

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

DIRECT ENERGY ESSENTIAL HOME SERVICES¹

Employer

and

Case 4–RC–20646

PLUMBERS UNION LOCAL 690 OF PHILADELPHIA
AND VICINITY, a/w UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPEFITTING INDUSTRY OF THE
U.S. AND CANADA, AFL-CIO²

Petitioner

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

The Employer, Direct Energy Essential Home Services, provides plumbing, electrical, heating, air conditioning, and appliance repair services to residential customers from three facilities in Delaware County, Pennsylvania. The Petitioner, Plumbers Union Local 690 of Philadelphia and Vicinity, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, AFL-CIO, 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 approximately 16 plumbing employees who are based at the Employer’s facility located in Drexel Hill, Pennsylvania. The Employer contends that the petitioned-for unit is inappropriate and that the smallest appropriate unit would include all Technicians employed by the Employer at the Drexel Hill facility or, alternatively, all Technicians employed at all three of its facilities. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties concerning the scope of the unit, and as discussed below I have concluded that the unit sought by the Petitioner is an appropriate unit. To provide a context for my discussion of the issues, I will first provide a brief overview of the Employer’s operations. Then, I will review the factors that must be evaluated in determining whether the unit sought by Petitioner is appropriate. Finally, I will present in detail the facts and reasoning that support my conclusions.

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

² The Petitioner’s name appears as amended at the hearing.

I. OVERVIEW OF OPERATIONS

The Employer formed its business in 1998 by acquiring several independent contracting firms that provided the following services: plumbing, electrical, heating, and air conditioning service and sales, and appliance repairs. The Employer now provides all of these services to residential customers through an integrated approach.

The Employer has facilities located on Eagle Road, Havertown, Pennsylvania (the Eagle Road facility), Belameade Road in Havertown, Pennsylvania (the Belameade facility), and in Drexel Hill, Pennsylvania (the Drexel Hill facility). The Eagle Road and Belameade facilities are four or five blocks apart, and the Drexel Hill facility is about five miles from Havertown. The Employer's headquarters is at the Eagle Road facility, and its Finance, Administrative, Marketing, and Human Resources operations are located there.

The Employer's employees who provide field service to customers are generically called Technicians. The Employer employs approximately 49 Technicians, who are organized into two separately supervised divisions, each of which includes several smaller groups.

Murray Barton is the Employer's Senior Vice-President of Operations, and Jerry Leete is the Director of Operations. Service Manager Jim Ailes and Install Manager Scott Vance report to Leete. Ailes is in overall charge of three groups of Technicians, who are under the immediate direction of three different Supervisors. In the Plumbing Division,³ Supervisor Greg Colleluori supervises 14 Plumbing Technicians and two Plumbing Technicians who are designated as Team Leaders.⁴ Supervisor Ken Byrd supervises seven Technicians in the Appliance Repair Division. In the Heating, Ventilation, and Air Conditioning (HVAC) Service Division, there are seven Technicians. The supervisory position in the HVAC Service division is currently vacant.

Install Manager Scott Vance supervises a team of 12 Technicians in the Electrical Division led by Supervisor Gary Swenson, and a team of six Technicians in the HVAC Installation Division supervised by Supervisor Jim Henderson.⁵ Vance also supervises a Technician who performs carpentry work, Jack Strong.

The Technicians in the Appliance Repair and Electrical divisions work out of the Belameade Road facility. The Technicians in the Plumbing, HVAC Service, and HVAC Installation divisions, as well as Carpenter Jack Strong, work out of the Drexel Hill facility. A sheet metal fabricator and a purchasing employee are also based at Drexel Hill. Three warehouse and driver employees move between the locations. The Employer's three dispatchers work at the Eagle Road headquarters.

³ For convenience, in this Decision the term "Division" will be used to refer to a group of Technicians who specialize in performing the same type of work.

⁴ The parties stipulated that the Team Leaders are not supervisors of the Employer within the meaning of Section 2(11) of the Act.

⁵ The parties stipulated that Barton, Leete, Ailes, Vance, Colleluori, Byrd, Swenson, and Henderson, as well as the following named individuals, are supervisors of the Employer within the meaning of Section 2(11) of the Act: Carolyn Capoferi, Director of Marketing; Russ DeFuria, Director of Administration; Victoria Phillips, Director of Finance; Pat Quinn, Material Resource Administrator; and Marie McKenna, Human Resource Administrator.

II. FACTORS RELEVANT TO EVALUATING THE APPROPRIATE UNIT

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R&D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds 190 F.2d 576 (2d Cir. 1951). In determining appropriate unit, the Board weighs a variety of factors, including differences in the employees' working conditions, compensation, hours of work and benefits; supervision; degree of dissimilar qualifications, training and skills; differences in job functions; frequency of contact with other employees; work situs; degree of integration or interchange of work between the classifications; the history of bargaining; and whether the classification at issue is part of an integrated operation. *Overnite Transportation*, 322 NLRB 723, 724 (1996); *Esco Corp.*, 298 NLRB 837, 839 (1990); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

In the construction industry, the Board has generally favored units organized along traditional craft lines or departmental lines, so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *Brown & Root Braun*, 310 NLRB 632, 635 (1993); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978); *R.B. Butler, Inc.*, 160 NLRB 1595 (1966). A "craft unit" is defined as a distinct and homogenous group of skilled journeymen, apprentices, and helpers who primarily perform tasks requiring craft skills, tools, and equipment, which are not performed by others. *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994). In *Burns & Roe*, the Board stated that in determining whether a group of employees constitutes an appropriate craft unit the Board looks to: whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated or overlaps with other employees; whether the employer assigns work according to need, rather than on a craft or jurisdictional basis; and whether the petitioned-for employees share common interests with the other employees, include wages, benefits and cross-training. 313 NLRB at 1308. In non-construction industry cases, the Board will examine additional factors to "determine the appropriateness of the craft unit sought in light of all factors present in the case." *E.I. DuPont de Nemours and Co.*, 162 NLRB 413 (1966), cited in *The MGM Mirage Casino-Hotel*, 338 NLRB No. 64 (2002). However, the integration of the employer's operations is not sufficient to preclude the formation of a separate craft bargaining unit, unless it results in such a fusion of functions, skills, and working conditions between those in the asserted craft group and others outside it as to obliterate any meaningful lines of separate craft identity. *E.I. DuPont de Nemours & Co.*, *supra*, 162 NLRB at 419.

III. FACTS

A. Employee Skills and Duties

The *Plumbing Division* Technicians perform plumbing services for residential customers, including troubleshooting problems, making repairs to existing piping and fixtures, and installing plumbing fixtures and water heaters. Technician William King testified that all of the Employer's Plumbing Technicians are licensed by various municipalities, except for one Technician who is currently classified as an apprentice. Eight Technicians are "Master Plumbers," a designation earned by passing a test administered by a municipality. Many of them served an apprenticeship or attended technical school in the plumbing field. Senior Vice-President of Operations Murray Barton testified that he did not know if the Plumbing Technicians had licenses and stated that the Master Plumber designation was not required for employment by the Employer. The Plumbing Technicians are not cross-trained in any of the skills required for the other operating divisions and are not required to possess any skills other than plumbing. All of the Plumbing Technicians receive their assignments from a dispatcher, who advises them whether to start the day at the Drexel Hill facility or out in the field at a customer's residence. At the end of the workday, they may go directly home rather than report to the Drexel Hill facility. One of the Employer's three dispatchers, Tim McGolgan, distributes the vast majority of plumbing assignments. The Technicians generally work alone⁶ and drive to customers' homes in a company trucks that are stocked with plumbing equipment, including fittings, traps, faucets, gas valves, a silver machine, torches, hand tools, turtles, and saws. Technicians in the Plumbing Division are on-call 24 hours a day for a week-long period on a rotating basis.

The Technicians in the *Appliance Repair Division* perform repairs to customers' home appliances, such as refrigerators, dishwashers, washing machines, and clothes dryers. They receive their assignments from a dispatcher and drive to customers' residences in a company truck. All of the Employer's trucks look the same on the outside, regardless of which group of employees uses them.

The *Electrical Division* Technicians perform electrical installation and repair work. They receive their assignments from a dispatcher and drive to customers' homes with a company truck stocked with electrical equipment. Electrical Technicians are sometimes on-call 24 hours a day.

The Technicians in the *HVAC Service Division* perform repair work to heating and air conditioning systems. They receive their assignments from a dispatcher. The Technicians in the *HVAC Installation Division* install new heating, ductwork, and air conditioning systems in customers' homes. Their work is generally scheduled and assigned in advance. Some of the HVAC Service and HVAC Installation Technicians possess EPA certifications for handling refrigerants. They are sometimes on-call 24 hours a day, and they all drive to customers' homes in company trucks.

⁶ King testified that during the past month, he worked alone except for two occasions. On one job he worked with the apprentice-level Technician from the Plumbing Division. On another assignment, in a dangerous neighborhood, an Electrical Division Technician accompanied him to watch the company truck.

The *Carpentry* Technician performs carpentry work, usually with a Technician from one of the other divisions. He rarely goes into the Drexel Hill facility but is generally out in the field at his assigned locations. He drives to the customers' homes in a company truck.

B. Contact, Interchange and Transfers

The Technicians in all divisions work alone most of the time, and the Employer generally avoids sending employees from two divisions out on a single call. If after arriving at the job, a Technician believes that the job requires a Technician with a different specialty, he or she will notify a dispatcher. For example, if an appliance repair employee finds that an appliance problem was caused by an electrical malfunction, an electrical Technician will be dispatched. When the HVAC Service Technicians are extremely busy in the summer months, Technicians from the Electrical and Appliance Repair divisions are sometimes assigned to make air conditioning repair calls. All Technicians have daily contact with dispatchers at the Eagle Road location. They receive their work assignments from the dispatchers and call them with problems or questions. Carpentry Technician Strong is the only Technician who regularly works with other Technicians.⁷

There is no evidence that any Plumbing Technician ever performs the work of any other specialty or that any Technician from another division performs plumbing work. There have been no transfers in or out of the Plumbing Division for at least the last two-and-a-half years. Barton testified that any employee could apply to transfer between divisions, but there was no evidence that any Technician has ever done so. Plumbing Division Supervisor Greg Colleluori formerly supervised one of the HVAC divisions.

C. Supervision

Different Supervisors independently supervise the different groups of Technicians. The Supervisors conduct weekly meetings that only the members of their divisions attend. Supervisors recommend candidates for employment in their divisions, which are approved by the Service Manager or Install Manager, and they recommend wage increases for members of their divisions, which are approved by Barton.

Greg Colleluori interviews candidates for employment solely within the Plumbing Division, and along with the Team Leaders, he is responsible for assessing the plumbing skills of applicants for employment. He reviews all time off requests for the Plumbing Division and writes the Technicians' annual performance reviews. Senior Vice-President of Operations Barton has informed all Technicians that they can speak to him personally about any questions or problems that they may have.

D. Wages and Benefits

The wage range for Plumbing Technicians is from \$11 to \$28 per hour, which is comparable to the ranges in other divisions, although no other employees have as high a

⁷ The record does not indicate how frequently or under what circumstances Strong works with plumbing employees. He does not work with Appliance Repair Technicians.

maximum rate. The wage range for HVAC Technicians is from \$11 to \$25 or \$26 per hour, for the Appliance Repair Technicians from \$15 to \$21 per hour, and for Electrical Technicians from \$17 to \$23 per hour. All Technicians are paid overtime for hours worked in excess of 40 per week, and all Technicians are eligible for commissions for selling the Employer's services and service plans, whether for their own services or services from another division. All Technicians are paid through the same payroll system and receive the same benefit package, including health and other insurance and the opportunity to participate in the same 401(k) plan.

E. Labor Relations Policies and Work Rules

Human Resources Administrator Marie McKenna centrally manages labor relations matters and maintains all employee personnel files at the Eagle Road facility. All Technicians are subject to the same employee handbook and work rules. The grooming, safety, and environmental policies and the uniforms are the same for all Technicians. All Technicians attend an identical new employee orientation session upon being hired. The Employer sponsors social events including a holiday party and golf tournament that are open to all employees. There is no evidence of any bargaining history at the Employer's facilities or its predecessor entities.

IV. ANALYSIS

The Employer's Technicians are divided into independently supervised groups along traditional craft lines. The Plumbing Division is separately supervised by Greg Colleluori, who is responsible for supervising only Plumbing Division employees. Plumbing Technicians exclusively perform plumbing services for the Employer's customers, and no other employees of the Employer perform plumbing work. Although there was limited evidence of overlap in tasks performed by Technicians of other divisions, mostly related to the peak air conditioning season, there was no evidence of any overlap of duties with the Plumbing Technicians.

The skills and responsibilities of the Technicians in the Plumbing Division are distinct from those of all of the other Technicians. The vast majority of the plumbers are licensed and some of them are certified by various municipalities as Master Plumbers, although the Employer does not require this certification. Many of them have completed apprenticeship or training school programs. They are provided with company vehicles stocked with specialized plumbing equipment. While their wage rate is comparable to that of the other specialties, their maximum hourly rate of \$28 is the highest of any of the Technicians.

There is no evidence of interchange or transfer among the plumbing Technicians and employees of the other divisions, and there is no extensive contact with other Technicians. Indeed, the plumbing employees often report directly to customers' homes at the beginning of the workday and go home at the end of the day without reporting to the Drexel Hill facility. The Plumbing Division Technicians share some significant terms and conditions of employment with other Technicians, including work rules and fringe benefits, and they have common supervision at higher levels. Nevertheless, the record clearly reflects their status as a distinct group.

I find that the record demonstrates that the Plumbing Technicians are a homogeneous group possessing a distinct community of interest separate and apart from other Technicians based on their skills, duties, separate supervision, and minimal contact and interchange with other Technicians. I therefore find that the unit of all Plumbing Technicians sought by the Petitioner comprises an appropriate craft unit, and I shall direct an election in that unit. *United Operations, Inc.*, 338 NLRB No. 18 (2002); *The MGM Mirage Casino-Hotel*, 338 NLRB No. 64 (2002); *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994).⁸

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 case.⁹
3. The Petitioner 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Plumbing Technicians employed by the Employer at its Drexel Hill, Pennsylvania facility, including Team Leaders, excluding all other employees, guards and supervisors as defined in the Act.

VI. 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 will vote whether or not they wish to be represented for the purposes of collective bargaining by **Plumbers Union Local 690**

⁸ *United States Steel Corporation*, 192 NLRB 58 (1971), cited by the Employer, is inapposite. In that case, the Board declined to find appropriate a petitioned-for unit of "craft and maintenance employees" because of extensive evidence of interchange, permanent and temporary transfers, routine contact, and interrelated work duties between members of the petitioned-for unit and other employees. None of those factors were present in this case.

⁹ Subsequent to the hearing the parties submitted into the record a written stipulation that provides an appropriate basis for asserting jurisdiction.

of Philadelphia and Vicinity, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

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, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *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 Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **June 13, 2003**. No extension of time to file this list shall 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 (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of

three 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 must post the Notices to 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 non-posting of the election notice.

VII. 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, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **June 20, 2003**.

Signed: June 6, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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