 documentation for employees at both sites. Twice weekly she visits Woburn, where she has a desk and workstation. At least once a week, one or two Woburn employees go to Chelsea regarding such matters as payroll or benefits. Human Resources Generalist Anna Cruz visits Woburn about twice a month to meet with employees regarding workers compensation cases or benefits. Since 2000, Kayem has changed its policy of permitting supervisors to handle discharges on their own. The human resources department must now approve all discharges at both sites and has requested supervisors to consult the department with respect to suspensions, as well.

Employees in Woburn and Chelsea are eligible to apply for transfers between the two facilities.¹² Since the last hearing, five rank and file production employees from Woburn have successfully applied for a permanent transfer to a production position in Chelsea.¹³ In addition, since the last hearing, there have been 14 openings for bargaining unit positions in Chelsea for which Woburn employees applied unsuccessfully.¹⁴ There

¹⁰ At the last hearing, Stopyra testified that mechanics from Woburn had gone to Chelsea to look for equipment or work on equipment less than a dozen times over the previous couple of years, that he could think of only one instance in the last six months when a Woburn mechanic visited Chelsea and that it was for the purpose of looking for a part, and that all of the maintenance of Woburn equipment is done by Woburn mechanics.

¹¹ As further discussed below, the supervisors at each plant are responsible for completing 30-day and 60-day evaluations of new employees.

¹² Hernandez posts all Chelsea and Woburn openings at both sites and conducts interviews at both sites.

¹³ These are Blanca Martinez, Pedro Mauricio, Carlos Pina, Cecilio Morales, and Juan Sanchez.

¹⁴ The unsuccessful applicants were Dunia Romero, Daisy Pointes, Julia Quanelis, Silvia Padilla, Jose Gonzalez, Olman Cruz, Gerardo Mejia, Pedro Mauricio, Daisy Portillo, Sadit Padilla, Cesar Reyes, Pedro Hernandez, Maria Figueiroa, Juan Sanchez, and Cecilio Morales. Some applied on more than one occasion. Three of them, Mauricio, Morales, and Sanchez were subsequently selected for other openings in Chelsea, as noted above.

Kayem also introduced evidence that four Woburn employees, at least three of whom if not all appear to have held non-bargaining unit positions, applied unsuccessfully for non-bargaining unit positions in Chelsea. Thus, a second shift production supervisor in Woburn applied to be a production supervisor in the muscle meat department in Chelsea. A buyer in Woburn applied to be a buyer in Chelsea. A warehouse supervisor in Woburn applied to be a food service sales

have been no transfers from Chelsea to Woburn, and no Chelsea employees have even applied for a transfer to Woburn since September 2000. All other factors being equal, seniority with the company is the determining factor in filling vacancies.¹⁵ Also since the last hearing, a Woburn employee who had been out on worker's compensation began to work at a light duty position in Chelsea in order to ease her back into work. A Chelsea employee who needs light duty would not be sent to Woburn.

One of the first shift quality assurance technicians in Chelsea is trained to work in Woburn and a second shift technician in Chelsea is about to be trained to cover for the absence of the second shift technician in Woburn. There is no evidence regarding the frequency with which they have been or will be sent to Woburn.

The Board has long held that a single-location unit is presumptively appropriate for collective bargaining. J&L Plate;¹⁶ Bowie Hall Trucking.¹⁷ The presumption in favor of a single-location unit can only be overcome "by a showing of functional integration so substantial as to negate the identity of the single facility." Bowie Hall Trucking.¹⁸ The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, skills and functions of employees, general working conditions, bargaining history, employee interchange, and geographic location of facilities in relation to each other." Bowie Hall Trucking.¹⁹ The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. J&L Plate.²⁰ Further, as the Board noted in Penn Color, Inc.²¹ the party seeking to overcome the presumptive appropriateness of a single-location unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

representative in Chelsea. David Lanzilli, a Woburn employee whose classification in Woburn was not indicated in the record applied to be controller/CFO in Woburn. I find transfers (or attempted transfers) between non-bargaining unit positions to be irrelevant to the issue of the community of interest between the production, maintenance, and warehouse employees at the two locations.

¹⁵ In the case of Woburn employees, Kayem uses their date of hire as their seniority date, even if the employees were hired before Kayem purchased the Woburn facility from the Genoa Sausage Company in 1997.

¹⁶ 310 NLRB 429 (1993).

¹⁷ 290 NLRB 41 (1988).

¹⁸ *Id.* at 42.

¹⁹ *Id.*, citing Sol's, 272 NLRB 621 (1984).

²⁰ *Supra* at 429.

²¹ 249 NLRB 1117, 1119 (1980).

I conclude that Kayem has once again failed to present evidence sufficient to overcome the presumption in favor of a single facility unit. In reaching this conclusion, I acknowledge that employees at the two facilities share common duties, skills, and hours. There is centralized labor relations in that employees at both sites receive the same pay and benefits and are subject to the same personnel policies. Personnel files are centrally located and a common human resources department handles recruiting and various other personnel functions for both facilities. The Board in Penn Color, however, assigned little weight to the fact that centralized higher management exercised significant control over the personnel policies and labor relations at all the locations in question and that personnel and payroll records were centralized for those locations. See also Neodata Product/Distribution,²² wherein the Board emphasized that common benefits and centralized direction of labor relations remain insufficient to rebut the finding of single facility appropriateness.

These factors are outweighed, moreover, by other more important factors. As before, there is common management only at the highest level; the production, maintenance, and warehouse employees at each plant continue to report to local shift supervisors and plant managers or production managers, who have the most immediate impact on their day-to-day working lives. The supervisors at each plant interview job applicants, make final hiring decisions, and perform evaluations of new employees. Although the human resources department must now approve all discharges at the two locations, the Board has found that factor insufficient to rebut the appropriateness of a single facility, and the supervisors are apparently still empowered to impose lesser discipline on their own.²³ Bowie Hall Trucking²⁴ (single facility appropriate where, although central management has the final authority with respect to hiring and major disciplinary decisions, the Eden terminal manager conducts the initial screening for new hires and is consulted with respect to major disciplinary decisions).

There have been only five permanent transfers from Woburn to Chelsea in the last two years and none from Chelsea to Woburn, a total number that is minimal given the size of the Chelsea plant and the two plants combined.²⁵ Further, the Board has found the

²² 312 NLRB 987, 989, n.6 (1993).

²³ I note that there is no evidence that the human resources department has ever overridden the decision of a plant manager to discharge an employee. Cf. Neodata Product/Distribution, supra at 989, finding a petitioned-for single-location unit inappropriate, where, *inter alia*, the personnel manager responsible for both sites who had to approve all discharges and disciplinary action testified that she had declined to follow a plant manager's recommendation to discipline or discharge an employee about 20 percent of the time.

²⁴ 290 NLRB 41, 43 (1988).

²⁵ I find the number of transfers to be insignificant even assuming that the 14 instances in which Woburn employees have unsuccessfully attempted to transfer to Chelsea over the last two years constitutes evidence of interchange.

significance of such interchange to be diminished where, as here, the transfers occur largely as a matter of employee convenience, i.e., they are voluntary. Red Lobster.²⁶ The amount of temporary interchange between the two plants, which the Board finds to be more meaningful than permanent interchange,²⁷ remains insignificant. Thus, the evidence shows that the mechanics from the two facilities continue to run parts back and forth between the two facilities and to assist each other in working on equipment with the same frequency as they did at the time of the last hearing, an amount of interchange the Board has already found to be insufficient. The only new evidence regarding temporary interchange is that two quality control technicians in Chelsea have been or will be trained to cover for absent quality control technicians in Woburn, but there is no evidence as to the frequency with which this has occurred or will occur.²⁸ There is no evidence of work-related contact between rank and file employees at the two plants other than attendance at a common orientation session for new hires.²⁹

Because the two plants produce different products, there is little functional integration between them. The only evidence of product integration between the two plants is that Chelsea employees prepare the spices used at both plants and a director of procurement negotiates contracts for the purchase of materials for both plants.³⁰ As in 2000, I find that distance of 14 to 15 miles between the two plants supports a finding that a single-location unit is appropriate. Red Lobster³¹ (13 restaurants not physically proximate where the average distance between them is seven miles and 11 are located within a radius of approximately 22 miles). In sum, I find, in accordance with my prior decisions and prior Board decisions concerning the petitioned-for unit, that the requested single-facility unit is an appropriate unit.

²⁶ 300 NLRB 908, 911 (1990).

²⁷ *Id.*

²⁸ At the time of the last hearing, a quality control technician from Chelsea had been temporarily assigned to cover for a Woburn quality control technician who was out on disability for a period of two weeks. That was the only instance in which Kayem had sent an employee from one facility to cover for an employee at the other facility in the previous three and a half years.

²⁹ Although two drivers drive back and forth between the two facilities multiple times per day, they are not in the petitioned-for unit.

³⁰ The Board has noted that it has found product integration to be a less significant factor than other types of integration in determining an appropriate bargaining unit. Lawson Mardon U.S.A., Inc., 332 NLRB No. 122, slip op. at 2 (2000).

³¹ *Supra* at 908.

Supervisory status of team leaders and assistant supervisors³²

The Chelsea plant employs about 21 team leaders, experienced production workers who oversee the production workers and report to the shift supervisors in the various departments. Each department has one to four team leaders on duty per shift, overseeing 12 to 32 production workers, depending on the department and the shift.

The team leaders are responsible for general oversight of the productivity of the production lines and the quality of the product. They make sure that the product meets specifications, which requires them to check hour by hour various requirements such as length, weight, color variation, label placement, and piece count. They spend about an hour a day completing production paperwork that documents productivity figures, temperatures, weights, scrap, waste, rework, and the like.

The supervisors determine the order in which work is done, which may depend on the work sent by the previous department, the availability of supplies, or the need to “wash down” the line between different types of products. The team leaders coordinate with the supervisors regarding what products will be produced and when, but have some discretion to determine the order in which batches will be produced, based on the number of items that need to be produced and the need for wash downs. The team leaders decide exactly how the product runs on the line and make sure that the lines are properly staffed, assigning employees from line to line as necessary. Production workers are usually rotated through the various jobs on their line daily for safety reasons and to avoid the problem of repetitive motion. If a department is short-staffed, Vice President of Manufacturing Peter Monkiewicz may ask a supervisor from another department to send a certain number of employees to that department. If the supervisor is not available,³³ the team leader may decide whom to send without approval from the supervisor. The team leaders select the employees to be reassigned based on skill level or knowledge of the position. Team leaders may stop operations in the event of a production problem to call in quality assurance, maintenance, or their supervisor, but that is something any employee may do as well.

Team leaders usually arrive 15 to 30 minutes earlier than the production workers to set up the lines and stay later to clean up the lines. Production workers usually take breaks within an established time, but team leaders may delay a scheduled break for 15 minutes if there is a little work left to do before a "changeover" to a new product, or they may send their crew on their break a few minutes early if they finish a run earlier than

³² I note that the parties stipulated to the inclusion of the team leaders and assistant supervisors at the last hearing. In light of my conclusion that a single-plant unit is appropriate, only the team leaders and assistant supervisors employed at the Chelsea plant will be considered.

³³ Shift supervisors spend 30 to 40 percent of their time out of the production area, checking raw materials, checking labels, checking finished goods, and attending production meetings. As noted above, supervisors also interview job applicants and make final hiring decisions.

expected. Team leaders may permit production workers to take unscheduled breaks, filling in for them as needed.

In the warehouse, the individuals who directly oversee the rank-and-file workers are called "assistant supervisors," although their role is similar to that of team leaders. The warehouse operates in three shifts. Each shift is staffed by a supervisor, assistant supervisor, and 10 to 19 receivers, order pickers, and high lift operators, depending on the shift. The warehouse workers receive products not manufactured in-house, such as cheeses and coffee, and they pick orders and load trucks. Assistant supervisors make sure that orders are picked at the right time for loading and check the orders for accuracy. They have some flexibility in deciding who will pick an order or the sequence in which routes will be picked, although the orders are prioritized based on when they are scheduled to ship. The assistant supervisors spend 60 to 80 percent of their time overseeing the warehouse employees. In the remaining time, they do productivity paperwork, check for shortages in orders, and assist in picking orders themselves. Like the team leaders, they have authority to delay a break if necessary to finish a task.

Supervisors ask for feedback from team leaders and assistant supervisors when completing 30-day and 60-day evaluations of new employees undergoing their probationary period. The evaluations are used for performance review and improvement and in connection with decisions to discharge probationary employees. Peter Monkewicz testified that production workers may also tell supervisors what they think about new employees and that the input of a team leader and another production worker has equal merit, although a supervisor is more likely to seek input from a team leader than a production worker when completing an evaluation. Team leaders may provide similar input to supervisors regarding the performance of temporary employees, who are sometimes hired subsequently as permanent employees. Monkewicz could not recall any particular instance in which a team leader's input regarding a temporary employee played a role in an offer to hire that person.

Team leaders and assistant supervisors have no authority to discipline employees. They discuss minor employee complaints and grievances but contact their supervisor or human resources for a matter that needs further attention. They train new employees, a task that is also performed by veteran employees. Team leaders and assistant supervisors fill in for absent supervisors, who may be entitled to anywhere from zero to four weeks vacation. They occasionally attend production or scheduling meetings in the place of absent supervisors. The supervisors are salaried, but the team leaders and assistant supervisors receive their usual hourly pay when they fill in for supervisors. The record does not reveal the frequency with which any given team leader fills in for a supervisor.

Although 60 to 70 percent of Kayem's employees speak limited English, team leaders and assistant supervisors are required to be able to speak English. They are included on a list of "responsible persons" that Kayem designates to the U.S.D.A. inspectors as employees with whom they may discuss concerns. Team leaders are paid hourly, as are the production employees. Their pay ranges from \$11.35 to \$14.80 per

hour, while production workers' pay ranges from \$10.10 to \$13.80 per hour.³⁴ Team leaders receive the same benefits as all other employees. They wear the same color hats as production workers (blue, yellow, or red, depending on the area), while supervisors wear white hats. In the production areas, team leaders wear the same blue coats as supervisors, while, production and sanitation workers wear white coats. Assistant supervisors in the warehouse wear the same uniform as the warehouse workers, a blue jumpsuit.

Pursuant to Section 2(11) of the Act, the term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.³⁵ The status of a supervisor under the Act is determined by an individual’s duties, not by his title or job classification. New Fern Restorium Co.³⁶ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care, Inc.³⁷ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.³⁸

Kayem asserts that the team leaders and assistant supervisors are Section 2(11) supervisors by virtue of their authority to assign and direct the work of employees, their role in employee evaluations, and their role in filling in for absent supervisors. Kayem has failed to demonstrate that the team leaders’ role in assigning employees to lines or in directing their work requires sufficient independent judgment to confer supervisory status. At the outset, I note that team leaders report to supervisors who are themselves in the production area 60 to 70 percent of the time and are in other nearby areas in the plant the rest of the time. J.C. Brock Corp.³⁹ (lead line coordinator is not a supervisor, where she reports to production supervisors who spend a majority of their workday on or near the production area and can be easily paged if needed). It appears that the supervisors are primarily responsible for determining the order in which work is done. While team

³⁴ Production workers are paid an extra \$1.50 per hour when they fill in for team leaders.

³⁵ 273 NLRB 1677, 1689 (1985).

³⁶ 175 NLRB 871 (1969).

³⁷ 532 U.S. 706, 710-712 (2001).

³⁸ 308 NLRB 101, 102 (1992).

³⁹ 314 NLRB 157, 158 (1994).

leaders are responsible for assigning workers to the lines, the workers are usually rotated through the various jobs, and there is no evidence that the jobs require such disparate skills that the team leaders are required to use independent judgment in making such assignments. J.C. Brock Corp.⁴⁰ (lead line coordinator's authority to move employees to different positions on a production line without checking with her supervisor is a function of routine work judgment and not a function of authority to use the type of independent judgment required of a statutory supervisor). While assistant supervisors in the warehouse have some discretion to determine the order in which work is done, such discretion is too minimal to qualify as independent judgment, where the orders must be prioritized based on when they are scheduled to ship.

The team leaders' and assistant supervisors' authority to approve or delay standard break times by a few minutes or to permit occasional unscheduled breaks is too minor a power to confer supervisory status. Loyalhanna Care Center⁴¹ (authority to approve breaks is a routine clerical judgment that does not require the exercise of independent judgment); J.C. Brock Corp.⁴² (lead line coordinator who relieves production lines employees for bathroom or other short breaks by performing the relieved employee's job herself or finding another employee to do it is not a supervisor). Training is not a supervisory function and I note, in any event, that new workers are trained by veteran employees as well as by team leaders and assistant supervisors.

The team leaders' and assistant supervisors' role in providing input into the evaluations of probationary and temporary employees does not confer supervisory status in the absence of evidence that their input directly affects other employees' job status and that they have made recommendations in the evaluations that were followed without independent investigation by superiors. Vencor Hospital-Los Angeles⁴³ Children's Farm Home.⁴⁴ Here, there is no evidence that any team leader or assistant supervisor has ever made a recommendation to discharge a probationary employee or hire a temporary employee or that such a recommendation was followed by a superior without independent investigation. Testimony that they provide amorphous "input" into evaluations with no specifics falls far short of the quantum of evidence necessary to demonstrate statutory authority.

Kayem has failed to demonstrate that the team leaders' and assistant supervisors' role in filling in for absent supervisors confers supervisory authority. The appropriate test for determining the status of employees who substitute for supervisors is whether the

⁴⁰ Id.

⁴¹ 332 NLRB No. 86, slip op. at 3 (2000).

⁴² Supra at 158.

⁴³ 328 NLRB 1136, 1139 (1999).

⁴⁴ 324 NLRB 61 (1997).

part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks. St. Francis Medical Center-West.⁴⁵ I note that Kayem has failed to present any specific evidence with respect to the frequency with which any given team leader covers for an absent supervisor, other than generalized testimony that supervisors may be entitled to anywhere from zero to four weeks vacation. In any event, the Board has found that the sporadic assumption of supervisory duties during annual vacation periods of regular supervisors is not sufficient to establish supervisory status. St. Francis Medical Center-West.⁴⁶ Further, the fact that team leaders may occasionally attend production or scheduling meetings in the absence of supervisors does not demonstrate supervisory status, particularly where no personnel matters are discussed at such meetings. J.C. Brock Corp.⁴⁷

Finally, the facts that the team leaders and assistant supervisors are higher paid, that they are required to speak English, that they are listed as “responsible persons” for purposes of the U.S.D.A. inspectors, that they work slightly longer hours than the production workers, and that they wear the same color coats as supervisors⁴⁸ are merely secondary indicia which are insufficient by themselves to establish supervisory status where there is no evidence that these individuals possess one if the primary indicia of supervisory status. Ken-Crest Services.⁴⁹

Unit placement issues:

Quality assurance technicians

The quality assurance department, also known as quality control, is responsible for testing and inspecting products at various stages of production in order to ensure that the products meet both Kayem standards and government standards for food safety enforced by U.S.D.A. inspectors. The department in Chelsea currently consists of seven quality assurance technicians and a research and development coordinator, who are supervised by quality assurance manager Jon Trelfa.⁵⁰

The quality assurance technicians provide coverage at the plant 24 hours a day on shifts that overlap those of the production workers and third shift sanitation workers.

⁴⁵ 323 NLRB 1046 (1997), citing Aladdin Hotel, 270 NLRB 838, 840 (1984).

⁴⁶ *Id.*, citing Jakel Motors, 288 NLRBN 730 (1988).

⁴⁷ *Supra* at 160.

⁴⁸ I note, in any event, that the team leaders wear the same color hats as the production workers.

⁴⁹ 335 NLRB No. 63, slip op. at p. 3.

⁵⁰ Because I have determined that the bargaining unit will be limited to employees employed at the Chelsea plant, I need not consider the facts relating to the quality assurance technicians in Woburn.

They spend part of their day on the production floor and part of their day in the quality assurance lab, which is located on the first floor near the pizza room. The lab contains various pieces of technical analysis equipment, computers, and a filing area for production paperwork.

For the most part, the duties of the quality assurance technicians have not changed since the last Decision. Five of them spend 80 to 90 percent of their time on the production floor and the balance in the lab. They perform floor monitoring duties, which involves ensuring that production workers are following procedures and ensuring food safety by monitoring for room temperature, overhead moisture, cleanliness of the production floor, and contamination. They swab equipment, hands, and contact surfaces to test for bacteria. They interact with blender operators to make sure they understand how to read the formulas that dictate when certain ingredients should be added. Technician Scott Maclean is responsible for food safety in the smoke house where the food is cooked. He sets up electronic temperature-monitoring devices and gives them to the smoke house operators, telling them which products to monitor. The smoke house operators complete paperwork documenting product temperatures, and Maclean checks that the paperwork is done correctly. A new quality assurance technician, Rogelio Celis, works in a fat analysis laboratory that was built on the "raw" receiving dock last year. He analyzes the level of fat in samples of raw material with an analyzer in the lab.

Two quality assurance technicians spend less time on the production floor than the others. First shift technician Scot Maclean has been given some additional responsibilities in the lab since the last hearing. He is responsible for analyzing the fat, moisture, and salt content of finished products and raw materials and is responsible for certain food safety paperwork. He spends about 50 percent of his time on the production floor and the rest of his time in the lab, where much of the production paperwork is filed.⁵¹ Production employees visit him almost daily in the lab to review paperwork.

First shift technician Lynn Ramirez is responsible for the product formulations. She works at a computer in the lab, using the fat analysis results for raw materials and the quantity of meat available to create production formulas that comply with government standards for each type of product. She gives the formulas to the production employees for use in manufacturing. She spends 10 to 20 percent of her time on the production floor, where she may be called to change formulations or handle other small problems, and she also physically counts the inventories of meat on the floor. The rest of her time is spent in the lab.

Three of the quality assurance technicians perform daily pre-operational inspections, which they perform with four production employees. The inspections, which take one to two hours, involve reviewing formulations, reviewing the blender operators' paperwork, and ensuring the cleanliness of the production area. Trelfa testified that production employees used to act more as assistants in the pre-operational inspection

⁵¹ Production paperwork includes records such as raw material data sheets, records regarding the blending process, cook records, chill records, pack records, and shrink records.

process but are now directly responsible for “pre-op” paperwork and inspection of equipment. They report directly to production supervisors and “indirectly” to Trelfa with respect to pre-op procedures.

One of the quality assurance technicians, Ron Sikorski, is trained in spice room operations and performs spice "weigh-ups" if there is no spice room employee available early in the morning. He does this weekly. Three of the quality assurance technicians are on a call list for the warehouse to work as pallet jack operators, picking loads and loading trucks. The record does not reveal how often they are called to work in the warehouse. Celis, who works in a lab located on the raw receiving dock, helps the raw material receiver receive loads when he is inundated, working with a pallet jack. The record does not reveal how frequently this occurs. One of the second shift quality assurance technicians, Evelyn Lagos, helps to make labels for products and helps the smoke house operators daily to take product temperatures in order to assure that the products are fully cooked and properly chilled.

In my 2000 Decision, I noted that many of the quality assurance employees had previously held production positions. Of the three quality assurance technicians hired since then, one was previously a warehouse employee and two had not worked for Kayem previously. As noted in my 2000 Decision, quality assurance technicians are not required to possess an advanced or specialized degree. Quality assurance technicians are paid on an hourly basis, with pay ranging from \$10.10 to \$15.45 per hour, while the pay of the production, maintenance, and warehouse employees ranges from \$10.10 to \$14.80. The technicians wear white hats and blue coats while on the production floor, the same uniform that is worn by supervisors.

In my 2000 Decision, I excluded the quality assurance technicians from the unit, relying on Lundy Packing Co.⁵² In that case, the Board found that the quality control technicians did not “share such an overwhelming community of interest with the petitioned-for production and maintenance employees as to mandate their inclusion in the unit despite the [p]etitioner’s objections.”⁵³ The Board acknowledged that it has generally included quality control employees in production and maintenance units when a union has requested them and that a unit including these employees might also have been appropriate. In this regard, the quality control employees in Lundy Packing performed production-related functions, had some contact with unit employees, had similar benefits and holidays, were not required to have special education or training, and some were formerly employed in production positions. However, in light of the fact that the quality control employees were separately supervised, were paid differently, did not interchange with the production and maintenance employees, had generally different functions, and had insubstantial and irregular contact with the production and maintenance employees, and as no labor organization sought to represent a broader unit including the quality

⁵² 314 NLRB 1042 (1994), enf. denied 68 F.3d 1577 (4th Cir. 1995)

⁵³ Id. at 1043.

control employees,⁵⁴ the Board concluded that their inclusion in the unit was not required.

On appeal, the Fourth Circuit denied enforcement of the Board's order, faulting the Board for an unexplained departure from prior Board cases which, "in an effort to avoid workplace fragmentation...consistently included quality control personnel in P&M units."⁵⁵ It criticized the Board's finding that the quality control employees need not be included because they lacked an "overwhelming community of interest" with the petitioned-for employees. The court concluded that the Board had excluded them because the petitioner did not seek to represent them, in violation of Section 9(c)(5), which provides that the extent to which employees have organized shall not be controlling in unit determinations.

The Board, however, has long maintained that it is not bound by the decisions of the circuit courts except in the circuit where the case originated, unless the Supreme Court addresses the issue.⁵⁶ In a later case, Overnite Transportation Co.,⁵⁷ the Board addressed the Fourth Circuit's holding in Lundy Packing Co., expressing its disagreement with the court's conclusion that the quality control employees could not constitute a separate appropriate unit. It reiterated its declared policy to consider only whether the unit requested is an appropriate unit, even though it may not be the optimum or most appropriate unit for collective bargaining,⁵⁸ and stated its view that "...more than one unit may be appropriate among the employees of a particular enterprise."⁵⁹

I find that the unit placement of the quality assurance technicians is still governed by the Lundy Packing case and that the facts have not changed sufficiently since 2000 to warrant a different result. The quality assurance technicians are separately supervised.⁶⁰

⁵⁴ The Board noted that "in representation proceedings, the unit sought by the petitioner is always a relevant consideration." *Id.*

⁵⁵ 68 F.3d at 1582.

⁵⁶ Washington Nursing Home, 321 NLRB 366 (1966), citing Waco, Inc., 273 NLRB 746, 749 (1984); Iowa Beef Packers, 144 NLRB 615, 616 (1963).

⁵⁷ 322 NLRB 723, 725-726 (1996).

⁵⁸ *Id.* at 723. The Board also noted that the Supreme Court has held that Section 9(c)(5) does not prohibit the Board from considering extent of organization as one factor in unit determinations, so long as it is not the controlling factor. *Id.* at 724, citing NLRB v. Metropolitan Life Insurance Co., 380 U.S. 438, 441-442 (1965).

⁵⁹ *Id.* at 726.

⁶⁰ Four production employees report "indirectly" to Trelfa only with respect to "pre-op" procedures and directly to other production supervisors. The pre-op work represents a small part of their day, and there was no explanation as to the degree of Trelfa's authority over them.

As before, their work requires them to move through the production floor and to interact with employees on the production floor, but they generally perform different functions from the unit employees, such as testing for bacteria, setting up temperature-monitoring devices, analyzing fat content, creating production formulas on a computer, and checking food safety paperwork. Two of them spend a substantial amount of time away from the production floor in the lab - Maclean spends about 50 percent of his time there and Ramirez spends 80 to 90 percent of her time there. While there is now some temporary interchange, I find that it is not significant enough to alter the result. In this regard, one technician works in the spice room weekly and one technician helps production workers make labels and take product temperatures daily, but there is no evidence as to how much time they spend performing this work. Nor is there any evidence as to the frequency with which the three quality assurance technicians are called to work in the warehouse or the frequency with which Celis, the technician who works on the receiving dock, assists the receiver in receiving loads. The technicians wear different color lab coats and hats from the production employees. On balance, I find that the separate supervision and different nature of the work outweigh the facts that the quality assurance technicians have regular contact with the production workers, are not required to have special education or training, are paid a similar hourly rate,⁶¹ and receive the same benefits. Accordingly, I shall exclude them from the unit.

Research and development coordinator

In late 2000, after the last Decision and Direction of Election, Kayem created the position of research and development coordinator in the quality assurance department. The incumbent, Justin Nguyen, has held the job for two months and held no previous position at Kayem. He is responsible for testing products, ensuring that products meet labeling requirements, changing current product formulations, and developing new products. He attends design review meetings, where new products are introduced. He works with quality assurance technician Lynn Ramirez in formulating new products, which are sent to the production floor to be created. Nguyen works in the lab from 7 a.m. to 4:30 p.m. and has daily contact with the quality assurance technicians. His position calls for a college degree, although one of his predecessors had a college degree and one did not. Nguyen is a salaried employee. He wears the same white hat and blue coat as the other quality assurance technicians while on the production floor.

The research and development coordinator does not share a community of interest with the production, maintenance, and warehouse employees. He is separately supervised in the quality assurance department. Nguyen spends all of his time in the lab, away from the production floor, and there is no evidence that he has contact with production employees. He has different duties and skills from production, maintenance, and warehouse employees, and his job requires a college degree. He is a salaried employee, while the petitioned-for employees are hourly workers, and he wears a

⁶¹ I recognize that in Lundy Packing, unlike here, the quality control employees were paid differently from the production employees. I do not find this distinction important enough to warrant a different result.

different uniform from the production employees. Based upon the above, the research and development coordinator shall be excluded from the unit.

Safety coordinator

At the time of the last hearing in 2000, Kayem sought to include two ISO employees, Jean Langevin and Anna Cruz. Langevin was Kayem's ISO document control coordinator, but she spent about 90 percent of her working time on Kayem's safety program and only 10 percent on ISO duties.⁶² At that time, ISO work was performed by a separate ISO department, consisting of Langevin and Cruz, who both reported to John Martin, the supervisor of the ISO department. The ISO office was located in an area of administrative offices including human resources and payroll, and Langevin spent about 70 percent of her time in the ISO office handling paperwork and 30 percent of her time on the production floor. Langevin reported to Michelle Bustin in the Human Resources office with respect to her safety program duties, which involved reviewing OSHA requirements, putting together a safety program, and conducting safety meetings. In my October 27, 2000 Decision, I found that the ISO employees should be excluded from the unit because, although they spent some time on the production floor, their functions were not an integral part of the production process, their positions were administrative, and they spent the overwhelming majority of their time working in an office located in the administrative area of the Chelsea facility.

Since the last hearing, Kayem has eliminated the ISO department as such. Langevin's title is now "safety coordinator." She continues to perform both safety and ISO work but reports directly to John Gary. With respect to her ISO work, Kayem's supervisors are now responsible for their own ISO documentation. Langevin maintains a master list of ISO procedures and types updates to procedures. In her capacity as safety coordinator, Langevin posts safety signs and provides paperwork for the supervisors to complete when there is an injury or accident in the workplace. The supervisors, rather than Langevin, are responsible for investigating the circumstances of workplace injuries and accidents. Langevin has driven injured employees to the doctor or hospital. She spends some time on the production floor pointing out safety signs and dealing with accidents, but the current record does not reveal how much time. In the absence of new evidence, I will assume that Langevin continues to spend about 70 percent of her time in her office and 30 percent on the production floor. Langevin now has a desk and computer in the lab where the quality control employees work. She also serves as the safety coordinator for Woburn and visits there about once a week. She is paid a salary rather than an hourly rate like the petitioned-for employees.

I find no basis for deviating from my prior determination that Langevin does not share a community of interest with the production, maintenance, and warehouse employees. Although her title and reporting relationships have changed since 2000, it appears that her functions remain the same. Langevin's duties continue to be administrative in nature and are not an integral part of the production process. She

⁶² ISO is a quality system that involves documenting critical procedures so that the product produced meets customer specifications and expectations for quality.

spends the vast majority of her time working in an office rather than on the production floor. Unlike the petitioned-for employees, she reports directly to a very high-level manager and is paid on a salaried basis. Accordingly, safety coordinator Jean Langevin shall be excluded from the unit.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance, and warehouse employees employed at the Employer's Chelsea, Massachusetts facility, but excluding production schedulers, industrial engineer, quality assurance technicians, research and development coordinator, safety coordinator, professional employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, 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 employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Local 1445, United Food and Commercial Workers, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North

Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before July 17, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 24, 2002.

Paul Rickard, Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 3rd day of July 2002.

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