

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

El Paso, Texas

RAYTHEON TECHNICAL SERVICES COMPANY, LLC

Employer

and

Case Nos. 16-RC-10582

16-RC-10583

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 351, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent two separate bargaining units of the Employer's employees. In the first petition, 16-RC-10582, the petitioner seeks to represent all permanent hourly travel clerk II and travel clerk III employees employed in the Employer's Passenger Service Section at Fort Bliss in El Paso, Texas. In the second petition, 16-RC-10583, the petitioner seeks to represent all permanent, hourly, shipping and receiving clerk // counselor, inspector; supply technician // technician, transportation, lead; technician supply; and general clerk III employees in the Personnel Property Movements Section at Fort Bliss. The Petitioner seeks to exclude from both units all supervisors as defined in the Act.

At the hearing, the Petitioner argued that the lead employees should be excluded from the second unit because they are supervisors. Additionally, the Petitioner argued that an estimated 60 to 72 temporary employees should also be excluded from any appropriate unit. The first petitioned-for unit has two employees. The second petitioned-for unit has sixteen employees

including the two lead employees. The Petitioner has agreed to represent employees in any unit found appropriate.

The Employer contends that both of the units proposed by the Petitioner are inappropriately narrow. Specifically, the Employer argues that the only appropriate unit must consist of a single system-wide unit of all of the Employer's employees in the Transportation, Supply and Material Maintenance branches of its operations at Fort Bliss, excluding any supervisors. The Employer argues that any appropriate unit should include all employees in the Project Automation Support Section, which provides informational technology (IT) support to the Transportation, Supply and Material Maintenance employees. Additionally, the Employer argues that both the temporary and lead employees should be included in any appropriate unit. The Employer alleges that there are approximately 250 employees in the single unit it has proposed.

The issues before me are as follows: (1) determining whether the petitioned-for units are appropriate for collective bargaining; (2) determining whether the Employer's temporary employees should be included in any appropriate unit; and (3) determining whether the lead employees should be excluded from any appropriate unit because they are supervisors as defined by Section 2(11) of the Act.

A hearing officer of the National Labor Relations Board conducted a hearing on this matter and the parties have filed post-hearing briefs. Based on the record as a whole and careful review of the arguments of the parties at the hearing and in their post hearing briefs, I find that the community of interest factors mandates the combination of the two petitioned-for units into a single unit which I find appropriate for collective bargaining purposes. I also find, however, that the Employer's other employees do not share a sufficient community of interest with the

petitioned-for employees that mandates their inclusion in the single unit I have found to be appropriate. I also find that any temporary employees should not be included in the proposed units and that the Petitioner has failed to meet its burden in establishing that the lead employees are Section 2(11) supervisors as defined by the Act.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the evidence regarding the issues of the appropriate bargaining unit, voting eligibility of temporary employees, supervisory status of lead employees and the reasoning that supports my findings.

STATEMENT OF FACTS

Introduction

The Employer provides logistical services for the United States Army at Fort Bliss in El Paso, Texas. Specifically, the Employer is responsible for providing logistical support to the units stationed at Fort Bliss and managing the movements and flow of equipment, soldiers and civilians to Fort Bliss either for training at the base or for deployment into the theater of operations. Fort Bliss is considered one of the Army's power projection platforms, that is, the platform where personnel and equipment is marshaled in preparation for deployment into the theater of operations. As such, under the current war time footing, numerous active Army, Reserve and National Guard units have mobilized through Fort Bliss for deployment into Afghanistan and Iraq for combat and combat support missions. In addition, as a major training installation, numerous active Army, National Guard and Reserve Units conduct their annual training and advanced individual training in air defense artillery at the base.

Overview of Operational and Supervisory Structure

The Employer has contracted to provide logistics support services to the Army. Program Manager Rafael De Jesus is responsible for the administration of the contract. Under the terms of the contract, the Employer's logistics operation is organized into three branches, a Transportation Branch, a Supply Branch and a Materials Maintenance Branch. The Employer also has an IT support group termed the Project Automation Support Section.

The three branches have their own managers each of which report directly to De Jesus. Enrique Nater is the manager for the Transportation Branch. Thomas Woods is the manager of both the Supply Branch and the Project Automation Support Section. Wayne Stuart is the manager of the Material Maintenance Branch. The parties stipulated, and I find, that Nater, Woods, and Stuart are supervisors within the meaning of Section 2(11) of the Act because they possess and exercise one or more of the following authorities: 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 to recommend such action, and that they utilize independent judgment in exercising such authority.

Transportation Branch

Each of the three branches is subdivided into different sections¹. The Transportation Branch is composed of four sections as follows: Passenger Service; Personnel Property Movements; Unit Movements; and Freight Movements. The Petitioner seeks to represents the

¹ The record disclosed conflicting names for the sections in the Transportation, Supply and Materials Maintenance branches. At various times the witnesses relied upon the conflicting names for the sections contained in Employer Exhibit 2 and Employer Exhibit 6. For consistency purposes, I shall utilize the section names identified in Employer Exhibit 6 for this decision. I have chosen to adopt these names because the names identified in Employer Exhibit 6 are supported by the section names in the petitions and two job postings introduced into the record. Further, I note that Employer Exhibit 6 appears to be the more credible document as it contains detailed information on not only the name of the sections, but additionally the first name and employee classification for each employee employed in each of the sections.

Passenger Service and Personnel Property Movements sections individually in the two petitioned-for units. The Passenger Service Section is staffed with two employees, a travel clerk II and a travel clerk III. The clerks assist individual personnel and their families in obtaining travel reservations for arrival to and departure from Fort Bliss. The clerks coordinate with Carlson Wagonlit, a private travel agency, to either arrange to fly the individuals on commercial airlines or to request procurement of a contracted aircraft to fly an entire unit on one airplane.

Personnel Property Movements (the second petitioned-for unit) arranges for the shipping and receiving of the household goods for both incoming personnel and those departing from the base. For those soldiers on base who are being deployed to Afghanistan or Iraq, Personnel Property Movements will inventory and store the soldiers' personal property so that the base's barracks facilities are available for the incoming personnel. The shipping and receiving clerks in Personnel Property Movements arrange for several local vendors to pick up and warehouse the departing soldier's personal property. The Personnel Property Movements Section consists of sixteen employees as follows: five shipping/receiving clerks; two shipping/receiving clerk // counselors; three shipping/receiving clerks // inspectors; three supply technicians; two lead supply technicians // technician, transportation; and one general clerk III.

In addition to the petitioned-for units in Passenger Service and Personnel Property Movements, the Transportation Branch includes a Unit Movements section and a Freight Movements section. Unit Movements "receives" the soldiers when they first arrive at the base. Unit Movements conducts the initial processing of the incoming unit and also receives the unit's incoming equipment by rail and/or air delivery. The Unit Movements Section has thirty-four employees as follows: one lead heavy equipment operator; fifteen heavy equipment operators; one supply technician // technician, transportation; two locomotive truckdrivers tractor – trailer //

engineer/brakeman; and fifteen heavy truck truckdrivers. Freight Movements receives military cargo when large equipment is transported by overland delivery. Freight Movements consists of six employees as follows: one lead supply technician // technician transportation; three material coordinators // specialist freight rate; one material handling laborer and a woodworker.

Supply Branch

The Supply Branch consists of five sections as follows: Installation Property Book; Central Issue Facility; Supply Operations; Material Management/Customer Assistance and Ammunition Supply. The Installation Property Book Section maintains the installation property book, which tracks the purchases of all units that are on the base. Each unit on the base has its own account and the clerks in the Installation Property Book Section enter into a computer database the purchases by the units on base. The Installation Property Section has five employees as follows: four general clerks IV and one lead supply technician.

The Central Issue Facility equips soldiers and civilians with various equipment and supplies they may need. For instance, the Central Issue Facility will issue Kevlar vests for soldiers and weapons to private contractors working for the Army. The Central Issue Facility has twenty-two employees as follows: one lead supply technician; two material handling laborers; twelve stock clerks; two general clerks III; one supply technician; one forklift operator // material handler (FLO) and three warehouse specialists.

The record does not disclose the function of the Supply Operations Section. The section has thirty-five employees as follows: eleven shipping/receiving clerks; four heavy equipment operators; four woodworkers; two forklift operators // material handler(s) FLO; one fuel distribution system operator; one lead fuel distribution system operator; two mobile equipment servicers; one lead blocker and bracer; one lead supply technician; two supply technicians; one

supply technician // inspector, supply; one general clerk III; one general clerk IV; one lead warehouse specialist; and two warehouse specialists.

The record does not disclose the function of the Material Management/Customer Assistance Section. The section has eight employees as follows: two general clerks IV; five supply technicians and one lead supply technician.

The Ammunition Supply Section is the only employee group that is not physically located near Fort Bliss. The section is located at McGregor Range in New Mexico, which is approximately 23 miles from Fort Bliss. The employees in ammunition supply administer ammunition for a five-state region. The Petitioner and the Employer have agreed to a stipulated election, which was held on May 21, 2004, for the employees at the ammunition supply point and, therefore, those employees will not be included in the instant discussion.

Material Maintenance Branch

The Material Maintenance Branch is composed of four sections as follows: Armaments; Vehicle and Equipment; Production Control and Support; and Missile and Electronic Systems. The primary mission of the branch is to inspect and prepare equipment for combat and combat support operations. The Armaments Section consists of five armorers who go out to the field to support units that are firing their weapons. The Vehicle and Equipment Section provides maintenance services for vehicles and equipment such as forklifts utilized by the soldiers and the Employer's employees in all three branches. The section has fifty-one employees as follows: thirty-nine heavy equipment mechanics; two motor equipment metal workers; one tool and parts attendant; four motor vehicle mechanics; four lead motor vehicle mechanics; and one mobile equipment servicer.

The Production Control and Support Section repairs vehicles and other equipment, including office equipment for the other sections. The section employs twenty-four employees as follows: four production control clerks; one lead production control clerk; one material coordinator; three tool and parts attendants; two electronic maintenance III technician, inspector; one supply technician; one material handling laborer; one janitor // laborer; one lead motor vehicle mechanic inspector; two maintenance schedulers; and seven motor vehicle mechanic inspectors. The Missile and Electronic Systems Section provides maintenance and/or training on radars and the Patriot Missile System. The Missile and Electronics Systems Section has twenty-one employees as follows: twenty electronic maintenance technicians III and one lead electronic maintenance technician III.

Project Automation Support Section

The Project Automation Support Section provides IT support to employees in the other branches and also maintains the Standard Army Management Information System, a software program that is utilized by the Army. The section has eight employees as follows: three logistics systems analyst(s); three computer systems analysts; one lead computer systems analyst; and one general clerk III. David Ahumada is the immediate supervisor of the employees in the Project Automation Section.

The parties stipulated, and I find, that David Ahumada is a supervisor within the meaning of Section 2(11) of the Act because he possesses and exercises one or more of the following authorities: 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 to recommend such action, and utilizes independent judgment in exercising such authority.

ANALYSIS

Appropriate Bargaining Unit

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, nothing in the statute requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1999). For example, in *Overnite*, the Board found that the inclusion of mechanics in a unit of drivers and dock workers was not required because the mechanics had a sufficiently distinct community of interest from the drivers and dock workers to enable them to be represented in a separate appropriate unit. *Id.* at 726. Therefore, to determine whether the units sought by the Petitioner in the instant case are appropriate, I must consider whether the petitioned-for units have a sufficiently distinct community of interest from the employees the Employer seeks to include in its proposed single unit.

In defining the appropriate bargaining unit, the key question is whether the employees share a sufficient community of interest. *Alois Box Co.*, 326 NLRB 1177 (1998); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In determining whether employees share a sufficient community of interest, the Board looks at a variety of factors, including: interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. *E. I. Du Pont*, 341 NLRB No. 82 (2004). Here, the record does not disclose any history of collective bargaining affecting any of the employees to provide guidance with respect to their unit placement.

Based upon my review of the record, the units petitioned-for here would, upon application of the foregoing community-of-interest factors, be found to be appropriate units for collective bargaining. In making this determination, as stated above, it is necessary to ascertain whether the petitioned-for units have a sufficiently dissimilar community of interest to justify separate representation from the employees the Employer seeks to include in its proposed unit.

Functional Integration

The record disclosed that from a broad perspective the Employer's operations are functionally integrated. Soldiers and/or civilians who are being deployed to Fort Bliss commonly interact with all three branches of the Employer's operational employees. For instance, the Passenger Service Section issues an incoming soldier travel reservations. That same soldier may have personal items transported to the base by the Personnel Property Movements Section. Upon arrival at the base, the soldier is initially received by the Unit Movements Section. In the preceding example, therefore, the soldier may interface with three of the four sections in the Transportation Branch.

After arriving at the base, the soldier may come into contact with employees in the other two branches. For example, incoming soldiers may obtain additional equipment from the Central Issue Facility Section in the Supply Branch. If the employee is issued a vehicle while on the base, she may have to visit employees in the Vehicle and Equipment and/or Production Control and Support sections of the Material Maintenance Branch.

Thus, the Employer's operations exhibit some degree of functional integration, however, the record does not disclose that the petitioned-for employees are dependent on the Employer's other employees to perform their daily job assignments.

Salary and Fringe Benefits

All employees have the same employee fringe benefits such as ten holidays per calendar year, vacation accrual rates and the opportunity to participate in the Employer's insurance and thrift and savings plans. In addition, all employees are invited to attend the Employer's annual picnic.

All employees are paid bi-weekly every other Thursday and thus have 26 pay periods per year. The record does not disclose the pay range for each of the disputed employee classifications. The only pay ranges identified in the record were \$18-\$24 an hour for the employees in the Project Automation Support Section and \$9-\$10 an hour for shipping and receiving clerks. Similar employee classifications make the same wages regardless of which section or branch they work in. Thus, a shipping and receiving clerk or supply technician in the Personnel Property Movements Section (one of the petitioned-for units) is in the same wage band as a shipping and receiving clerk or supply technician in the Supply Operations and/or Material Management/Customer Service sections in the Supply Branch.

Hence, in some circumstances, wages between employees in at least one of the petitioned-for units are similar to some of the employees that the Employer seeks to include in its proposed unit. However, the same logic leads to the reasonable conclusion that there are differences in pay between the employees as well. For instance, the two travel clerks who makeup the first petitioned-for unit in the Passenger Service Section are the only travel clerks employed by the Employer.

Further, although the Employer employs shipping and receiving clerks and/or supply technicians in some of the other sections, there are no shipping and receiving clerks and/or

supply technicians in the following sections: Passenger Service; Vehicle and Equipment; Missile and Electronics Systems; Armaments; and Project Automation Support. Moreover, whereas the shipping and receiving clerks and supply technicians constitute fifteen of the sixteen employee classifications for Personnel Property Movements, (the second petitioned-for unit) their representation is much more diffuse in the other sections. . For instance, in the Transportation Branch, only one of the six employees in Freight Movements, and only one of the thirty-four employees in Unit Movements is a shipping and receiving clerk or supply technician.

In the Supply Branch, six of the eight employees in Material Management/Customer Service; fifteen of the thirty-five employees in Supply Operations; two of the twenty-two employees in Central Issue Facility; and one of the five employees in Installation Property Book Section are shipping and receiving clerks and/or supply technicians. Finally, Production Control and Support Section, the only section of the Material Maintenance Branch that has a shipping and receiving clerk or supply technician, has only one such employee out of twenty-four employees.

Based on the preceding, it is clear that all employees share similar community of interest concerns with respect to the Employer's fringe benefits. However, the Employer has not established a similar overwhelming common concern with respect to pay. As the example of the two pay ranges for the shipping and receiving clerks and the employees in the Project Automation Support Section demonstrate, there are substantial differences in the hourly wages of certain of the Employer's employees' based on their classification.

The testimonial evidence proffered by the Employer to establish common concern regarding wages, via the testimony that employees in the same classification are paid the same regardless of which branch or section they work in, is insufficient. The majority of the

employees that the Employer seeks to include in its proposed unit are in different employee classifications than the employees in the petitioned-for units. Thus, the Employer has failed to show an overriding commonality of concern between employees in the petitioned-for units and the Employer's proposed unit regarding wages.

Similarity of Working Conditions and Employee Skill

The unit proposed by the Employer contains approximately thirty-four different employee classifications. However, the Employer offered very little record evidence regarding the specific job duties, qualifications and training for each of these employee classifications. The most detailed evidence regarding the foregoing is contained in job postings for a heavy equipment operator position in the Unit Movements Section and a logistics systems analyst position in the Project Automation Support Section. Both job postings contain detailed information on the job descriptions and qualifications for the respective positions.

The only common element between the two positions is the requirement that the prospective employees have a driver license. In almost every other aspect, the job descriptions and qualifications are very different from each other and very different from any of the classifications in the two petitioned-for unit. The job description for the logistics systems analysts states, among other things, that the employee will utilize software and computer equipment to perform network management and network administration; manage client servers, electronic mail, and a local area network; and provide instruction to area users on database and file accessing techniques. In contrast, the job description for the heavy equipment operator states that the employee will operate gasoline or diesel powered lift equipment to load aircraft or railcars, inspect cargo for hazardous declarations and perform maintenance and safety checks on the lift equipment.

The qualifications listed for each position are equally dissimilar. The qualifications for the heavy equipment operator include experience in air and rail loading, maintaining heavy lift equipment, having the licenses to operate material/ground handling equipment and having no physical and/or medical limitations on heavy lifting. In contrast, the qualifications for the logistics system analyst include knowledge of hardware and software systems and experience with MS-DOS, UNIX and Windows operating systems. The job posting for the analyst also states that the desired qualifications would include level two security certification and two years experience with a related bachelor's degree.

The preceding is the most detailed evidence in the record regarding the working conditions and employee skill levels of any of the employee classifications that the Employer seeks to include in its proposed single unit. In addition to this documentary evidence, the record disclosed very limited evidence regarding the other employee classifications. Specifically, the Employer alleged that there was little if no difference between the general clerk, travel clerks, supply technicians and shipping and receiving clerks in the two petitioned-for units and the same employee classifications in the Supply and Material Maintenance branches.

Contrary to the Employer's assertion, significant differences exist between the employees in the petitioned-for units and the Employer's other employees. First, the travel clerks in the Passenger Service Section are the only travel clerks employed by the Employer. The record disclosed that the travel clerks utilize the Sabre reservation system developed by American Airlines to perform their duties. The record does not disclose any other employees who utilize this system.

Second, the working conditions and skills of the supply technicians and shipping and receiving clerks in the second petitioned-for unit are different from those of the same employees

in the Supply and Material Maintenance branches. The record disclosed that employees in these classifications routinely interpret Army regulations in performing their duties. Although there is some “overlap” in these regulations, each of the Employer’s three branches have specific regulations unique to that particular branch, i.e., separate regulations for Transportation, Supply and Material Maintenance.

Further, whereas the employees in the petitioned-for unit work a set 7:30 a.m. to 4:30 p.m. schedule, the employees in the Unit Movements, Central Issue Facility, Vehicle and Equipment, and Missile and Electronics sections work flexible schedules that may include overtime. Lastly, De Jesus testified that while the Employer has a set business week of Monday through Friday, the schedule varies by branch (although the record does not disclose the specific workweeks for each of the three branches).

The record also disclosed that the employees in the two petitioned-for units are issued GSA vehicles. The record does not disclose which, if any, of the Employer’s other employees are also issued such vehicles.

In sum, the evidence of similarity of working conditions and employee skills between the petitioned-for employees and the Employer’s other employees is limited. Although there is some similarity between the employees of the same classification in the petitioned-for units and the Employer’s other employees, considerable differences exists with respect to vehicle assignment, scheduling and/or the branch-specific Army regulations to distinguish the employees’ working conditions.

Geographical Proximity

All the employees that the Employer seeks to include in the proposed single bargaining unit are located within a two to three mile radius on the base that may be traversed in less than

ten minutes from one location to another. The petitioned-for employees in both units (Passenger Service and Personnel Property Movements) work in separate buildings on the base that do not contain any other of the Employer's employees. The buildings in which each of the petitioned-for units are located are directly across the street from each other.

Common Supervision

The supervisory structure of the Employer's operations is divided into four tiers. At the top, De Jesus shares in some of the supervision of the employees, as he must personally approve all employee terminations. Next, the Employer's human resource manager signs off on any disciplinary action below termination, approves leave and participates in all employee hiring by holding the only permanent chair on a three-person interview panel. The other two members of the panel may consist of some combination of a branch manager and supervisor or two supervisors from the branch where the vacancy exists. In addition to the foregoing, the record testimony revealed that some of the sections in the Employer's three branches have low-level supervisors. For instance, the parties stipulated that David Ahumada, section supervisor for the Supply Operations and the Project Automation Support sections, is a Section 2(11) supervisor.

Transportation Branch manager Enrique Nater provides the day-to-day supervision for the petitioned-for employees in the Passenger Service and Personnel Property Movements section. In addition to the two petitioned-for units, Nater also manages the Freight Movements and Unit Movements sections.² Nater conducts meetings with both of the petitioned-for units twice a week. Employees from the Passenger Service and Personnel Property Movements sections are the only employees who attend these meetings.

² De Jesus testified that the Unit Movements Section has a vacant supervisory position that the Employer is actively seeking to fill.

Interchange and Contact Among Employees

The record evidence reflects that on an annual basis, employees in the petitioned-for units and the Employer's other employees come into contact with each other two to three times a year, however, evidence of day-to-day interchange among the employees is minimal. All of the Employer's employees are required to attend annual ethics and safety training together. In addition, the Employer has also begun a "state of the business" meeting and all employees attend. However, in the day-to-day performance of their job duties, the record disclosed minimal contact between the petitioned-for employees and the Employer's other employees. Specifically, the record revealed no day-to-day contact between the petitioned-for employees and the employees in the Material Management/Customer Service; Ammunition Supply; Central Issue Facility; Installation Property Book; Equipment and Vehicles; Missile and Electronics Systems and Freight Movements sections of the Employer's operation.

The record reflects some minimal contact between the petitioned-for employees and packing and crating employees in the Supply Branch, employees in the Production Control and Support Section and employees in the Unit Movements Section. However, this evidence lacked detail and was contradicted by testimony from employees in both petitioned-for units.

Although De Jesus testified about limited contact between the petitioned-for employees in the Personnel Property Movements Section and packing and crating employees, shipping and receiving clerk // inspector Maria Minjarez testified that she has never, nor has she ever heard of, any contact between the Personnel Property Movements Section employees and packing and crating employees in the Supply Branch. Minjarez testified that the Employer contracted with various vendors in El Paso to actually move the personal items and when a special item need to

be packed and crated, she calls the vendor to inform them of the special item and they will perform the crating themselves.

De Jesus also testified about limited contact between the petitioned-for employees in the Passenger Service Section and employees in the Unit Movements Section. Passenger Services travel clerk Lesley Pugh contradicted this evidence by testifying that during her twenty-month employment tenure, the only other employees that she has ever contacted to perform her duties as travel clerk are the employees in the second petitioned-for unit, the Personnel Property Movements Section.

Based on the above, I am compelled to conclude that the petitioned-for employees have very limited contact with the Employer's other employees on a day-to-day basis.

The record reflects only limited evidence of transfers between the employees in the petitioned-for units. The only evidence of such transfers in the record was De Jesus's testimony that during the iteration of Iraqi Freedom I, the Employer processed a record of 975 individuals in one day through its Central Issue Facility. In comparison, the contract requirement is 150 individuals per month. As a result of the record processing, the Employer could not perform the necessary data processing before the next business day. As a result, an unspecified numbers of supply technicians from Transportation were temporarily transferred to the Central Issue Facility to assist with the data entry. The record does not disclose if these employees came from any of the petitioned-for units. The Transportation employees were trained on how to utilize the particular programs in the Central Issue Facility in order to assist with the data entry. The record also disclosed that employee interchange might occur during January and July of each year, which tends to be the ramp-up period of the Employer's operations.

As with the evidence of daily interaction amongst the petitioned-for employees and other employees, the foregoing testimony of employee transfers is lacking in any detail and context to evaluate the level of interchange amongst the employees. See *New Britain Transportation Co.*, 328 NLRB 820 (1999), Board requires detailed evidence of employee interchange to be presented as a percentage of total employees.

Conclusion

Based upon my review of the record, I have concluded that sufficient differences in the community of interest factors are present in the instant case to justify separate employee representation for the petitioned-for employees. Although the record disclosed some broad functional integration of the Employer's operations, similarities in fringe benefits and close geographical proximity, the record also disclosed appreciable differences in day-to-day supervision, working conditions and a lack of employee contact so as to find a separate community of interest for the petitioned-for employees. I note that the Board has held that, "[e]mployee interchange and common day-to-day supervision are the two most important factors." *E. I. Du Pont* quoting from *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). See also *Heritage Park Health Care Center*, 324 NLRB 447, 452 (1997), *enfd.* 159 F.3d 1346 (2d Cir. 1998); *Towne Ford Sales*, 270 NLRB 311 (1984); and *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986).

I also find that the community of interest factors for the employees in the two petitioned-for units are so substantial as to mandate their inclusion in one unit. With respect to the foregoing, the record disclosed that employees in both groups share the same day-to-day supervisor, frequently have contact with one another multiple times in a workweek, share similar working conditions and work in close proximity to each other. For example, in addition to the

same fringe benefits and common labor relations policies enjoyed by all employees, employees in both sections are supervised on a day-to-day basis by Nater, meet with each other at least three times a week, work the same schedule, utilize GSA vehicles and work across the street from one another.

Although other combinations of the Employer's employees may also be appropriate for collective bargaining, the above-proposed unit is consistent with the Petitioner's choice of which employees it seeks to represent. The Board has repeatedly held that the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees. *Cellco Partnership*, 341 NLRB No. 63 (2004). Therefore, because a combined unit of employees in both the Personnel Property Movements Section and Passenger Services Section is appropriate, I need not find that the broader single unit urged by the Employer is the only appropriate unit in this case.

In making this finding, I find unpersuasive the argument by the Employer that the Board's decisions in *Ohio Valley Supermarkets, Inc.*, 269 NLRB 353 (1984) and *Stop N' Go Inc.*, 279 NLRB 344 (1986) compel me to determine that the all encompassing unit proposed by the Employer is the only appropriate unit. Those decisions held that in the context of a chain of retail stores, the single facility presumption had been rebutted where it was shown that the local store managers exercised minimal supervisory authority. Material differences exist between the facts of the instant case and those present in Board decisions cited by the Employer. Specifically, the pay and job classifications for employees in the different retail outlets were the same for all of the employees. See *Ohio Valley Supermarkets*, 269 NLRB 353, 353 (1984) ("all job classifications, wage scales, and benefits are the same for employees at all three stores) and *Stop N' Go Inc.*, 279 NLRB 344, 353 (1986) ("all nonsupervisory employees are clerks or

cashiers performing duties substantially identical to those of their counterparts at other of the stores”).

Under such circumstances as in those decisions, the only difference between the community of interest factors for the employees is different supervisory personnel and geographic separation. Thus, where the evidence shows that the local supervisory personnel have muted supervisory authority, the local autonomy of the stores is non-existent. In contrast, the all encompassing unit proposed by the Employer in the instant case has over thirty employee classifications with numerous employee classifications in the Employer’s proposed unit that are not included in either of the petitioned-for units. The pay differential of the employees in the proposed unit is as much as 100% between one classification and another.

Voting Eligibility of Temporary Employees

The Employer argues that the temporary employees should be included in any appropriate unit.³ The Board has long held that "temporary employees, who are employed on the eligibility date, and whose tenure of employment remains uncertain, are eligible to vote." *Personal Products Corp.*, 114 NLRB 959, 960 (1955). See also *WDAF Fox 4*, 328 NLRB 3 (1999), *enfd.* 232 F.3d 943 (8th Cir. 2000). Thus, the test for determining the eligibility of individuals designated as temporary employees is whether they have uncertain tenure. If the tenure of the disputed individuals is indefinite and they are otherwise eligible, they are permitted to vote. *In re MJM Studios of New York, Inc.*, 336 NLRB 1255 (2001)

The record disclosed that the Employer has approximately 72 temporary employees whose tenure is set to expire on July 31, 2004. The Employer alleges, however, that their tenure

³ The Employer estimated that between 60-72 employees are temporary workers. Of this number, the Employer states four of the temporary employees were hired through a temporary agency named Volt. Both parties stipulate that the Volt employees should not be included in any bargaining unit.

is uncertain because the July 31, 2004 date is “artificial.” The July 31 date was chosen as the expiration date of the temporary employees' tenure because the base and option year of the Employer's contract with the Army is July 31. Currently, the temporary employees' employment has only been funded through July 31 of this year. The Employer has informed the temporary employees that based on the political situation in Iraq, the likelihood of their tenure being extended beyond July 31 is very good. Therefore, the Employer alleges that the temporary employees' employment tenure is uncertain and thus they should be included in any appropriate unit.⁴

Contrary to the Employer's argument, I have concluded that the temporary employees' employment is not uncertain and they should not be included in the unit. The Employer did not provide any concrete evidence that the July 31 date will be extended and/or abrogated. Nor does the record contain any testimonial or documentary evidence establishing a prior practice of the Employer in extending the temporaries' employment tenure. Concededly, the possibility always exists that the employees' tenure may be extended beyond July 31. However, upon the limited evidence in the record, it is premature at this date to characterize the temporary employees' employment tenure in the instant case as uncertain. The Employer's argument with regard to the length of the war is speculation with no supporting evidence as to the status of the temporary employees at this time. Thus, I conclude the temporary employees should be excluded from the bargaining unit.

⁴ In its post hearing brief, the Employer alleged that the tenure of the temporaries is dependent on how long the war in Iraq and Afghanistan will last. The Employer's brief then speculates that the operations will continue for another four to five years. The record does not support the preceding statement and inference. De Jesus testified that the temporary employees' employment tenure was based on the political situation in Iraq. On cross examination, De Jesus testified that if the political situation changed, including the planned June 30th handover of sovereignty to the Iraq government, then it may not be necessary to extend the temporaries' employment tenure.

The foregoing discussion appears to be moot in any event as Employer Exhibit 6 reveals that no temporary employees are assigned to either the Personnel Property Movements Section or the Passenger Service Section – the two sections that form the unit I have found appropriate in the instant case.

Supervisory Status of Lead Employees

At the hearing, the Petitioner asserted that the lead employees are supervisors and should be excluded from the bargaining unit. As the party asserting supervisory status, the Petitioner bears the burden of proof. *NLRB v. Kentucky River Community Health Care, Inc.*, 532 U.S. 706, 710 (2001). In order to meet this burden, the Petitioner must demonstrate by a preponderance of credible evidence, that the lead employees engage in activities described by Section 2(11) of the Act. *Star Trek: The Experience*, 334 NLRB 246, 251 (2001). Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The above definition reflects the primary indicia of supervisory authority. Although the exercise of any one of these types of authority is sufficient to confer supervisory status, it is well settled that such authority must be exercised with “independent judgment on behalf of management and not in a routine or sporadic manner.” *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990). The exercise of some supervisory authority in merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an

employee. *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994), *The Clark Machine Corp.*, 308 NLRB 555 (1992).

For the reasons set forth below, I find that the Petitioner has not met its burden and thus, I conclude that the lead employees should be included in the unit.

The record disclosed that lead employees do not hire, fire or discipline employees; nor does the record contain any evidence that the leads direct the work of other employees as contemplated by the Act. The limited evidence of supervisory authority of leads in the record consists of contradictory testimony regarding the role leads play in scheduling employees. The Board has held that where the evidence is conflicting and inconclusive, supervisory status will not be found. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Thus, I must conclude that the evidence is insufficient to establish Section 2(11) status. In making this finding, I take notice of the Board's admonition with respect to determining supervisory status. The Board has cautioned that supervisory status shall not be construed too broadly because the employee who is deemed a supervisor is denied employee rights that the Act is intended to protect. *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989); *Adco Electric*, 307 NLRB 1113, 1120 (1992), *enfd.* 6 F.3d 1110 (5th Cir. 1993); and *Chevron U.S.A.*, 309 NLRB 59, 62 (1992).

Therefore, I am compelled to conclude that the lead employees are not supervisors as defined in Section 2(11) of the Act as the Petitioner has not met its burden in the instant case. Thus, I conclude that the leads are rank and file employees who must properly be included in the unit. See *In re Dole Fresh Vegetables, Inc.*, 339 NLRB No. 90 (2003).

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 parties stipulated, and I find, that the Employer, Raytheon Technical Services Company, LLC, a Delaware corporation, is engaged in the business of providing various services to the Federal Government, and the service and maintenance of military and civilian equipment. During the preceding twelve months, a representative period, the Employer, in conducting its business operations derived gross revenues in excess of \$50,000 from sales to customers located directly outside the State of Texas. Accordingly, the Employer meets the statutory standard for asserting jurisdiction over nonretail enterprises.

Additionally, the record disclosed that the Employer provides services that have a substantial impact on the national defense of the United States of America and accordingly the assertion of discretionary jurisdiction is appropriate. Based on the foregoing, I find 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.

3. The Petitioner claims to represent certain employees of the Employer.

4. The parties stipulated to the Petitioner's labor organization status.

5. 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.

6. 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:

INCLUDED: All permanent hourly travel clerk II and travel clerk III, shipping and receiving clerk; shipping and receiving clerk // counselor; shipping and receiving clerk // inspector; supply technician; supply technician // technician, transportation, lead; and general clerk III employees employed in the Employer's Passenger Service Section and Personnel Property Movements Section at Fort Bliss in El Paso, Texas.

EXCLUDED: All supervisors as defined under the Act .

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 351, 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. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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). This 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, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102 **on or before June 10, 2004**. No extension of time to file this 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 817-978-2928. 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 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 full 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.

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 5:00 p.m., EST **on June 17, 2004**. The request may **not** be filed by facsimile.

Dated: **June 3, 2004**

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102