

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

PECO ENERGY COMPANY

Employer

and

Case 4-RC-20802

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, ON
BEHALF OF LOCAL UNION NO. 614

Petitioner

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

The Employer, PECO Energy Company, transmits and distributes electricity and natural gas in Philadelphia and the surrounding areas of Pennsylvania. The Petitioner, IBEW Local 614, 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 the Employer's production and maintenance employees. While agreeing that a production and maintenance unit is appropriate, the Employer contends that the unit should include 165 Customer Consultants who work at its Philadelphia, Pennsylvania headquarters and six Customer Information Desk Engineering Assistants (CIDEAs) working at a facility in Plymouth Meeting, Pennsylvania. The Petitioner asserts that the Customer Consultants and CIDEAs are office clericals who should be excluded from the bargaining unit. The Petitioner's proposed unit would consist of about 1115 employees, and the Employer's proposed unit would include approximately 1285 employees.¹

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 Customer

¹ Four additional employees classified as Engineering Assistants work at locations other than Plymouth Meeting and perform functions different from those handled by the CIDEAs. As discussed below, the parties agree that three of these Engineering Assistants should be included in the unit. They disagree on the status of the fourth, William Nendza.

The parties stipulated that all of the Billing Consultants other than those in the Meter Services Group are excluded from the unit, but that the Billing Consultants in the Meter Services Group are included.

Consultants and CIDEAs. As discussed below, I have concluded that employees in both of these classifications are office clerical employees who should be excluded from the bargaining unit.

To provide a context for my discussion, I will describe the prior election proceedings concerning this unit and provide an overview of the Employer's operations. I will then review the factors that must be evaluated in determining whether the disputed employees are office clericals or plant clericals. Thereafter, I will present in detail the facts and reasoning that support my conclusions.

I. THE 2002-3003 ELECTION PROCEEDINGS

This petition is related to a previous petition involving the same parties. In 2002, the Petitioner filed a petition in Case 4-RC-20513 seeking to represent the production and maintenance employees in the Employer's transmission and distribution operations.² The Employer, as is the case here, agreed that a production and maintenance unit was appropriate but disagreed as to the inclusion or exclusion of a number of classifications. Among the disputed classifications in 2002 were the two classifications at issue in the present case, the Customer Consultants and CIDEAs.³ In a Decision and Direction of Election dated May 5, 2003, I found the employees in both of these classifications to be office clericals and excluded them from the bargaining unit. (2003 Decision, pp. 19-28, 33-35).

² Prior to October 2000, the Employer, PECO Energy Company, was an independent entity which engaged in both the generation of electric power and the transmission and distribution of electric power and natural gas. In 1997, the Utility Employees of America filed a petition seeking to represent the production and maintenance employees in PECO's transmission and distribution operations – essentially the same unit involved in this case. The then Acting Regional Director for Region Four issued a Decision finding the petitioned-for unit appropriate and resolving a number of questions regarding the unit placement of particular employees. *PECO Energy Company*, 4-RC-18718 (1997).

In October 2000, PECO merged with Commonwealth Edison to form Exelon, Inc. Following the merger, the Employer became a wholly-owned subsidiary of Exelon, Inc., and PECO Energy Company's generation business was spun off into a separate corporate subsidiary, Exelon Generation. The Employer's business is now limited to the transmission and distribution of electric power and natural gas.

³ At the time of the 2002 hearing, the Employer staffed the Customer Information Desk with employees temporarily assigned from other positions, and as discussed below, the parties disputed their eligibility. Thereafter, the Employer permanently assigned CIDEAs to work at the Customer Information Desk and classified them as Engineering Assistants. For the most part, the CIDEAs perform the same functions as the employees who were assigned to the Customer Information Desk in 2002.

The Employer sought review of a number of the determinations made in the 2003 Decision but did not seek review of the portions of the Decision dealing with the Customer Consultants and CIDEAs. The Board granted review on several issues, and employees in various disputed positions voted subject to challenge.⁴ An election was conducted on May 21, 2003, and the challenged ballots were determinative. Thereafter, in a Supplemental Decision on Challenged Ballots dated June 19, 2003, the Acting Regional Director reaffirmed the conclusions from the 2003 Decision, and the Employer again filed a request for review with the Board. Before the Board ruled on this request for review, however, the Petitioner withdrew the prior petition and filed the petition in the instant case.

II. OVERVIEW OF OPERATIONS

The Employer operates in six Pennsylvania counties – Philadelphia, Bucks, Montgomery, Delaware, Chester, and York. The Employer’s headquarters building is at 2301 Market Streets in Philadelphia, and the Employer has a number of other facilities throughout its territory, including the Plymouth Service Building in Plymouth Meeting, Pennsylvania.

The 2003 Decision contains a detailed recitation of the Employer’s organizational structure. (2003 Decision, pp. 8-18). Although the Employer has made some changes in that structure, the issues in this case are narrower than those addressed in the 2003 Decision, and the facts set forth in that case concerning the Employer’s structure remain accurate in relevant part.

The vast majority of the bargaining unit sought by the Petitioner consists of Line Mechanics, Distribution Mechanics, Energy Technicians, Maintenance Technicians, and Engineering Technicians who perform the hands-on work for the Employer’s transmission and distribution facilities. These employees are based at various facilities other than the Employer’s headquarters. The various classifications of Mechanics and Technicians report through their supervisors to Employer Managers who report in turn to Vice-Presidents Fidel Marquez, Bruce Renwick, and Terry Donnelly. Marquez, Renwick, and Donnelly are employed by a different Exelon subsidiary, Exelon Energy Delivery. They report to Exelon Energy Delivery Operations Vice-President Preston Swafford, who reports to Jack Skolds, the President of Exelon Energy Delivery and a Vice President of Exelon, Inc.

The disputed Customer Consultants and CIDEAs serve as the primary customer contacts within the Employer’s organization. The Customer Consultants work in an office area on the fourth floor of the Employer’s Philadelphia headquarters. They report to Employer Call Center Manager Cindy Patterson. Patterson reports to Exelon Energy Delivery Customer Care Director Phyllis Batson, who reports in turn to Exelon Energy Delivery Customer and Marketing Services Vice-President John Costello. Costello reports to Exelon Energy Delivery President Skolds.

⁴ The Board granted review with respect to employees classified as Work Process Clerks, Drafters, Mapping Records Clerks, and Equipment Update Clerks. The Petitioner has agreed in this case to include all of these classifications in the bargaining unit.

None of the employees included in the unit by agreement of the parties report to Patterson or Batson with the exception of a group of eight High Bill Consultants (HBCs).

The CIDEAs work at the Employer's Plymouth Service Building in the same area as the Systems Dispatchers, who are excluded from the unit by agreement of the parties. The CIDEAs report to Information Supervisor Susan Kennedy. Kennedy reports to Exelon Energy Delivery Manager of Business Support and Communications Sue Gasper, who reports to Exelon Energy Vice-President Renwick. None of the employees included in the unit by agreement of the parties report to Kennedy or Gasper.

III. FACTORS RELEVANT TO DETERMINING WHETHER THE CUSTOMER CONSULTANTS AND CIDEAS ARE OFFICE CLERICALS OR PLANT CLERICALS

The Board distinguishes between plant clerical and office clerical employees, generally including the former in production units while excluding the latter. The distinction between office and plant clericals is based on community-of-interest concepts. Clericals whose principal functions relate to office operations and perform these functions within an office area are generally viewed as office clericals who do not have a close community of interest with a production unit. *Cook Composites and Polymer Co.*, 313 NLRB 1105, 1108 (1994). In contrast, plant clericals normally spend a significant percentage of their time in production areas or adjacent offices, perform functions directly related to the production process, and are regarded as having a community of interest with production employees sufficient to require their inclusion in the same unit. *Caesar's Tahoe*, 337 NLRB 1096, 1098-1100 (2002). Among the factors considered in determining whether particular employees should be viewed as office or plant clericals are whether they share supervision with production workers, whether they are considered part of the same administrative segment of the employer's organization, and whether they have significant face-to-face contact with production employees. *Palagonia Bakery Company, Inc.*, 339 NLRB No. 174, slip op. at 22 (2003); *Harron Communications, Inc.*, 308 NLRB 62, fn. 1 (1992).

IV. FACTS

A. The Customer Consultants

The Employer employs three categories of Customer Consultants - Call Center Customer Consultants, Small Business Customer Consultants, and High Bill Area Customer Consultants (HBACCs).

Call Center Customer Consultants

Most of the Customer Consultants work in a Call Center located on the fourth floor of the Employer's headquarters. The Call Center operates on weekdays from 7 a.m. to 8 p.m. and on Saturdays from 9 a.m. to 1 p.m., although some employees assigned to emergency service work

are present round-the-clock. The Call Center Customer Consultants work on eight-hour shifts. They report to supervisors who answer to Call Center Manager Cindy Patterson. With the exception of some of the HBCs, no unit employees visit the Call Center on a regular basis.⁵

As the Customer Consultants are the primary contact point for customers, when hiring them, the Employer looks for a customer service background and seeks individuals with the ability to work well with customers. Their main function is to respond to customers' telephone inquiries. They sit in cubicles and use computers to record and transmit information received from customers, and the Employer expects them to spend about seven hours of their shifts on the telephone.

Many of the inquiries fielded by the Customer Consultants require some action by the Employer. They use a computer program that lists categories of inquiries, such as gas explosions or electricity failures, and they place each customer contact into one of the categories. About 15 percent of the inquiries are considered emergencies. When confronted with an emergency call, the Customer Consultants secure necessary information, create a computerized work order, and send the order to a group of Systems Dispatchers working in the Plymouth Service Building.⁶ The Customer Consultants contact the Systems Dispatchers by telephone after sending the emergency work order to make certain that the order has been received and to verify that the Systems Dispatchers are sending an Energy Technician to the customer's premises to resolve the problem. If the Customer Consultants are unable to reach a System Dispatcher, they will verify receipt of the order by contacting CIDEAs, who work in the same office area as the Systems Dispatchers.

The Systems Dispatchers are responsible for assigning emergency work orders to Energy Technicians or other field employees. The assignments are transmitted by computer, although Systems Dispatchers contact the field employees by telephone to make certain the orders have been received. When the work is complete, the field employee who handled the assignment makes a computer entry to indicate what was done. The Customer Consultants can access these entries in the event a customer calls back with questions. If an entry is unclear, a Customer Consultant may contact a System Dispatcher or a field employee by telephone for clarification.

Calls from police or fire departments are considered emergencies and are handled in the same manner as other emergency contacts. Calls from the Philadelphia police and fire departments are taken by the Customer Consultants, while calls from suburban police and fire departments are routed to the CIDEAs.

Non-emergency customer inquiries are not routed through the Systems Dispatchers. Customer Consultants access a computer program showing when Energy Technicians or other field employees are available to handle such calls and schedule appointments directly. After

⁵ Some of the HBCs are assigned to work in the city of Philadelphia, and these employees come to the Call Center on a daily basis to do paperwork and pick up documents. The HBCs' duties will be described in greater detail later in this Decision.

⁶ By agreement of the parties, the Systems Dispatchers are excluded from the unit.

scheduling an appointment, the Customer Consultant sends the appropriate field employee a work order by computer. The field employees may contact Customer Consultants by telephone if they have questions about the work orders, but such direct contact between field employees and Customer Consultants is rare.⁷

Some Customer Consultants spend a portion of their workweek responding to customer inquiries received by mail, e-mail, or through the Pennsylvania Public Utility Commission. Employees rotate through this assignment. During storms, Customer Consultants handle initial customer inquiries and assist CIDEAs in contacting customers to verify that service has been restored.

The Customer Consultants are considered “emergency” employees and are subject to the same on-call policies as the field employees who respond to power outages and gas leaks. Because the Customer Consultants take calls from customers reporting gas leaks, they are subject to the Employer’s drug testing policy. Most of the Employer’s other clerical employees are not viewed as emergency employees and are not required to submit to drug testing.

The Employer classifies employees as either exempt or non-exempt. All non-exempt employees are subject to the same personnel policies. The Customer Consultants are considered non-exempt as are many of the employees included in the bargaining unit.

Small Business Customer Consultants

The Employer has a dedicated phone number which small businesses can contact to secure information, register complaints, or request work, and about 19 Small Business Customer Consultants answer the calls received through this number. The Small Business Customer Consultants generally perform the same functions as the Call Center Customer Consultants, i.e., categorizing inquiries and referring them to the appropriate segment of the Employer’s operation. Unlike the Call Center Customer Consultants, Small Business Customer Consultants also handle complaints about excessive bills, making adjustments if appropriate and referring complaints to High Bill Consultants as necessary. The Small Business Customer Consultants sometimes offer customers advice on how to avoid high bills.

High Bill Area Customer Consultants (HBACCs)

Non-business complaints about excessive bills are referred to a group of seven Customer Consultants who work under Supervisor Anthony Gioia (herein called High Bill Area Customer

⁷ The characterization of direct contact as “rare” was made by an Employer witness at the 2002 hearing. Employer witnesses at the 2004 hearing indicated that the duties of the Customer Consultants have not changed significantly since 2002.

Consultants or HBACCs.) Gioia also supervises eight High Bill Consultants (HBCs), who are included in the unit by agreement of the parties.⁸

The HBACCs contact complaining customers by telephone and attempt to resolve their concerns. If necessary, they can make minor adjustments to customer bills. Assuming the matter cannot be adjusted by phone, they prepare a computer work order which is sent to a field desk in the High Bill area.

The field desk is manned by one of the HBACCs on a rotating basis. The field desk HBACC forwards work orders to HBCs who visit customer premises and perform tests designed to determine the causes of the high bills. The HBCs work in particular geographic areas, and assignments are made by the field desk HBACCs based on customer location.

HBCs contact the field desk HBACC if they have questions about work orders. The field desk HBACC contacts the HBC if customers seek information about the status of their complaints or to change a scheduled appointment. The field desk HBACCs perform microfiche research for the HBCs. They also handle follow-up correspondence if an HBC discovers a “foreign” or non-legitimate tie-in at a customer’s premises. The field desk HBACC is in telephone contact with each of the eight HBCs at least once per day.

Contact between the other HBACCs and the HBCs is mostly through the field desk HBACC. However, non-field desk HBACCs may directly contact HBCs for technical assistance or to arrange an unscheduled visit to a customer’s premises to check the exterior for anything that might be causing an excessive bill.

The HBCs spend most of their time in the field visiting customer premises, although they visit an office for about one hour per day to perform paperwork. HBCs assigned to Philadelphia do their paperwork at a work station in the Call Center area at the Employer’s headquarters. HBCs working in the suburbs use work stations at facilities in Warminster and Phoenixville, Pennsylvania.

B. Customer Information Desk Engineering Assistants (CIDEAs)

The Customer Information Desk (the Desk) is located on the second floor of the Plymouth Service Building. At the time of the 2002 hearing, the Desk was staffed by employees classified as Systems Dispatchers, Customer Consultants, Contractor Liaisons, and Work Process Clerks. Employees rotated through positions on the Desk, normally staying for about one year. However, the Employer indicated at the hearing that it was in the process of assigning employees to the Desk on a permanent basis. The 2003 Decision found that to the extent employees were permanently assigned to work at the Desk, they were office clericals who should be excluded from the unit.

⁸ Another employee who works under Gioia is classified as a Junior Analyst. The Junior Analyst’s status was disputed in 2002, but the parties agreed in this proceeding to exclude the position from the unit.

Subsequent to the 2002 hearing, the Employer assigned six employees to work at the Desk on a permanent basis and classified them as CIDEAs. Five of the six employees currently assigned to these positions previously worked as Call Center Customer Consultants, and the sixth was previously classified as a Work Process Clerk. The CIDEAs report to Information Desk Supervisor Susan Kennedy.

The Desk is located in the same office area occupied by the Systems Dispatchers, and no unit employees report there on a regular basis. The Desk is open from 6 a.m. to 10 p.m. on weekdays and from 7 a.m. to 3 p.m. on weekends. The CIDEAs spend all of their time in the office, wear casual business attire, and spend about 80 percent of their time talking on the telephone.

The Employer has dedicated phone numbers for police and fire departments and large commercial customers. Calls from large customers and from police and fire units outside Philadelphia are handled by the CIDEAs. The CIDEAs follow the same procedures in responding to these calls as the Call Center Customer Consultants use in handling the calls they receive. Thus, they generate computer work orders and forward emergency work orders to Systems Dispatchers. Work on non-emergency orders is scheduled by the CIDEAs using the same computer program as the Customer Consultants use. The CIDEAs also schedule work on items categorized by the Call Center as “miscellaneous requests,” which are forwarded to the CIDEAs by the Call Center. As was the case with the Call Center Customer Consultants, the CIDEAs occasionally receive questions from field employees assigned to work orders originating at the Desk. Such inquiries are normally made by phone.

As noted above, Call Center employees are required to contact Systems Dispatchers by phone to verify that the Systems Dispatchers have received emergency work orders. If the Systems Dispatchers are unreachable, the Call Center will contact the CIDEA to verify receipt. When a customer reports a power outage, the CIDEAs use a computer program to verify that the customer’s meter is off-line before a field employee is dispatched to the customer’s premises. The CIDEAs use the same program to determine if nearby customers are also off-line so the field employee can gauge the extent of any problem.

Following storm-related outages, CIDEAs contact customers to verify that power has been restored. Call Center Customer Consultants sometimes assist them in performing this task. The CIDEAs also disseminate information during storms and power outages, keeping the Employer’s responsible managers apprised as to the status of efforts to restore service. The CIDEAs contact large customers any time the Employer shuts off power to perform maintenance work in order to be certain the customers have secured alternative sources of energy.

Like the Call Center Customer Consultants, the CIDEAs are on-call for emergencies. They must be drug tested due to their role in responding to gas odor calls. The CIDEAs are subject to the same personnel policies as other non-exempt employees.

C. Other Clerical Classifications

The Employer contends that the Customer Consultants and CIDEAs must be included in the unit because the Petitioner has agreed to include other clerical classifications that the Employer claims perform similar functions. The classifications cited by the Employer's attorney at the hearing were Work Process Clerks, Contract Liaisons, Equipment Update Clerks, Mapping Records Clerks, Material Process Clerks, and Engineering Assistants. These classifications were disputed in 2002, and the 2003 Decision contains detailed descriptions of their duties. This Decision will discuss the additional evidence concerning their duties adduced at the 2004 hearing.

Work Process Clerks

The 2003 Decision excluded the Work Process Clerks as office clericals.⁹ The Board granted review on this issue, and the Work Process Clerks voted subject to challenge. Their status was never finally determined, but the Petitioner has now agreed to include them in the unit.

The Work Process Clerks work in a number of different areas of the Employer's organization performing a variety of functions. They input payroll information and other data, purchase supplies, update blueprints, gather information needed by field employees, prepare comments on proposed sales of real estate, and process claims for damage done to the Employer's equipment by outsiders.

In 2002, Employer witnesses testified that Call Center Customer Consultants forwarded non-emergency work orders to some Work Process Clerks, who determined which segment of the Employer's organization should perform the work and forwarded the work orders to the appropriate organizational component so that field employees could be scheduled to perform the necessary tasks. At the 2004 hearing, however, Employer witnesses indicated that Call Center Customer Consultants schedule non-emergency work themselves. Even assuming that work orders are forwarded to Work Process Clerks, however, there does not appear to be any significant contact between the Work Process Clerks and the Call Center Customer Consultants about either the work orders or any other matters. Work Process Clerks may be asked to assist CIDEAs with contacting customers in storm emergencies. Otherwise, there is no evidence of Work Process Clerks interchanging duties with either CIDEAs or Customer Consultants. Some Work Process Clerks share office space with unit employees, although most do not. The Work Process Clerks are for the most part supervised separately from other employees included in the Petitioner's proposed unit.

Engineering Assistants

In addition to the CIDEAs, there are four employees classified as Engineering Assistants who are assigned to other segments of the Employer's operations. In 2002, one of these

⁹ The Decision dealt with several different types of Work Process Clerks in various sections.

Engineering Assistants, William Nendza, worked in the Operations Planning group within the Customer Response Section of the Employer's Operations Department. Nendza spent all of his time in an office responding to customer complaints about the manner in which the Customer Response Section performed its functions. The Decision excluded him from the unit because he had limited contact with other unit employees and was separately supervised (2003 Decision, pp. 40-43).

The three remaining Engineering Assistants worked in 2002 in the Regional Engineering groups in the Employer's Operations Department. These employees also responded to customer complaints but spent much of their time out of the office and shared space and supervision with Designers who were included in the unit. Because of their frequent direct contact with unit employees and common supervision, they were included in the unit (2003 Decision, pp. 70-71). Engineering Assistants may occasionally ask CIDEAs for information related to complaints they are investigating, but there is no other significant contact or interchange of duties between the other Engineering Assistants and either the CIDEAs or the Customer Consultants.

In 2003, the Board did not grant review with respect to the Decision's inclusion of the Engineering Assistants, but during the hearing in this case, the Petitioner indicated that it was willing to include all four of these Engineering Assistants in the bargaining unit. In its post-hearing Brief, however, it asserted that Nendza should be excluded. Since the Employer did not have notice of the Petitioner's position with respect to Nendza at the time of the hearing and did not have an opportunity to present evidence concerning him, it would be inappropriate to decide his status at this juncture, and I shall permit Nendza to vote subject to challenge.

Equipment Update and Mapping Records Clerks

These employees worked in 2002 in the Mapping and Document Services group within the Engineering Services section of the Operations Department assisting Drafters in maintaining up-to-date blueprints of the Employer's facilities. The Update Clerks screen prints and enter blueprint changes into the computer system. The Mapping Records Clerks distribute updated prints (See 2003 Decision, pp. 50-53). There is no evidence of significant contact or interchange of duties between the Equipment Update and Mapping Records Clerks and the CIDEAs and Customer Consultants.

The Mapping Drafters and Mapping Records Clerks were excluded from the unit in the 2003 Decision. The Board granted review on this issue, although it never finally determined the status of these employees. The Petitioner has now agreed to include the Drafters, Equipment Update Clerks, and Mapping Clerks in the unit.

Material Process Clerks

In 2002, the Employer employed three individuals classified as Material Process Clerks within its EED Support Services Department. One of them inputted payroll information and distributed work orders to a group of Paving Inspectors. Since I excluded the Paving Inspectors from the unit and the Material Process Clerk worked in the same area subject to the same supervision, she was also excluded (2003 Decision, pp. 84-85). The Petitioner has now agreed to

include both the Paving Inspectors and the Material Process Clerk. There is no evidence that either group of employees has significant contact with the CIDEAs or Customer Consultants.

The two remaining Material Process Clerks enter payroll data for employees who work in the Employer's warehouses and storerooms and maintain a catalog of materials. The Material Process Clerks were previously excluded (2003 Decision, pp. 87-90), however, the Petitioner has agreed to include them in the proposed unit in this case. There is no evidence that they have significant contact with either CIDEAs or Customer Consultants.

Contractor Liaisons

In 2002, these employees were included in Regional Contractor and Builder Services groups. They are now included in a group called SEPA Commercial Industrial Public Authority that also includes employees classified as Engineers, Designers, Design and Construction Consultants, Work Process Clerks, and Junior Analysts.¹⁰ The Contractor Liaisons answer telephone calls from contractors seeking new or upgraded service. After securing certain information, the Contractor Liaisons evaluate the contractor's request to determine its level of complexity. Simple requests are scheduled by the Contractor Liaisons for performance by unit field employees, and more complex requests are referred to Design and Construction Consultants or Designers for further development. In either case, the Contractor Liaisons gather blueprints and other documents needed for performance of the work and give them to the field employees or Design and Construction Consultants.

In answering telephone calls and scheduling work, the Contractor Liaisons use the same computer systems as the Customer Consultants and CIDEAs. On occasion, customers call the wrong segment of the Employer's organization, and Contractor Liaisons may be called upon to schedule work normally scheduled by the Customer Consultants or CIDEAs. Calls are sometimes transferred between Contractor Liaisons and Customer Consultants, and these employees may speak to each other during the transfer. Contractor Liaisons may also speak to Customer Consultants when responding to customer complaints if a Customer Consultant previously spoke to the customer. Contractor Liaisons share office space and supervision with Design and Construction Consultants.¹¹ The Contractor Liaisons in the unit were included in 2003 over the Petitioner's objections, but the Petitioner has now agreed to their inclusion along with the Design and Construction Consultants

¹⁰ The record does not indicate what duties the Work Process Clerks in this revised organization perform, and, absent evidence to the contrary, I assume they are performing the same functions described in the 2003 Decision.

¹¹ The Petitioner agreed to include the Design and Construction Consultants in the unit in 2003.

V. ANALYSIS

Consistent with the 2003 Decision, I find the Customer Consultants and CIDEAs to be office clerical employees who should be excluded from the production and maintenance unit sought by the Petitioner.¹² The Customer Consultants and CIDEAs work in an office setting answering telephones and inputting data into computers. Unit employees virtually never frequent the areas in which the Customer Consultants and CIDEAs work. Specifically, other than a small group of HBCs who stop in periodically to handle paperwork, unit employees do not even report to the headquarters location at which the Customer Consultants are employed. Similarly, although unit employees report to the Plymouth Service Building in which the CIDEAs are employed, they do not go to the area of that building where the CIDEAs work. The only unit employees who frequent the areas in which the Customer Consultants and CIDEAs work are the eight HBCs, and considering that the agreed-upon unit has more than 1100 employees, this contact is of minimal significance. Moreover, the eight HBCs have regular interaction with only one Customer Consultant – the HBACC assigned to the field desk. The other HBACCs interact with the HBCs mostly through the field desk Consultant, and Customer Consultants outside the High Bill area have almost no contact with the HBCs. Even the contacts between the field desk Consultant and the HBCs are mostly by telephone, and telephone contact with unit employees has been deemed insufficient to make an office employee into a plant clerical. *Cablevision Systems Development Co.*, 251 NLRB 1319, 1323-24 (1980), enfd. 671 F.2d 737 (2d Cir. 1982), cert. den. 459 U.S. 906 (1982). In summary, contact between Customer Consultants and the HBCs is limited, and this contact is largely restricted to a small fraction of the Customer Consultants.

The Customer Consultants and CIDEAs do not share supervision with unit employees other than the HBCs. They have almost no face-to-face contact with employees in unit classifications, and except for the Customer Consultant assigned to the field desk in the High Bill area, even their telephone contact with unit employees is extremely limited. The only classification with which the Customer Consultants or CIDEAs have significant contact is the Systems Dispatchers, who have been excluded from the unit by agreement of the parties.

¹² Citing *Heartshare Human Services of New York*, 320 NLRB 1 (1995), enfd. 108 F.3rd 467 (2nd Cir. 1997), the Petitioner asserts that the Employer should be precluded from arguing for the exclusion of the Customer Consultants and CIDEAs on any basis other than changed circumstances since the 2003 Decision. In *Heartshare*, the Board held that where there has been a determination regarding the scope of a bargaining unit following a hearing, the Regional Director had the discretion to limit the scope of the subsequent hearing involving the same unit to the question of whether there had been changed circumstances since the original hearing. Contrary to the Petitioner's contention, the Board did not state that a finding regarding unit scope in one case is necessarily binding in subsequent cases involving the same unit, and the Board has stated that a prior determination of an appropriate unit is not necessarily controlling in a subsequent proceeding involving the same unit. *Film & Dubbing Productions*, 181 NLRB 583, fn. 1 (1970); *Thalhimer Brothers, Incorporated*, 93 NLRB 726, 727 (1951). Thus, the Employer is not precluding from asserting that my prior findings should be revised.

There is minimal interchange of duties between Customer Consultants, CIDEAs, and unit employees. Work Process Clerks may occasionally assist the CIDEAs with storm callbacks, and Contractor Liaisons may take some calls normally handled by the Customer Consultants, but this interchange of duties is too sporadic to support a finding of plant clerical status.

The work principally performed by the Customer Consultants and CIDEAs, i.e., taking and distributing work orders, is related to the tasks performed by unit employees, but the Board has found employees who perform similar work to be office clericals where, as here, their contact with unit employees is limited. *Palagonia Bakery Company, Inc.*, supra; *Deposit Telephone Company*, 328 NLRB 1029 (1999); *Harron Communications*, supra; *Cablevision Systems Development Co.*, supra. In short, the evidence indicates that the Customer Consultants and CIDEAs are office employees who have minimal contact with unit employees, and on this basis I find them to be office clericals who can appropriately be excluded from the bargaining unit. *Cooper Hand Tools*, 328 NLRB 145, 184 (1999); *Mitchellace, Inc.*, 314 NLRB 536 (1994), enf. 90 F. 3rd 1150 (6th Cir. 1996); *Cook Composites and Polymers Co.*, supra, 313 NLRB at 1108.

The inclusion in the unit of clerical employees other than the Customer Consultants and CIDEAs does not require a different result. Most of the other clerical employees perform functions distinct from those performed by the Customer Consultants and CIDEAs, work in other areas of the Employer's operation, are subject to different supervision, and have little, if any, contact with the Customer Consultants and CIDEAs. Only the Contractor Liaisons are primarily engaged in performing functions similar to those handled by the Customer Consultants and CIDEAs, and their situation is clearly distinguishable since they work in the same areas as and share supervisors with unit Design and Construction Consultants. The Customer Consultants and CIDEAs, in contrast, are separately supervised and have minimal contact with unit employees. Further, the Petitioner is not obliged to seek the most appropriate unit and need only request an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), enf. 190 F.2d 576 (7th Cir. 1951). Given their separate supervision, location in areas not occupied by unit employees, and limited contact with unit employees, I find the Customer Consultants and CIDEAs are distinct groups and that their exclusion does not render the Petitioner's proposed unit inappropriate.¹³

I therefore find the Customer Consultants and CIDEAs to be office clerical employees, and I shall accordingly exclude them from the unit. *Palagonia Bakery Company, Inc.*, supra; *Deposit Telephone Company*, supra; *Harron Communications*, supra; *Cablevision Systems*

¹³ I am also not persuaded by the Employer's reliance on the inclusion in a bargaining unit at Exelon's Chicago operations of employees who perform functions similar to those handled by the Customer Consultants and CIDEAs, because the record does not indicate how those employees came to be placed in the Chicago unit. The union involved in the Chicago proceedings may simply have agreed to include them, and there is no reason why that agreement, which did not involve the Petitioner, should be binding on the Petitioner.

Development Co., supra.¹⁴ Compare *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999); *Scholastic Magazines, Inc.*, 192 NLRB 461 (1971).

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.

¹⁴ The Employer's post-hearing brief cites a number of cases which it contends support a finding that the Customer Consultants and CIDEAs are plant clericals who should be included in the unit. The cited decisions are distinguishable because the clericals involved, unlike the Customer Consultants and CIDEAs in this case, were either supervised by individuals who also supervised unit employees, worked in close proximity to unit employees, had significant face-to-face contact with unit employees, and/or interchanged duties with unit employees. *Caesar's Tahoe*, supra, 337 NLRB at 1100 (daily face-to-face contact and interchange of duties); *Interstate Warehouse of Ohio*, 333 NLRB 682, 688 (2001) (common supervision and interchange of duties); *Syracuse University*, 325 NLRB 162, 165 (1997) (face-to-face contact and interchange of duties); *Aurora Fast Freight*, 324 NLRB 20, 21 (1997) (work in close proximity and some overlapping supervision); *Neodata Product Distribution*, 312 NLRB 987, 988 (1993) (frequent face-to-face contact); *ABS Corp.*, 299 NLRB 516, fn. 1 (1990) (common supervision and assist unit employee in performing duties); *Jumbo Produce*, 294 NLRB 998, 1009 (1989), enf. 931 F.2nd 887 (4th Cir. 1991) (close proximity); *Columbia Textile Services*, 293 NLRB 1034, 1037-38 (1989), enf. 917 F. 2nd 62 (D.C. Cir. 1990) (daily face-to-face contact); *John N. Hansen Co.*, 293 NLRB 63, 64-65 (1989) (close proximity and frequent face-to-face contact); *Blue Grass Industries*, 287 NLRB 274, 298 (1987) (close proximity and face-to-face contact); *S & S Parts Distributors Warehouse*, 277 NLRB 1293, 1294-96 (1985) (close proximity and regular contact); *Hamilton Halter Co.*, 270 NLRB 331 (1984) (close proximity and interchange of duties); *Texprint*, 253 NLRB 1101, 1103 (1981) (close proximity and common supervision); *Avon Products*, 250 NLRB 1479, 1483-1484 (1980) (common supervision, close proximity and daily interchange of duties); *Industrial Supplies Co.*, 237 NLRB 189 (1978) (common supervision, close proximity, and daily face-to-face contact); *American Optical Corp.*, 236 NLRB 1046, 1047 (1978) (common supervision, face-to-face contact, and interchange of duties); *Healthco, Inc.*, 233 NLRB 835 (1977) (close proximity, face-to-face contact, and substitution for unit employees); *Cooper Mattress Manufacturing Co.*, 225 NLRB 200, 201-02 (1976) (close proximity).

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 production and maintenance employees employed by the Employer including Billing Consultants employed in the Meter Services Group, Contractor Liaisons, Design and Construction Consultants, High Bill Consultants, Meter Process Clerks, Meter Technicians, Metering Design and Construction Consultants, Revenue Protection Technicians, Senior Lab Technicians, Facilities PM Technicians, General Facilities Mechanics, General Utility, High Rise Mechanics, Electrical Technicians 1/C, Equipment Operators, Equipment Operator Helpers, Material Coordinators, Material Process Clerks, Tool Mechanics, Truck Drivers, Damage Prevention Inspectors, Energy Technicians, Engineering Assistants (other than Engineering Assistants employed at the Customer Information Desk), Engineering Technicians, Line Mechanics, Maintenance Assistants, Paving Inspectors, Power Quality Technicians, Senior Corrosion Control Mechanics, Senior Distribution Mechanics, Tech Maintenance, Tech Maintenance Underground Transmission, Work Process Clerks, Equipment Update Clerks, Facilities Drafters, Gas Design Technicians, Mapping Records Clerks, Senior Designers, Senior Facilities Drafters, and Plant Operations Mechanics; **excluding** Customer Consultants, Customer Service Center Clerks, Engineering Assistants assigned to work at the Customer Information Desk (CIDEAs), Executive Administrative Assistants to the President, Administrative Assistants, Executive Administrative Assistants, Executive Assistants to the President PECO, Instrument Specialists Gas, Junior Analysts External Relations, Mechanical Maintenance Specialists – Gas Supply, Power Systems Specialists Gas, Rate Coordinators, Regulatory Assistants, Regulatory Clerks, Accounts Receivable Representatives, Billing Coaches, Billing Consultants (other than Billing Consultants employed in the Meter Services Group), Billing Specialists, Credit Specialists, Customer Consultant Coaches, Foremen, Junior Analysts, Junior Analysts Payment Processing, Revenue Control Representatives, Revenue Recovery Representatives, Foremen Master Technicians, Facilities Clerks, Customer Choice Consultants, Finance Assistants, Senior Administrative Coordinators, Support Service Planner/Schedulers, Analysts IT, Claims Coordinators, Real Estate and Facilities

Clerks, Communications Assistants, Executive Chauffeurs, office clerical employees, guards, and supervisors as defined by the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **International Brotherhood of Electrical Workers, AFL-CIO, on behalf of Local Union No. 614**. 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 seven (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 **July 2, 2004**. 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, or by E-mail to Region4@NLRB.gov.¹⁵ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, 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 three (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 five (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.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **July 9, 2004**.

Signed: June 25, 2004

at Philadelphia Pennsylvania

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

¹⁵ See OM 04-43, dated March 30, 2004, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 04-43 is available on the Agency's website at www.nlr.gov.