

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

CHEMSON, INC.

Employer

and

Case 4–RC–20835

PAPER, ALLIED INDUSTRIAL, CHEMICAL  
AND ENERGY WORKERS UNION,  
(PACE) LOCAL 2-286

Petitioner

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

The Employer, Chemson, is engaged in the manufacture of chemical stabilizers for use in the PVC plastics industry. The Petitioner, PACE Local 2-286, 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 full time and regular part-time production employees, shipping and receiving, warehousemen, fork-lift operators, maintenance mechanics and general help. The Employer would exclude its employee Anthony Campos from the unit contending that Campos does not share a community of interest with the other employees in the proposed unit. The Petitioner would include Campos in the unit. The Petitioner’s proposed unit would consist of about eight employees, while the Employer’s proposed unit would include approximately seven employees.

A hearing officer of the Board held a hearing, and the parties filed briefs with me.<sup>1</sup> I have considered the evidence and the arguments presented by the parties concerning the inclusion of Campos in the unit. As discussed below, I have concluded that Campos shares a significant community of interest with other employees, and therefore, he will be included in the unit.

To provide a context for my discussion, I will first present an overview of the Employer’s operations and then will review the factors that must be evaluated in determining whether Campos should be included in the unit. Finally, I will present in detail the facts and reasoning that support my conclusion.

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<sup>1</sup> The Employer also filed a Motion to Amend transcript. The Motion is unopposed and is hereby granted.

## **I. OVERVIEW OF OPERATIONS**

The Employer manufactures finish products for, and distributes raw materials to, commercial customers who use these products and materials as additives in the plastics industry. The Employer's facility is located at 1725 Holstein Avenue, Philadelphia, Pennsylvania. The facility includes a warehouse building with no partitions or divisions. There are areas where raw materials are processed and stored, and a shipping and receiving area, which includes loading docks. Adjoining the warehouse is the Employer's laboratory and a small office.

The manufacturing process, which accounts for approximately half of the operations, involves blending raw materials, which are stored in the warehouse, to produce a finished product. The distribution function only involves receiving and storing raw materials and does not require any work to be performed on the materials.

The Employer's Production Department employs eight employees and is supervised by Plant Manager Sal Cantone. The Shipping and Warehousing Department is supervised by Materials Manager Glenn Atkinson and consists solely of Anthony Campos. The Employer employs a total of 17 individuals at its facility, including managers and supervisors.

## **II. FACTORS RELEVANT TO EVALUATING CAMPOS' INCLUSION IN THE APPROPRIATE UNIT**

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7<sup>th</sup> Cir. 1969). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds, 190 F.2d 576 (7<sup>th</sup> Cir. 1951). In determining whether employees possess a sufficient community of interest to be included in an appropriate unit, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, bargaining history, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

## **III. FACTS**

In determining whether Campos shares a community of interest with the other unit employees, I shall examine the following factors: job functions; employee contact, functional integration, and interchange; supervision; qualifications and training; and compensation and hours of work.

### JOB FUNCTIONS OF THE PRODUCTION EMPLOYEES AND CAMPOS

The Employer's manufacturing process requires its production employees to blend white powder raw materials with five to ten other ingredients in order to produce a final product. The production employees move the raw materials from the warehouse storage area and mix them in blenders.<sup>2</sup> The production employees then package the final product and bring it to a designated area for shipment to the Employer's customers. Production employees use forklifts, where necessary, to move the raw materials and finished product, but no other equipment.

Campos' principal functions are to receive and record the receipt of raw materials, move the raw materials to designated warehouse areas, and ship the final product to customers by loading outbound trucks. Campos records the shipment of the products. He uses a forklift to remove products from incoming trucks, and prepares an inventory of the material received. Campos samples the product received and transports a portion of it to the Employer's laboratory. Throughout his work day, Campos prepares orders for shipment by moving them from the designated area where they are dropped by production employees, and takes them to the loading dock. Campos has a desk at the loading dock.

### EMPLOYEE CONTACT, FUNCTIONAL INTEGRATION AND INTERCHANGE

The blenders, where production employees mix the raw ingredients, are located about 100 feet from the shipping and receiving area. The raw materials are stored in the area between the blenders and the shipping and receiving area. When Campos performs his shipping and receiving function, he regularly interacts with the production employees. These interactions occur when production employees deliver the finished product to the shipping area and when Campos provides forklift assistance to production employees to move or reach raw materials stored in the warehouse area.

In recent weeks, Campos substituted for an injured employee on the small bag machine. Campos testified that he operated this machine for almost the entire work day,<sup>3</sup> while the employee, who was on light duty status, switched with Campos and performed work as a shipper. Prior to this period, Campos performed production work approximately two to three times per month, sometimes working full days. Campos performed this work largely on the small bag machine when the shipping schedule was light. Except as described above and on other limited occasions, the production employees generally do not perform Campos' shipping and receiving functions.

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<sup>2</sup> The Employer has two blenders-one of standard size, and one which it refers to as a "small bag machine" because the end product produces the blended product in very small parcels.

<sup>3</sup> Plant Manager Cantone estimated that during this time period, Campos operated the small bag machine for approximately 15-20 hours per week. In light of my ultimate determination, there is no need to resolve this conflict in testimony.

Campos was described as a shipping manager or supervisor or as a shipper/receiver by Employer witnesses. These witnesses acknowledged that Campos did not actually supervise any employee.<sup>4</sup> A job description signed by Campos on March 5, 2004 identifies him as a “Production Operator/Shipping and Receiving Clerk.” This job description lists a variety of job requirements for Campos, including the movement of materials, the manufacture of blends, and the shipment and receipt of products and materials.

Campos and the production employees utilize the same breakroom, share the same locker room, wear the same uniforms, and utilize the same parking lot.

### SUPERVISION

Production employees are supervised by Plant Manager Cantone. Materials Manager Atkinson supervises Campos when he performs his shipping and receiving functions, but Cantone supervises Campos when he performs production work.

### QUALIFICATIONS AND TRAINING

Campos attended college for one year, and has a certificate in logistics management which he acquired while working for a former employer. Prior to working for the Employer, Campos had extensive shipping and receiving experience. There were no formal qualifications identified for the production positions or for the shipping and receiving position. The job descriptions for Campos and for production employees require training in forklifts, respirators, OSHA hazardous communications, and possession of working knowledge in various production, shipping and receiving operations. Campos did not receive any formal training before operating the small bag machine.

### COMPENSATION AND HOURS OF WORK

Campos is salaried, paid on a monthly basis, and does not punch a time clock.<sup>5</sup> The production employees are hourly paid and punch a time clock. Neither Campos’ salary level nor the others employees’ hourly wage rates are specified in the record. All employees are eligible for the same health insurance plan. Campos works from 9:00 a.m. to 5:00 p.m., Monday to Friday. Production employees work on one of two 10-hour shifts, 5:00 a.m. to 3:00 p.m. or 3:00 p.m. to 1:00 a.m., Monday through Friday, and may work one ten-hour shift on Saturday or Sunday.

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<sup>4</sup> The Employer does not assert that Campos is a supervisor under Section 2(11) of the Act.

<sup>5</sup> Campos began working for the Employer in 1997. In the first year of his employment, he was hourly paid. In 1998, Campos chose to become a salaried employee.

#### IV. ANALYSIS

I find that Campos is properly included in the unit sought by Petitioner. Campos has regular daily contact with production employees, as he delivers the raw material used by these employees in the production process, and the production employees, in turn, deliver finished products to Campos who prepares them for shipping. Campos and these employees are involved in a functionally integrated operation and work in the same facility where they frequently are close to one another, and are separated by, at most, 100 feet.<sup>6</sup> I also find a significant overlap in Campos' job functions and those of the production employees. Campos has performed a substantial amount of production work in the past six weeks, and in periods prior to this, performed this work albeit less regularly. In addition, even when Campos performs shipping and receiving work, he moves raw materials with a forklift, the same equipment used by production employees in their movement of material or final product. Campos shares similar terms and conditions of employment with production employees, enjoying the same health insurance benefits,<sup>7</sup> and using the same locker room, breakroom and parking lot, and wearing the same uniform.

I find that the record amply demonstrates that Campos shares a community of interest with the production and maintenance employees, based on their regular contact in a functionally integrated operation, overlap in job functions, similar hours and benefits and similar working conditions.<sup>8</sup> Accordingly, I will include him in the unit sought by Petitioner. *Maidsville Coal Co., Inc.*, 257 NLRB 1106, 1114-17 (1981) enfd. on rehearing 718 F.2d 658 (4th Cir. (1983). *Risdon Manufacturing Company*, 195 NLRB 579, 581 (1972).<sup>9</sup>

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<sup>6</sup> This conclusion is not undermined by the separate existence of production and shipping/warehouse departments as Campos is the only individual working in the latter department. See *Keller Crescent Co.*, 326 NLRB 1158, 1159 (1998).

<sup>7</sup> Campos' salaried status is not of major significance, as he chose to be compensated in that matter. While he does not work the exact hours as production employees, there is a significant overlap in hours worked.

<sup>8</sup> Campos' community of interest is not overcome by being under different supervision from the production employees in light of the close connection to their respective duties and their close working proximity. *Blue Grass Industries, Inc.*, 287 NLRB 274, 298-99 (1987). The impact of this separate supervision is lessened further because Campos and the production employees are both supervised by the Plant Manager when performing production work.

<sup>9</sup> The cases cited in the Employer's brief in support of a contrary conclusion are readily distinguishable. In *Vitro Corp.*, 309 NLRB 390 (1992), the Board excluded automatic data processing employees from a warehouse unit because these individuals worked in separate locations, did not have work-related contact, and did not have an overlap in job functions. Similar considerations led to the Board's exclusion of sales and clerical employees from a warehouse and driver unit in *Esco Corp.*, 298 NLRB 837, 841 (1990). Unlike those cases, Campos and the production employees work in the same facility, and have extensive daily work-related contact and an overlap in job functions.

## V. 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.
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, shipping and receiving, warehousemen, fork-lift operators, maintenance mechanics and general help employed by the Employer at its 1725 Holstein Avenue, Philadelphia, Pennsylvania location, excluding all other employees, quality control employees, guards, and supervisors as defined by the Act.

## VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **Paper, Allied Industrial, Chemical and Energy Workers Union, (PACE), Local 2-286**. 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 list 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 6, 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](mailto:Region4@NLRB.gov).<sup>10</sup> 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

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<sup>10</sup> 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](http://www.nlr.gov).

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.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. 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 13, 2004**.

Signed: June 29, 2004

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]  
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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four