

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

TRANE, AN OPERATING UNIT OF
AMERICAN STANDARD COMPANIES

Employer¹

and

Case 14-RC-12421

LOCAL UNION NO. 562, UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

The Employer sells, installs, services, and maintains heating, ventilation, and air-conditioning systems (“HVAC”) and related parts. In addition to facilities around the country, the Employer has a St. Louis territory comprising operations at Fenton, Cape Girardeau, and Bridgeton, Missouri. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all HVAC field technicians and apprentices employed at the Employer’s Fenton, Missouri facility. A hearing officer of the Board held a hearing and the parties filed briefs with me.²

As evidenced at the hearing and in the briefs, the parties disagree on four issues:
(1) whether the unit must include both the Fenton and Cape Girardeau, Missouri facilities;

¹ The Employer’s name appears as amended at hearing.

² The Employer’s request for special leave to file a reply brief, opposed by the Petitioner, is denied.

(2) whether apprentice Jose Vazques should be excluded from the unit; (3) whether the warehouse coordinator/driver should be excluded from the unit; and (4) whether senior HVAC field technician Jim Witte and HVAC field technician Rich Mueller are supervisors within the meaning of Section 2(11) of the Act.

The Employer contends that the only appropriate unit consists of both the Fenton and Cape Girardeau facilities. The Petitioner seeks only the Fenton facility. The Petitioner also contends that apprentice Jose Vazques and warehouse coordinator/driver Tony Stabler should be excluded from the unit because those employees do not share a community of interest with the petitioned-for field technicians. The Petitioner further contends that technicians Jim Witte and Rich Mueller should be excluded from the unit because they are supervisors. The Employer contends that these four individuals should be included in the unit. The parties agree that the Bridgeton facility and its work force of parts employees should be excluded from any unit found appropriate.

I have considered the evidence and arguments presented by the parties on these issues. As discussed below, I have concluded that the single-facility unit is an appropriate unit; that apprentice Vazques shares a community of interest with the unit and is, therefore, included; and that Witte and Mueller are not supervisors and are also appropriately included in the unit. I further find that the record evidence is insufficient to accurately determine the placement of the warehouse coordinator/driver and I shall, therefore, allow Tony Stabler to vote subject to the Board's challenged ballot procedures.

I. OVERVIEW OF OPERATIONS

The Employer manufactures, installs, and services commercial and residential HVAC equipment throughout the United States and abroad. The Employer's three facilities located in Fenton, Cape Girardeau, and Bridgeton make up its St. Louis District

Sales Office Territory or “DSO.” The St. Louis DSO sells and services HVAC equipment for new construction projects, replacement, and repair. The Fenton facility is the main office and the largest of the three facilities. The Fenton facility occupies 35,000 square feet, including a 5,000 square foot warehouse as well as offices, training spaces, and meeting rooms. The Cape Girardeau facility occupies 1,000 square feet and includes offices and a small warehouse area. Both the Fenton and Cape Girardeau facilities handle HVAC installation, service, and maintenance. The Bridgeton facility consists solely of a warehouse and parts department.

The Employer employs approximately 85 employees at the Fenton facility, including various administrative, financial, sales, and managerial personnel. These personnel control sales, management, human resources, labor relations, and payroll for all three facilities. The actual installation and service work is performed by HVAC field technicians. The Fenton facility employs 1 senior HVAC field technician, 12 HVAC field technicians, and 3 HVAC field technician apprentices as well as the warehouse coordinator/driver. The Cape Girardeau facility employs a total of five employees: a salesperson, a senior HVAC field technician, two HVAC field technicians, and one HVAC field technician apprentice.

The district manager is responsible for the overall operations of the St. Louis DSO. The human resources manager is responsible for personnel at all three facilities and reports directly to the district manager. The St. Louis DSO service operations are the responsibility of the general operations manager. The general operations manager reports directly to the district manager and is the direct supervisor of all of the field technicians and the warehouse coordinator/driver. Until about January 10, 2003, these employees were directly supervised by the service supervisor. However, that position has been eliminated and those responsibilities assumed by the general operations manager.

The Fenton service operations cater to the Employer's customers in St. Louis and surrounding areas. The Cape Girardeau facility was established to serve customers located in that area. But for the different geographical areas primarily served by the Fenton and Cape Girardeau facilities, the HVAC field technicians and apprentices perform similar work on HVAC systems. However, the St. Louis area has more commercial work as well as more work volume in general.

The Fenton and Cape Girardeau HVAC field technicians have identical qualifications. All HVAC field technicians are required to have a commercial driver's license, a St. Louis County license, and a refrigeration certification that permits refrigeration recovery. The Employer has no formal apprentice program for the HVAC field apprentices, rather they receive on-the-job training as well as periodic training at the Fenton facility. Ascension from apprentice to field technician and, ultimately, to senior field technician is based on knowledge, skills, and experience. The primary determinant is experience. There is not a set or fixed time in which apprentices may advance to field technician status. Apprentices are often paired with service technicians so they may enhance their knowledge and proficiency. Apprentices and field technicians at the Fenton and Cape Girardeau facilities have varied HVAC experience and skills levels, and some field technicians, by virtue of experience with specific brand name equipment, offer unique capabilities. Senior HVAC field technicians do the same work as the other HVAC field technicians.

II. SCOPE OF THE UNIT

A. OVERVIEW OF APPLICABLE LAW

The single plant unit is presumptively appropriate. As the Petitioner seeks a presumptively appropriate unit, it is the Employer's burden to introduce relevant, affirmative evidence to rebut that presumption. *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999). To rebut the presumption, the Employer must show that the single plant unit has

been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, function, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *J&L Plate, Inc.*, supra; *Bowie Hall Trucking*, 290 NLRB 41 (1988). Inasmuch as there is no bargaining history at either the Fenton or Cape Girardeau locations, further discussion of that factor is unnecessary and analysis focuses on the remaining relevant factors.

B. DISCUSSION OF RELEVANT FACTORS

1. Centralized Control Over Daily Operations and Labor Relations

The record establishes central control by the Fenton facility over the daily operations and labor relations of both facilities. The lack of local autonomy at the Cape Girardeau facility is underscored by the fact that no managerial, human resources, or supervisory personnel work at the Fenton facility. All decisions regarding personnel policies and procedures applicable to the Cape Girardeau facility are made by Fenton management. Similarly, all hiring, firing, disciplinary, lay-off, leave, vacation, and wage decisions for employees at both facilities are made by management at the Fenton facility. All personnel files and payroll records are maintained at Fenton, and all training, including safety training, sexual harassment, and service training is conducted at the Fenton facility or by Fenton management.

The HVAC field technicians at both facilities are directly supervised by the general operations manager, who works out of the Fenton facility. The HVAC technicians at Cape Girardeau receive their assignments from the dispatcher in Fenton. Customer calls to the Cape Girardeau facility are routinely forwarded to the dispatcher at

the Fenton facility. This forwarding is automatic if no one answers the phone at the Cape Girardeau facility, which frequently occurs, as the Employer employs no office clerical or other administrative staff at Cape Girardeau.

2. Similarity of Skills, Function, and Working Conditions

The HVAC field technicians at the Fenton and Cape Girardeau facilities perform the same type of work installing, servicing, and maintaining HVAC equipment and parts. The signal difference is that one group primarily works in the St. Louis area while the other works primarily in the Cape Girardeau area. The St. Louis work involves a greater percentage of high-rise and other large commercial buildings as compared to Cape Girardeau. Both groups of employees have similar skills, training, and qualifications, although some technicians have greater expertise with particular types of equipment. Both groups of technicians use the same types of equipment and tools, and they drive the Employer's trucks, on which they carry their tools and day-to-day supplies. They all work primarily from their homes, and they receive their assignments from the Fenton dispatcher by telephone or fax to their home. They frequently submit their completed work orders and time sheets to Fenton via fax.

The HVAC field technicians at both facilities are covered by the same employee handbook and uniform policy. They work the same hours and receive the same fringe benefits such as 401(k), health plan, and stock options. They are all hourly paid. Although there was conclusory testimony that comparable wages are paid to Fenton and Cape Girardeau apprentices and field technicians, the Employer refused to present evidence as to specific wage rates. Evidence of wage rates was limited to general testimony that wages were paid commensurate with experience, technical expertise, and the need to pay competitively and that two field technicians in Cape Girardeau and four field technicians make the same wages, while the apprentice in Cape Girardeau makes

14.7% more than one of the apprentices in Fenton. No evidence was presented concerning relative experience or technical expertise.

3. Employee Interchange

The frequency of employee interchange is controverted. The record does establish that while the Cape Girardeau and Fenton HVAC field technicians primarily work in the geographic areas customarily serviced by their respective facilities, they have sometimes been assigned to work on projects in each other's areas, both alone and with technicians from the other facility. This interchange apparently occurs when a project requires specific expertise from a particular field technician at the other location or when workload pressures require additional assistance on a project. The Employer also utilizes subcontractors for additional assistance as well as technicians from the other facility. Cape Girardeau technicians are more likely to work in the St. Louis area at peak times for the St. Louis area, around January and February. Cape Girardeau has different peak times due to the nature of the buildings serviced.

The district manager testified that "hundreds of times a year" the Cape Girardeau and Fenton technicians "interchange one way or the other" or work "together on jobs." The district manager, who has held his position and worked in this area for only 6 months, testified that his testimony was based on "reviewing the jobs our technicians worked on." The district manager provided no detail as to what records he reviewed nor the time period encompassed by his review. The district manager had no direct knowledge of, nor had he reviewed the records of, a very recent large project that involved a total of 20 technicians, including the Fenton technicians, who worked substantial overtime, and HVAC technicians employed by subcontractors. No Cape Girardeau technicians apparently worked on this job. Only one HVAC field technician testified at the hearing. This technician, who is domiciled at Fenton, testified that he had

not worked with a Cape Girardeau technician for “a long time, maybe about a year” and that, on that occasion, the job lasted only a day or two.

There is no evidence of any permanent transfers between the facilities. The Fenton-based technicians live in the St. Louis area and the Cape Girardeau technicians live in the Cape Girardeau area. The record also establishes that technicians from both areas may have contact during training and meetings. Technicians from both facilities have attended training and service meetings together at Fenton, and have attended certain quarterly communications meetings in Fenton via video link from the Employer’s Piscataway, New Jersey head offices. However the record does not disclose the frequency of such meetings and training, extent of technician attendance, or whether technician attendance is mandatory. The district manager also testified that the Fenton-based technicians have Nextel phones; the Cape Girardeau technicians have cellular phones; and all have a complete list of employee phone numbers. The district manager testified that field technicians call each other to discuss technical issues “probably on a weekly basis.” The record does not reflect the basis for his testimony.

4. Geographic Proximity

The Fenton and Cape Girardeau facilities are a considerable distance apart. The record establishes that the drive from the Fenton facility to the Cape Girardeau facility takes between 1-½ to 2 hours, usually closer to 2 hours. I take administrative notice that Fenton and Bridgton are in St. Louis County, Missouri, and that Fenton and Cape Girardeau are about 108 miles apart.

C. ANALYSIS

Although some factors favor the broader unit urged by the Employer, on balance the Employer has failed to establish that the Fenton plant has been “so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity.” *J&L Plate*, supra. Clearly, the Employer has established centralized

control of labor relations and supervision of both facilities. The Employer has also established that the technicians share similar skills, functions, and working conditions, although this evidence is mitigated by the differences in work location and the absence of specific evidence that wage rates are the same at both locations. When balanced against the distance between the facilities, the desire of the Petitioner, lack of bargaining history and lack of meaningful evidence of interchange, however, this evidence is insufficient to rebut the presumption favoring a single-facility unit.

Although the record does establish that, at times, the employees from both facilities work together, the record fails to affirmatively establish meaningful, substantial or significant interchange. This is the Employer's burden. The Employer's generalized evidence that technicians "interchange" hundreds of times per year, lacks context and specificity. The time period is unknown. The percentage of time the technicians are working side-by-side with technicians from the other facility, rather than alone in each other's territory is unknown. The duration of these "hundreds" of instances of interchange is unknown. The percentage of employees involved in this interchange is unknown. The percentage of total work involved in this interchange is also unknown. In conflict with the generalized testimony, the HVAC field technician testified specifically that he had not worked with a Cape Girardeau technician in about 1 year. Moreover, there is no evidence of any permanent transfers between facilities, nor is there evidence that the temporary transfers are mandatory rather than voluntary. In these circumstances, the Employer has failed to establish significant interchange between the facilities. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988).

Also quite significant is the fact that the Fenton and Cape Girardeau facilities are 108 miles apart. The record amply establishes that the Fenton and Cape Girardeau technicians live and primarily work in different geographical areas.

I also note that the Act does not require that a labor organization seek to represent employees in the most comprehensive or most appropriate unit. Rather, the Act only requires that a unit petitioned for be appropriate. *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). Furthermore, I note that the Petitioner's desire is to represent technicians at the Employer's Fenton facility. The Petitioner's desire in this regard, while not dispositive, is a relevant consideration. *Airco, Inc.*, 273 NLRB 348 (1984).

Moreover, I find the cases cited in the Employer's brief with respect to functional integration and geographical distance in weighing community of interest inapposite and distinguishable. The cases cited with respect to functional integration do not involve a single versus multi-facility unit and the application of the single-facility presumption. *Desert Palace, Inc., d/b/a Caesars Tahoe*, 337 NLRB No. 170 (2002), dealt with a challenge to the ballot of an engineering coordinator who had dual clerical and maintenance functions in a single-facility setting. In *Alamo Rent-A-Car*, 330 NLRB 897 (2000), the issue involved a choice between two multi-facility units. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999), involved the functional integration of a unit of clerks in a single-facility where the clerks performed directly related work. The cases pertaining to the geographical distance of facilities are also inapposite. *R & D Trucking, Inc.*, 327 NLRB 531 (1999), involved two facilities just five miles apart. *Novato Disposal Services, Inc.*, 328 NLRB 820 (1999), had little to do with geographical distance of facilities, instead the Board relied upon such factors as significant and regular interchange of employees and common seniority to find the single-facility presumption rebutted. In *Waste Management Northwest*, 331 NLRB 309 (2000), there was greater proximity and more concrete evidence of integration than exists here.

Accordingly, relying particularly on the distance between the two facilities, the lack of significant employee interchange, the absence of any bargaining history among the unit employees, and the fact that no labor organization seeks to represent the

employees on a broader basis, I find that the Petitioner's requested single-facility unit is appropriate.

III. STATUS OF JOSE VAZQUES

Petitioner contends that apprentice Jose Vazques does not share a community of interest with the other Fenton technicians and, therefore, should be excluded from the unit. Petitioner contends that Vazques, although classified as an apprentice, is no more than an unskilled helper.

The evidence establishes that Vazques is classified as an apprentice. Like other technicians, Vazques has a refrigeration certification card. Vazques does not have a St. Louis County license or a commercial driver's license. Like other apprentices, Vazques does not have sufficient experience to qualify to take the tests to obtain a St. Louis County license. Unlike the other apprentices, Vazques does not have a driver's license, but he is in the process of securing one. As a result, Vazques does not drive the Employer's trucks and must travel from job to job with another field technician. Vazques spends his time assisting the other technicians with their work. He performs refrigerant recovery, cleans equipment, and assists with maintenance. He shares the same supervision as the other technicians. He receives the same training as other apprentices and the same fringe benefits. He is paid hourly like the other technicians, however, his specific wage rate is unknown.

In these circumstances, the evidence is insufficient to distinguish Vazques from the other apprentices. Although the Union contends that Vazques performs only unskilled work, this evidence is based on the testimony of the one field technician, who has only observed Vazques on one job. Moreover, the technician testified that all of the technicians on this job were performing the same type of work. In view of the evidence that Vazques works daily with the other technicians, assisting them with the performance of their work, that he receives the same training as other apprentices, and shares the

same supervision, benefits and working conditions; his lack of a driver's license and the performance of unskilled work on one job assignment is not a sufficient basis on which to distinguish him from other apprentices. I shall, therefore, include Jose Vazques in the unit.

**IV. SUPERVISORY STATUS OF SENIOR FIELD TECHNICIAN
JIM WITTE AND FIELD TECHNICIAN RICH MUELLER**

Petitioner contends that Jim Witte and Rich Mueller should be excluded from the unit because they are supervisors. The record establishes that Witte and Mueller are both employed at the Fenton facility. Witte is classified as a senior HVAC field technician, and Mueller is a HVAC field technician. Neither Witte nor Mueller testified at hearing. Petitioner's sole witness at hearing, a HVAC field technician, provided all evidence pertaining to their asserted supervisory status.

Both Witte and Mueller have historically worked in the field performing unit work. A few weeks prior to hearing, the service supervisor, who directly supervised the technicians, left the Employer. After his departure, the Employer announced that the service supervisor would not be replaced and that the general operations manager would directly supervise the technicians. Despite this announcement, the field technician testified that he believed that Witte and Mueller were taking over the service supervisor's duties. In support of his belief, the field technician testified that since the service supervisor's departure, he has not observed Witte or Mueller work in the field, although he admitted that he has worked alone since the departure. The field technician also observed that Mueller has been working in the Fenton office since about a week before the hearing. He testified that he guessed Mueller was primarily working on scheduling. He also testified that he turned in his vacation request form to Mueller and anticipated calling Mueller concerning his next assignment. The field technician also testified that he turned in a vacation request form to Witte, who told him it was approved.

The field technician further testified that he has consulted with both Witte and Mueller regarding technical problems encountered in the field. Both Witte and Mueller are more experienced and have superior knowledge and technical skills in some areas. In turn, less-skilled apprentices and field technicians have also sought out the assistance of the field technician.

The field technician also testified that in the summer of 2002, over lunch, Witte told the field technician that he was spending too much time in the office and not enough time in the field. Witte then reported this complaint to the service supervisor. The service supervisor then privately issued an oral reprimand to the field technician about the problem. The field technician received no further discipline as a result of the incident. No evidence was presented that Mueller has ever been involved in any discipline of apprentices or field technicians.

The field technician also testified that during the first week of January 2003, he received his evaluation from the service supervisor and another senior field technician, who is no longer employed with the Employer. A few weeks after the evaluation, the field technician met with the district manager, the general operations manager, Witte, and Mueller. At this meeting, the general operations manager informed the field technician that he would receive a pay raise. Mueller stated that training opportunities will increase and both Mueller and Witte discussed that the field technician may have to train other technicians on the use of the laptop. Mueller is in charge of training. The record does not reflect the precise nature of this duty. The record also indicates that the Employer has a peer review process for apprentices and field technicians. Members of management and field technicians may serve as peers. The record does not detail the workings of this peer-review process.

ANALYSIS

On this record, I find the evidence insufficient to establish the supervisory status of either Jim Witte or Rich Mueller. It is well settled that the burden of proving supervisory status rests on the party asserting that such status exists. *Ohio Masonic Home*, 295 NLRB 390 (1989). Any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999). To be classified as a supervisor, the individual in question must be acting in the interest of the employer, have authority to accomplish one of the enumerated functions listed in Section 2(11), and use independent judgment. *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574, 114 S.Ct. 1178 (1994). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status under Section 2(11). *Sears, Roebuck & Co.*, 305 NLRB 193 (1991).

Petitioner presented absolutely no evidence that Witte or Mueller is able to hire, fire, transfer, suspend, layoff, recall, promote, reward, discharge, or adjust grievances. Witte's role in reporting the field technician to the service supervisor for spending too much time in the office does not establish authority to discipline or effectively recommend discipline. Rather, the evidence at most establishes that Witte's role was reportorial rather than substantive and, therefore, not indicative of supervisory authority. *Vencor Hospital-Los Angeles*, 328 NLRB 1136 (1999). Moreover, there is no evidence that the oral reprimand had any effect on the field technician's terms and conditions of employment. *Freeman Decorating Co.*, 330 NLRB No. 160 (2000).

While the field technician testified that Mueller has recently been working in the office and scheduling employees, the evidence does not detail the exact nature of his scheduling duties or other work in the office. Indeed, the evidence shows that the field technician has limited knowledge of the work being performed by Witte or Mueller. As

the lack of evidence must be construed against the Petitioner, Petitioner has failed to establish that Mueller or Witte use independent judgment to schedule or otherwise assign work. *Elmhurst Extended Care Facilities, Inc.*, supra. Similarly, although the evidence establishes that vacation requests were submitted to Witte and Mueller and that Witte informed the service technician that vacation was approved, there is no evidence to suggest that Witte or Mueller ever denied or refused a vacation request or even that they granted the requests without first consulting with the general operations manager. Thus, the evidence presented is at best indicative of a clerical or administrative task, rather than supervisory authority. *E & L Transport Company*, 315 NLRB 303 (1984).

The evidence that field technicians consult with Witte and Mueller regarding technical problems also does not establish supervisory status. There is no evidence that the technicians are required to seek direction from Witte and Mueller, rather it appears that the consultation is at the behest of the technician with the problem. Nor is there evidence that the technicians are required to follow the advice received from Witte or Mueller. Rather, it appears that consultation between all apprentices and field technicians about problems encountered is not uncommon and that Witte and Mueller are frequently consulted because they are the most experienced field technicians at Fenton. This evidence does not establish authority to responsibly direct or assign within the meaning of Section 2(11) of the Act.

Evidence pertaining to Witte and Mueller's participation in the meeting where the technician received a wage increase is likewise not sufficient to confer supervisory status. The evidence establishes that the pay raises are determined by the district manager. The record does not disclose any evidence that Witte or Mueller had any role in evaluating the technician or awarding him the pay raise. Mere attendance at such a meeting, without more, is insufficient to make Witte and Mueller supervisors. While

Mueller discussed training opportunities in the meeting and is “in charge” of training, training is not primary indicia of supervisory authority. Accordingly, I conclude that Petitioner has failed to meet its burden to provide affirmative evidence that Witte and Mueller are supervisors. I shall include them in the unit.

V. STATUS OF WAREHOUSE COORDINATOR/DRIVER

Petitioner contends that warehouse coordinator/driver Tony Stabler does not share a community of interest with the technicians and, therefore, should be excluded from the unit. The Employer contends that Stabler should be included in the unit because his work is highly integrated with that of the technicians; he regularly assists the technicians in the performance of their work and, if excluded, Stabler would be disenfranchised as the only hourly service employee not included in the unit.

The record establishes that Stabler works out of the Fenton facility. His duties include maintenance of the Fenton warehouse. He ensures that the warehouse is clean and safe and that tools and equipment are properly stored and checked out to the field technicians. Stabler also delivers parts and equipment to technicians out in the field and makes deliveries to the Cape Girardeau and Bridgeton facilities. The human resources manager testified that Stabler has daily contact with technicians in the course of his duties. The record does not reflect the nature or duration of this contact. The human resources manager also testified that Stabler works with the technicians as a helper. He has a refrigeration certificate and assists with refrigerant recovery. He also provides other unspecified assistance to the technicians in the field. The record does not reflect, however, the amount of time Stabler spends helping the technicians perform their work nor does the record indicate that this assistance is provided on any regular basis.

Stabler works the same hours as the technicians, is supervised by the general operations manager, and is subject to the same personnel policies as all other Fenton employees. Stabler is hourly paid, however, the record does not reflect how his wage

rate compares with that of the technicians. His fringe benefits are similar to that of the technicians except that he accrues less personal holidays.

The record does not indicate whether or not other employees work in the Fenton warehouse or if other employees deliver parts or perform other duties similar to those of Stabler. The record also does not establish that, other than the technicians, Stabler is the only other employee at Fenton supervised by the general operations manager. For example, the dispatcher is also directly supervised by the general operations manager.

In these circumstances, the record is not sufficient to establish that Stabler regularly performs duties similar to those performed by the technicians for sufficient periods of time to demonstrate that he has a substantial interest in the working conditions of the unit. See *Ansted Center*, 326 NLRB 1208 (1998); *Oxford Chemicals*, 286 NLRB 187 (1987). Moreover, the record also does not establish that, if excluded, Stabler would not share a community of interest with any other employee at the Fenton facility. Accordingly, on the basis of this record, I cannot conclude whether or not Stabler should be included in the unit as either a dual-function employee or as a residual employee. I shall, therefore, allow Tony Stabler to vote subject to the Board's challenged ballot procedures.

VI. FINDINGS AND CONCLUSIONS

Based on 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

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All senior HVAC field technicians, HVAC field technicians and HVAC field technician apprentices employed by the Employer at its Fenton, Missouri facility, EXCLUDING office clerical and professional employees, guards and supervisors⁴ as defined in the Act, and all other employees.⁵

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: Local Union No. 562, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.

³ The Employer, Trane, an operating unit of American Standard Companies, a Delaware corporation, with its principal office located at 1 Centennial Avenue, Piscataway, New Jersey, and with facilities located in Fenton and Cape Girardeau, Missouri, is engaged in the sale, installation, and service of commercial and residential heating, ventilating, and air-conditioning systems. During the past 12 months, which period is representative of the Employer's operations, the Employer purchased and received goods valued in excess of \$50,000 outside the State of Missouri.

⁴ The parties stipulated the following individuals are supervisors under Section 2 (11) of the Act: District Manager Robert Campbell, General Operations Manager Randy Crampy, New Systems Sales Manager Randy Kratz, Contracting Sales Manager Scott Hardwick, Controller/Financial Manager Casey Schulte, Human Resources Manager Mellisa Thorn, Marketing Director Nicole Dicks, Existing Building Sales Manager Mike Rolfes, Contracting Fulfilment Manager Jeff Ahlbrand, and Building Automation Systems Fulfilment Manager Dennis Goodwin. Accordingly, I shall exclude these individuals from the unit.

⁵ The parties also stipulated that certain sales persons, project engineers, project managers, building automation system employees, contracting employees, and office administration employees do not share a community of interests with the technicians. Accordingly, I shall also exclude them from the unit.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which 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. Those 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.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.⁶

⁶ Because the Employer is engaged in the construction industry, the eligibility of voters will be determined by the formula in *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992).

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used in communication 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 an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the 14th Region, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103 on or before **March 18, 2003**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to

potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. This request must be received by the Board in Washington by **March 25, 2003**. The request may not be filed by facsimile.

Dated March 11, 2003
at Saint Louis, Missouri

Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14

177-8560-1500
420-5034
420-6280
420-7303
440-1700