

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

Beloit, Wisconsin

GENENCOR INTERNATIONAL WISCONSIN, INC.¹

Employer

and

Case 30-RC-6576

**INTERNATIONAL CHEMICAL WORKERS UNION
COUNCIL OF THE UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION, AFL-CIO**²

Petitioner

DECISION AND DIRECTION OF ELECTION

This is my determination as to the appropriateness of the unit sought by the Petitioner, as stated in a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), as amended, and after a hearing was held before a hearing officer of the National Labor Relations Board (Board).³ Petitioner seeks to represent a unit of:

all full-time non supervisory (hourly) operators, technicians and mechanics in production, maintenance, lab, warehouse and waste treatment; excluding all salaried, non-salaried supervisor, professionals, office clericals, R&D, guards/security and temporary employees.

¹The name of the Employer appears as amended at hearing.

²The name of the Petitioner appears as amended at hearing, I further have taken administrative notice of the International Union's affiliation and have amended Petitioner's name accordingly.

³ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Timely briefs from the Employer and Petitioner have been received and duly considered, and upon the entire record in this proceeding, the undersigned finds: 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. The parties stipulated, and I find, that the Employer, a Wisconsin corporation with an office and place of business in Beloit, Wisconsin, is engaged in the business of chemical manufacturing, and that during the past calendar year, a representative period, the Employer purchased and received at its Beloit, Wisconsin location goods valued in excess of \$50,000 directly from suppliers located outside the state of Wisconsin. 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. 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.

The Petitioner asserts that the seven laboratory technicians are properly included in the Unit, but that the two Quality Assurance/Quality Control specialists (QA/QC specialists) are statutory supervisors and should be excluded. The Employer opposes inclusion of laboratory technicians and QA/QC specialists as lacking a community of interest with the proposed bargaining unit, and argues in the alternative that if laboratory technicians are included in the Unit community of interest considerations dictate that the QA/QC specialist classification must also be included. In seeking this unit the Petitioner further asserts that the four employees in the area coordinator classification, one in the technical specialist - maintenance classification and one in the technical specialist-process classification are statutory supervisors.⁴ The Employer disputes the asserted supervisory status, and argues each is properly included in the Unit. The Employer also disputes that the QA/QC specialists are supervisors.

I find that the laboratory technicians and QA/QC specialists share a community of interest with each other and the proposed bargaining unit such that both laboratory classifications must be included in an appropriate unit. Further, I find that area coordinators are statutory supervisors, but that the technical specialist–maintenance, technical specialist–process and QA/QC specialist positions are not and, therefore will be included in the appropriate unit. As such I find the following unit is appropriate for purposes of collective bargaining:

⁴ Employer Exhibit 1 lists the job title held by Thomas Jankowski as “Technical Specialist,” and the position held by Jeremy Gillam as “Technical Specialist – Process.” Employer Exhibit 2 refers to Jankowski as “Technical Specialist – Maintenance,” and Gillam as “Team Coordinator Helper.” For the purposes of this decision Jankowski is considered a “Technical Specialist – Maintenance” consistent with Employer Exhibit 6. Gillam is considered a “Technical Specialist – Process,” consistent with Employer Exhibit 5. The parties stipulated that while Gary Hass is classified identically to Jankowski this is a matter of administrative convenience related to his pay, but that as a practical matter he has assumed a supervisory position, is no longer a Technical Specialist – Maintenance, and is properly excluded as a statutory supervisor. The record reflects the maintenance department reports to Hass, and that he exercises significant independent judgment in directing the work of the department. Consistent with the parties’ stipulation and the record I find Hass is a statutory supervisor and exclude him from the Unit.

All full-time and regular part-time process technicians, laboratory technicians, QA/QC specialists, maintenance technicians, maintenance administrators, technical specialist-maintenance, technical specialist-process, warehouse technicians, and environmental health and safety technicians employed by the Employer at its Beloit, Wisconsin location; excluding all professionals, office clericals, area coordinators, team coordinators, temporary employees, guards and supervisors as defined in the Act.

The size of the bargaining unit is approximately 50 employees.

Background

The Employer, part of a large multinational biotechnology entity, operates a 24 hour a day, seven day a week production facility in Beloit, Wisconsin. This facility consists of seven buildings spread over approximately 26 acres and employs 79 employees, divided into two primary divisions: technical and administrative. The technical division is responsible for the various aspects of the production plant, which utilizes a complex fermentation process to create a variety of enzymes, sold primarily to the grain processing industry. The administrative division involves finance, human resources, purchasing, and other managerial functions. The administrative offices are located on the first floor of the facility's main building; technical aspects such as the process area, control room and laboratory are also located in the main building, with other technical aspects such as wastewater treatment, warehousing and maintenance situated in outlying buildings. The employee classifications at issue are part of the technical division.

The growth and cultivation of the product enzymes are the central functions of the plant, but in addition to production, the technical division also involves laboratory monitoring of product quality and the maintenance and development of the specialized technologies used in the process, an engineering function. The varied aspects of the technical division are reflected in the three subsets, or groups, within the division's organization: operations, laboratory, and technology.

Operations is the production and maintenance group. It is also the largest of the Employer's groups, consisting of four area coordinators, three team coordinators, approximately 17 employees performing product recovery, 14 employees dedicated to fermentation (one of whom is classified as technical specialist – process), and 10 employees in a maintenance department (one of whom is classified as a technical specialist-maintenance). The laboratory consists of ten employees, including the QA/QC manager, two QA/QC specialists, and seven laboratory technicians. The technology group consists of a technology manager, a capital manager, three plant engineers, two process engineers, and an automation engineer.

The work areas dedicated to the production process are numerous and varied. The Employer's product process begins in the laboratory, but is shortly after transferred to a "seed tank" on the production floor, where the material begins its growth. After achieving a certain size it is transferred to a large fermentation vessel. During this fermentation process components are added to create optimal growth conditions. After transfer from the fermentation tank, the process has entered the recovery phase, with some products immediately harvested and sold with relatively little treatment, but other products requiring additional processing. Processing involves separating the product into debris, solids (eventually sold as fertilizer) and a liquid (ultimately concentrated and stabilized to create the finished product).

Approximately 45 production and maintenance employees, the majority of the proposed bargaining unit, carry out the above process. These employees are categorized as process technicians II and III, and maintenance technicians II and III. These employees work on a rotating schedule to cover the around the clock production needs of the facility. They report directly to the team coordinator for their respective section, Mike Lichte in fermentation, Jerry DeSormeau in recovery, and Gary Hass in maintenance.

The laboratory at the Employer's facility is a large room consisting of benches for analytical work, and three smaller rooms, one for microbiological work, one for autoclaves, and one which is the laboratory manager's office. Laboratory employees classified as either Laboratory Technicians II & III or QA/QC Specialist, utilize each of these areas as work dictates. The work in the laboratory consists of beginning the fermentation process, although this only takes approximately five percent of the employees' time, and extensive quality control testing. All employees in the lab wear eye protection and lab coats.

Most lab technicians work a first shift from 6:30 am to 4:30 pm, with a second shift scheduled from 4:30 pm to 2:30 am. Both shifts work a rotation of four days out of seven and weekends are covered as they come up in the rotation. QA/QC specialists and the laboratory manager work Monday through Friday, 7:30 am to 4:30 pm, although both specialists and the laboratory manager fill in on a rotating weekend shift to assist lab technician scheduling. All employees in the lab report to the lab manager, Suzie Breneman.

The classifications described above include exempt salaried and non-exempt hourly employees. The Employer's pay structure consists of five "bands."⁵ The Employer provides the same benefit package to all employees, including health insurance, a stock option plan, and eligibility for recognition awards.⁶ Uniforms are available to all employees, although their use is usually limited to those employees in the production facility. Certain areas of the facility do present hazards and safety equipment is required for all employees in those areas regardless of position.

⁵ The Employer's handbook clarifies the type of position that is included in each pay band as follows: I, Vice-Presidents/Research Fellows, II Directors/Staff Scientists, III Managers/Scientists, IV Professional/Supervisory, and V Administrative/Technicians.

⁶ The Employer utilizes a 3-tier recognition award system. Any employee can make a recommendation to begin the process, the basis for the award determines the tier the award falls in, which in turn determines the amount of the potential award and the individual or committee that makes the determination.

Analysis

A. Community of Interest, Inclusions in the Bargaining Unit

The primary issue regarding Petitioner's proposed unit is whether the unit sought by Petitioner is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry. *Bartlett Collins Co.*, 334 NLRB 484 (2001). The unit needs only to be an appropriate unit, and need not be the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951). For a unit to be appropriate, the key question is whether the employees share a sufficient community of interest, which is determined by examining such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. See *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).

1. Laboratory Technicians

As noted in the above description of the laboratory, the majority of lab technicians' work is quality control in nature, as they are responsible for inspecting the quality of the product and ensuring that it adheres to specific standards. Considering that this is their primary duty lab technicians are properly viewed as quality control employees. Under established Board law quality control employees are generally included in a unit of production and maintenance employees. *Blue Grass Industries*, 287 NLRB 274, 276 fn. 10 (1987), see also *Lundy Packing Co.*, 314 NLRB 1042 (1994), *enf. denied on other grounds*, 68 F.3d 1577 (4th Cir. 1995).

Here the Petitioner is seeking the inclusion of the lab technician position. To exclude them from the unit requires finding the lack of a community of interest between the production and maintenance employees and lab technicians overwhelming. *Lundy Packing Co.*, supra. Considering the mutuality of interest in wages, hours, and other working conditions, skills, functions, frequency of contact and interchange, and functional integration, it is apparent this is not the case. While factors are present that would support excluding lab technicians, the petitioned for unit must only be an appropriate unit, not the most appropriate unit. For this reason I find it is appropriate to include the lab technician II and III positions in the proposed unit.

Regarding wages, hours and other working conditions, lab technicians' employment is similar to that of production and maintenance employees. Although specific hours of work differ, both classifications work in a twenty-four hour a day facility that requires staffing on multiple shifts, on a rotation that involves working unconventional hours. Lab technicians and production and maintenance employees are both classified as non-exempt, hourly, pay band V positions. Both classifications are covered by the same benefits plans and are eligible for the same incentive programs. Regarding commonality of supervision, while the first line of supervision for each is at the group level, each of their group supervisors reports to the operations manager.

Although lab technicians and production and maintenance employees are not working in the same area, and do not perform the same tasks, they do work in close proximity as part of working on the same process. Indeed, by initiating the seed train, the laboratory starts the production process, and by classifying the cultivated material finished product the laboratory also ends the production process. Additionally the two groups have some interaction when

carrying out their job duties. The record reflects that at the beginning of a shift lab technicians will talk to the operators to determine what will be occurring in the plant during that shift, what samples the lab can expect, and any problems the lab needs to know about. Additionally if questions arise during the shift a lab technician may walk to the control room, located near the laboratory on the second floor, with that question. At hearing Laboratory Manager Breneman estimated this happened on average at least once a shift. For these reasons I find the lab technicians share a community of interest with the production and maintenance employees and are properly included in the proposed bargaining unit.

2. QA/QC Specialists

As described above, the work of QA/QC specialists is very similar to lab technicians. The two classifications share an overwhelming community of interest regarding traditional factors such as commonality of supervision, common functions, and frequency of contact. Approximately 10 to 15 percent of a QA/QC specialists' time is spent filling in for lab technicians, and QA/QC specialists actually work in the lab technicians' schedule rotation. The two groups work in close proximity throughout the working day and share common supervision. They are the only two classifications that utilize laboratory tools such as spectrometers, autoclaves, auto analyzers, and incubators. Also, as the only employees in the laboratory, these two groups share many secondary working conditions such as the use of lab coats and specialized safety gear.

The circumstances surrounding the placement of QA/QC Specialists is much different than that of lab technicians, however, in that the Petitioner seeks to have them excluded. As noted above, the Petitioner need only propose an appropriate unit. Nonetheless, in the present case, the community of interest between these two classifications is so overwhelming that the

exclusion of QA/QC specialists, in the face of the clear community of interest they share with the lab technicians, would be inappropriate. For that reason I include QA/QC specialists in the proposed unit.

B. Supervisory Status of Disputed Classifications

The plain language of the Act establishes whether an employee is a supervisor. The Act defines supervisors as:

...any individual having authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or to effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. §152(11).

This statutory direction is read in the disjunctive, if any one of the statutory factors is found, regardless of frequency of occurrence, that employee is a statutory supervisor. *Big Rivers Electric Corp.*, 266 NLRB 380, 382 (1983). It is also well-established Board law that the party asserting supervisory status has the burden of proof. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001). The statutory language creates a three-part test for determining supervisory status. *Id.* at 713. An employee is a statutory supervisor if the party asserting that status can show: (1) the employee has the authority to engage in one of the twelve listed activities; (2) the exercise of that authority requires the use of independent judgment; and (3) the authority is held in the interest of the Employer. *Id.* While it is true the Board does not construe supervisory status broadly because employees deemed to be supervisors lose the protection of the Act, this policy consideration will not overcome sufficient evidence under the above test.

In relatively close cases, the Board looks to well-established secondary indicia, including the individuals' job title or designation as a supervisor, attendance at supervisory meetings, job responsibilities, authority to grant time off, etc., and whether the individual possesses a status

separate and apart from that of rank-and-file employees. See *NLRB v. Chicago Metallic Corp.*, 794 F.2d 531 (9th Cir. 1986); *Monarch Federal Savings & Loan Assn.*, 237 NLRB 844 (1978), *enfd. N.L.R.B. v. Monarch Federal Sav. and Loan Ass'n*, 615 F.2d 1354 (3rd Cir. 1980); and *Flex-Van Service Center*, 228 NLRB 956 (1977).

The Board reviews the facts in each case in order to differentiate between “the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact.” *Providence Alaska Medical Center*, 320 NLRB 717, 725 (1996). The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*

1. Area Coordinators

An area coordinator is generally assigned to each of the sections within operations, with responsibility to gather and record performance data for that section. The area coordinator’s primary responsibility is to then take that data and create a production schedule, prioritizing work. Also known as manufacturing supervisor, this position is placed within the Employer’s hierarchy immediately below the operations manager, equivalent to team coordinator, a stipulated supervisory position.⁷ See Employer Exhibit 2. Unlike production and maintenance employees, area coordinators are exempt, salaried employees classified in pay band IV, and generally work a Monday through Friday schedule, with occasional extended hours.

In creating the production schedule, area coordinators are in regular contact with corporate planning in Rochester, New York, coordinating with headquarters the schedule of what needs to be produced, packaged and shipped. Once developed, area coordinators take the

⁷ The record reflects that operators report to the respective team coordinator for their section, and that the team coordinator responsibly directs their work.

schedule to the production floor; this can be as general as placing projects on an assignment board, or occasionally as specific as pulling an operator off one part of the process and assigning that employee to another. This results in significant interaction with the other members of the operations group, including the team coordinators mentioned above and the operators themselves. Although it varies depending on the shift and day, at hearing it was estimated that 25 to 40 percent of area coordinators' working time is spent working with team coordinators and operators.

Area coordinators collect and review data for their sections, but this is not necessarily done with an eye for employee review. Indeed, they do not have any involvement with transferring, disciplining, discharging, laying off, recalling, or otherwise evaluating employees.⁸ However, because of this information review function area coordinators have in the past, when the review of data has revealed a problem, brought performance issues to Operations Manager Jim Swanson's attention. When this is done, area coordinators do not specifically recommend a course of action, but will be involved in the subsequent troubleshooting process to correct the problem.

This troubleshooting role can combine elements of the area coordinator's information review and training functions. Area coordinators are responsible for "pulling together teams" to address technical or equipment issues as they occur. At hearing an example was provided where an area coordinator discovered a problem in the fermentation process, then at a meeting with the fermentation operators raised the issue for discussion. From that discussion the area coordinator determined that different operators were using different techniques, causing the problem. To

⁸ Area Coordinators' planning functions do not extend to involvement in the hiring process greater than that of other employees. The Employer uses a hiring committee approach that utilizes a cross-section of employees from throughout the facility, so while area coordinators may sit on a hiring committee, they are no more likely to be involved than other employees.

resolve the problem the area coordinator and operators developed and implemented a standard procedure.

As noted above training is another important aspect of the area coordinator position. See Employer Exhibit 3 (listing “ability to train others” as a required competency for the position). Area coordinators have been involved in the training of employees on new equipment, and in the training of new employees, including team coordinator helpers. Further, area coordinators lead monthly “ring meetings” for their section, a meeting that brings together the team coordinators and production and maintenance employees from the operations group and the engineers from the technology group, to discuss new developments in their respective focus, such as fermentation or recovery.

It is my determination that area coordinators use independent judgment to develop a production schedule which they then implement through the assignment and responsible direction of work, and that this function qualifies them as statutory supervisors. Specifically, I find that setting the production schedule and directing either team coordinators or production and maintenance employees to fulfill that schedule must be viewed as one indistinguishable task, and that this task is not merely routine, clerical or perfunctory in nature. I also note that the significant training responsibilities of the position support this finding.

Although corporate planning assists area coordinators, the record demonstrates that it is the area coordinators who have the principal independent responsibility for the prioritization of work in the facility. Implementing this production schedule, as a practical matter, is a responsibility area coordinators share with team coordinators. For example, although usually they will pass along instructions via the team coordinator, when implementing the production schedule area coordinators will occasionally instruct operators directly. Operator Todd Bolen

testified that Area Coordinator Bergan had personally reassigned employees to cover positions while employees were on breaks or at lunch. Bolen also testified Bergan had assigned “daily work instructions,” reassigned him to other parts of the process based on production schedule priorities and routinely placed assignments on the assignment board.⁹

I am mindful that the Board does not construe supervisory status broadly as a policy matter, but in the instant case sufficient evidence of supervisory indicia has been produced. In the assignment and direction of work the area coordinator position is essentially equivalent to that of team coordinator, a stipulated statutory supervisor position. While team coordinators are singularly dedicated to directing work, the area coordinators’ additional responsibilities regarding training and planning do not diminish their participation in independent and responsible direction of work. Indeed, the most reasonable reading of the Employer’s internal hierarchy is that based on these extra duties the area coordinator position may be even higher than that of team coordinator, but it is certainly equivalent.

2. Technical Specialist - Maintenance

Jankowski is the only technical specialist – maintenance person currently working for the Employer, and one of two electricians at the facility.¹⁰ Both electricians repair and perform preventative maintenance on electrical systems and instrumentation. However, as a technical specialist – maintenance, Jankowski also provides technical input on the design of capital projects. This is done with the goal of keeping projects “maintenance friendly” and involves approximately 25% of his time. He also works with engineers regarding the installation of new equipment and with outside contractors involved in electrical work at the facility, up to and

⁹ According to Bolen, due to the 24-hour nature of the facility an incoming operator normally continues the work of the outgoing operator when that project is done, if no other work is specifically assigned, assignments can be taken from the assignment board. If no work is available on the board the operator will seek out his or her team or area coordinator.

including directing the work of the contractors' employees. There is no evidence that Jankowski has ever directed the work of a coworker.¹¹

Technical specialist – maintenance is a non-exempt hourly position. Jankowski records his time and that time is approved by his supervisor. There is no evidence in the record that he transfers, disciplines, lays off, recalls, evaluates or otherwise exercises any supervisory control over any other employee. His potential involvement in the hiring or award process is no different from that of any other employee.

The only arguable basis for finding the technical specialist – maintenance position supervisory is the position's responsibilities regarding capital projects. I find, however, that based on the record none of the supervisory indicia established by Section 2(11) are implicated by this function. Further, this is not a close case where it is necessary to analyze secondary indicia. For these reasons I find this position is not one of a statutory supervisor.

3. Technical Specialist-Process

The technical specialist - process has a number of responsibilities related to the details of the production process, from planning the transfer of material between tanks to collecting data regarding raw material usage and inventory creation. The position may also have responsibilities outside the normal scope of operators' work. For example, a technical specialist - process person is responsible for wastewater treatment on the weekends when the wastewater technician is not present. In this specialized role, he is also expected to serve as "lead operator," providing coverage for other operators when needed. Both operators and the technical specialist -process report to a team coordinator, however, and there is no evidence in the record that technical specialist directs the work of coworkers.

¹⁰ The other electrician, Tom Bishop, is a Maintenance Technician III, an undisputed bargaining unit position.

¹¹ Jankowski reports to Maintenance supervisor Hass, as does Bishop.

Jeremy Gillam is the only current employee in the technical specialist-process classification. He is a non-exempt hourly employee, also records his time and his supervisor approves that time.¹² At hearing, recovery operator Bolen testified that Gillam has assigned work to him on his weekend shift. Bolen further testified that he questioned his team coordinator supervisor regarding this assignment of work, and he was told Gillam is “his boss and [he] should listen to him plain and simple.”

The record does not reveal any arguable basis for finding the technical specialist – process position supervisory, absent Bolen’s testimony. There is no evidence that any of the supervisory indicia established by Section 2(11) are involved in this position, other than this assertion of responsible direction. This statement is simply insufficient on its own, to demonstrate how Gillam exercises supervisory authority. It cannot be determined from the record whether, in the context of the discussion, this directive referred to routine or perfunctory direction that would not qualify as supervisory indicia. In the absence of any other evidence supporting a finding of supervisory status, and considering the Petitioner’s burden, I find this position is not one of a statutory supervisor.

4. QA/QC Specialists

As noted above both lab technicians and QA/QC specialists, the latter of which are also known as “technical specialists – lab,” staff the laboratory. QA/QC specialists are predominately focused on one task, approving the transfer of material from process status to that of finished product. As this final approval step is of particular importance in the quality control operation, involving the personal signature of the approving technician, it is assigned to these particular specialists.

¹² Gillam’s supervisor is Team Coordinator (Sr.) Michael Lichte, supervisor of the fermentation operators.

QA/QC specialists have other specialized roles in the lab, as well as final approval. They have responsibilities involving the calibration and maintenance of lab equipment, preservation of finished product and implementation of special lab programs. Specialists are not, however, involved with the terms and conditions of the lab technicians' employment, except that the specialists may fill in for the laboratory manager in the case of a "severe customer complaint" in the manager's absence.¹³

If an employee substitutes for a supervisor, and takes on all supervisory duties in assuming that role, then the substituting employee is properly regarded as a supervisor under the Act. *Birmingham Fabrication Co.*, 140 NLRB 640 (1963); *Illinois Power Co.*, 155 NLRB 1097 (1965). Where the substitution is less than complete, however, or where the substitution is isolated, sporadic or insignificant, the substitution does not warrant a supervisory finding. *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985), *Carlisle Engineered Products Inc.*, 330 NLRB 1359 (2000), and *Aladdin Hotel*, 270 NLRB 838 (1984).

Substitution for the laboratory manager forms the only arguable basis for finding QA/QC specialists statutory supervisors. However, there is no evidence in the record that this substitution has actually happened in the past. To the extent it could happen, witnesses speculated it would not be as the result of assignment, but merely because an emergency occurred in the lab manager's absence. Further, this emergency role would not consist of anything more than acting as a conduit of information from decision makers in the management hierarchy to the laboratory staff. As such, this potential role as supervisor substitute would not involve a complete assumption of the lab manager's role, and by its nature would be isolated and

¹³ The record indicates that this substitution would be limited to alerting upper management or contacting corporate quality control and passing along the instructions provided.

sporadic. For these reasons I find that the position of QA/QC specialist is not one of a statutory supervisor.

Conclusion

I find that lab technicians share a community of interest with the proposed bargaining unit and that QA/QC specialists share a community of interest with lab technicians and the proposed bargaining unit, such that both classifications must be included in an appropriate unit. Further I find that area coordinators are statutory supervisors, but that the technical specialist – maintenance, technical specialist –process and QA/QC specialist positions are not. As such the appropriate unit for the purpose of collective bargaining is as stated above.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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 employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement

thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Chemical Workers Union Council of the United Food and Commercial Workers International Union, AFL-CIO.

LIST OF VOTERS

In order 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 the 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*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before July 28, 2004.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by August 4, 2004.**

Signed at Milwaukee, Wisconsin on July 21, 2004.

____/s/Joyce Ann Seiser_____
Joyce Ann Seiser, Acting Regional Director
National Labor Relations Board
Thirtieth Region
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