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

SUNOCO, INC. (R&M) and SUNOCO PARTNERS, LLC[1] Employer and ATLANTIC INDEPENDENT UNION Petitioner and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 2-901, AFL-CI0[2] Intervenor	Case 4–RC–21006

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Sunoco, Inc. (R&M) and Sunoco Partners, LLC, manufactures petroleum products and chemicals and distributes these products on both a retail and wholesale basis. The Intervenor, USW Local 2-901, (herein called USW or the Intervenor) is party to a collective-bargaining agreement with Sunoco, Inc. (R&M) covering, inter alia, Drivers and Mechanics at four of the Employer's Pennsylvania terminals: Twin Oaks, Malvern, Willow Grove, and Exton. The Petitioner, Atlantic Independent Union (herein called AID or the Petitioner), 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 Drivers and Mechanics employed by the Employer at three of those terminals: Twin Oaks, Malvern, and Willow Grove.[3] The Intervenor contends that only a unit of

[1] The name of the Employer appears as amended at the hearing.
[2] Following the hearing in this case, Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, (PACE) and the United Steelworkers of America merged to form the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. PACE is signatory to the collective-bargaining agreement with Sunoco, Inc. (R&M). [3] The Petitioner initially sought to include the Terminal Operators in the unit, in addition to the Drivers and Mechanics. The Employer took the position that these employees should not be included in the unit because the Terminal Operators, who were formerly employed by Sunoco, Inc. (R&M), were no longer employed by that company but by a new company, Sunoco Partners LLC, and that they therefore did not

employees of all four terminals, including Exton, is appropriate. The Petitioner has indicated that it would be willing to proceed to an election in either unit.[4] The Employer agrees with the Petitioner that the Exton terminal should not be included.

A Hearing Officer of the Board held a hearing in this matter, and the parties filed briefs. Thereafter, I issued an Order Reopening Record and Notice of Hearing, and the Hearing Officer held an additional day of hearing.[5] The parties then filed additional briefs. I have considered the evidence and the arguments presented by the parties, and I have concluded that the Exton terminal employees should be included in the unit along with the employees of the other three terminals.

In this Decision, I will first present the relevant facts. Then, I will review the factors that must be evaluated .in determining whether the Exton terminal employees should be included in the unit. Finally, I will explain the reasoning that supports my conclusions.

I. FACTS

The Employer's pipelines carry petroleum products to 35 terminals. A terminal is a facility that receives petroleum products from pipelines, stores it, and distributes it in smaller quantities to customers. The vast majority of the product is distributed to the Employer's own service stations and retail customers, although third parties also obtain some products from these terminals. The Employer's Home Comfort Services operating unit handles retail distribution of heating oil.

The four terminals involved in this proceeding distribute different types of petroleum products. The Twin Oaks and Willow Grove facilities both handle gasoline and heating oil. The Malvern terminal exclusively handles gasoline. The Exton facility handles heating oil, kerosene, and diesel fuel.

share a community of interest with the Drivers and Mechanics. The Petitioner and the Intervenor contended that both companies operated as a single employer, and the hearing in this case focused heavily on this issue. By letter dated September 13, 2005, however, the Petitioner amended the petition to remove the Terminal Operators from the proposed unit, and the other parties have indicated that they do not oppose this amendment. All parties agree that the sole remaining issue is the status of the Exton employees. Accordingly, it is unnecessary to determine whether the Terminal Operators should be included in the unit. The issue of whether Sunoco Partners LLC and Sunoco, Inc. (R&M) constitute a single employer has been raised in another case that remains pending, but this Decision will not deal with that matter because it is no longer at issue in this proceeding. The unit employees are employed by Sunoco Inc. (R&M).

[4] As discussed below, there are several types of Drivers and Mechanics employed at the four terminals. The parties agreed to include the classifications of Transport Drivers and Heating Oil Drivers, including regular seasonal Heating Oil Drivers, as well as Garage Mechanics (sometimes simply called Mechanics), Service Station Mechanics, and Burner Service Mechanics. Mechanics are at times called Technicians in the record.

[5] The reopened hearing concerned the Terminal Operators issue.

There are two types of Drivers. Transport Drivers drive large tanker trucks and haul gasoline and petroleum products to customers, usually service stations. They are required to have a CDL-A license. Heating Oil Drivers drive smaller trucks and need a CDL-B license. They haul distillate product, including home heating oil, kerosene, and diesel fuel, to customers' homes, and they are assigned to the Home Comfort Services unit.

The Employer also employs different types of Mechanics. Service Station Mechanics are responsible for repairing and maintaining the Employer's retail facilities, including pumps and dispenser units at gasoline stations. Garage Mechanics are responsible for repairing the trucks. Burner Service Mechanics are part of the Home Comfort Services unit and are responsible for repairing and maintaining heating and air-conditioning equipment.

The collective-bargaining agreement between PACE and Sunoco, Inc. (R&M) (the Agreement) covers employees at all four of the terminals.[6] The Agreement extends from May 24, 2001 through May 25, 2005, and initially covered employees at only the Twin Oaks, Malvern, and Willow Grove terminals.

In 2001, PACE filed a petition to represent the employees at the Exton Terminal in Case 4-RC-20257. The Employer and the AIU, which intervened in that case, contended that certain Exton Heating Oil Drivers, who had been transferred to the Twin Oaks terminal, should be excluded. Following a hearing, a Decision issued excluding those Drivers transferred to Twin Oaks from the unit based on a finding that they did not share a sufficient community of interest with the Exton employees. Following issuance of the Decision, an election was held, and the Exton employees voted for representation by PACE.

During subsequent negotiations, the Employer and PACE decided to include the Exton terminal employees in the existing unit but agreed that the term of the contract with respect to the Exton employees would be September 29, 2001 through September 29, 2005. Thus, as it applies to the Exton employees, the Agreement expires more than four months after expiration of the Agreement as it applies to the other three terminals. The terms of the Agreement, however, have applied equally to the employees regardless of the terminal at which they work. Under the Agreement, the wage scales have been the same for each position, regardless of the employee's terminal, although there has been a separate wage and incentive program for the employees who work in the Home Comfort Services unit.

The classifications differ to some extent between the terminals. The Twin Oaks facility employs 20 Transport Drivers, 10 to 12 Service Station Mechanics, 4 Heating Oil Drivers, and 10 Burner Service Mechanics. Until recently, the Malvern terminal employed 9 Transport Drivers, but they were transferred to Twin Oaks. The Willow Grove terminal does not employ Drivers or Mechanics; Drivers from other facilities haul product from Willow Grove. The Exton terminal employs 8 Heating Oil Drivers and about 12 Burner Service Mechanics. All of the Exton employees are part of the Home Comfort Services unit. There are also a number of seasonal Heating Oil Drivers.

[6] The Agreement also includes employees at the Employer's Paulsboro, New Jersey facility, but the parties agreed to exclude these employees.

Transport Drivers assigned to any terminal also perform work at other terminals on an asneeded basis. A central scheduling group determines the assignments for Transport Drivers at Twin Oaks, Malvern, and Willow Grove. Exton Heating Oil Drivers are dispatched separately from Exton. The record does not indicate whether Twin Oaks Heating Oil Drivers are dispatched by the central dispatching group or by the Exton Heating Oil scheduler. The Employer has permanently transferred employees among the terminals, but the record does not indicate how frequently these transfers have occurred.

All of the terminals are located within the Philadelphia metropolitan area. The Twin Oaks terminal is located in Aston, Pennsylvania; the Malvern terminal is in Malvern, Pennsylvania; the Willow Grove Terminal is located in Hatboro, Pennsylvania; and the Exton terminal is in Exton, Pennsylvania. The Twin Oaks Terminal is 22 miles from the Malvern terminal, 39 miles from the Willow Grove terminal, and 20 miles from the Exton terminal. The Malvern terminal is 28 miles from the Willow Grove terminal and 4 miles from the Exton terminal. The Willow Grove terminal is 32 miles from the Exton terminal.[7]

The Transport Drivers and Mechanics at the Twin Oaks and Malvern terminals all report to Transportation Manager William Marchbank. The Exton Home Comfort Services employees report to Manager of Home Comfort Services Robert Young.[8] Young and Marchbank both report to the same individual, Manager of Heating Oil and Distribution Boyd Foster. A separate supervisor, unnamed in the record, supervises the Heating Oil Drivers who work at Twin Oaks.

The same Human Resources Department has authority over employees at all four terminals, and the same labor relations policies apply to all of them. Employee benefits and payroll services are also the same at all four terminals.

II. RELEVANT LEGAL STANDARDS

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, the inquiry ends. *American Hospital Association v. NLRB*, 499 U.S, 606, 610 (1991); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See *The Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). 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, 418 (1950), enfd. on other grounds 190 F.2d 576 (2d Cf. 1951).

[7] I take official notice of these mileage numbers, which were not included in the record. [8] Young recently replaced Keith Wrisley in this position.

The touchstone for determining whether a bargaining unit is appropriate is a communityof-interest analysis. In determining whether a group of employees possesses a community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, skills, and job functions, employee contact and interchange, and similarities in wages, hours, benefits, and other terms and conditions of employment. See *Home Depot USA,* 331 NLRB 1289 (2000); *Esco Corp.,* 298 NLRB 837 (1990).

Ordinarily when considering a multi-facility operation, the Board holds that a singlelocation unit is presumptively appropriate for collective bargaining. *J&L Plate, Inc.* 310 NLRB 429 (1993); *Bowie Hall Trucking,* 290 NLRB 41, 42 (1988). However, that presumption is inapplicable where the petitioning union seeks to represent a multi-facility unit. *Hazard Express, Inc.,* 324 NLRB 989 (1997); *Capital Coors Co.,* 309 NLRB 322, n. 1 (1992). In a multi-facility context, absent the presumption of appropriateness, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (a) similarity in employee skills, duties, and working conditions; (b) functional integration; (c) centralized control of management and supervision; (d) geographical separation of facilities; and (e) bargaining history. *Bashas', Inc.,* 337 NLRB 710 (2002); *Alamo Rent-A-Car,* 330 NLRB 897 (2000); *Macy's West Inc., 327* NLRB 1222, 1223 (1999); *Bowie Hall Trucking,* 290 NLRB 41, 42 (1988).

III. ANALYSIS

I find, pursuant to the .standards set forth above, that the Exton employees share a community of interest with the employees from the other three terminals. Significantly, employees at all of the terminals have been covered under the same collective-bargaining agreement for the last several years. Although this contract has a different expiration date for Exton, its terms have been applied to employees at all of the terminals. The Board gives substantial weight to prior bargaining history. See *Trident Seafoods, Inc.,* 318 NLRB 738 (1995),enfd in relevant part, 101 F. 3rd 111 (D.C. Cir. 1996); *The Great Atlantic* & *Pacific Tea Co.,* 153 NLRB 1549, 1550 (1965).[9]

The other factors also militate in favor of including the Exton employees. Thus, with respect to geographical proximity, the Exton terminal is no farther from the other terminals as they are to each other; indeed, the Exton terminal is only four miles from the Malvern terminal. The Exton terminal is structurally similar to the other terminals in that it receives fuel from pipelines, stores it, and distributes it by truck. Although unlike the other terminals, Exton primarily distributes heating oil, Twin Oaks also distributes heating oil, in addition to gasoline.

There is some overlap between the employee classifications at the terminals. Exton employs only Heating Oil Drivers and Burner Service mechanics, while Twin Oaks employs employees in these classifications in addition to Transport Drivers and other types of Mechanics. The only evidence of a distinction between the skill levels of Heating Oil Drivers and Transport

[9] The Board does not adhere to the historical bargaining unit where that unit does not conform reasonably well to other standards of appropriateness. *Crown Zellerbach Corp.,* 246 NLRB 202, 203 (1979).

Drivers is that Transport Drivers require a CDL-A license while Heating Oil Drivers require a CDL-B license. Although they use different types of trucks, it is not clear that these trucks require markedly different skills. Similarly, the record does not indicate that different types of Mechanics require significantly different types of skills.

The Drivers and Mechanics at the respective terminals are governed by the same Human Resources department and labor relations policies and are covered by the same grievance procedure. The Exton employees report directly to Robert Young, rather than to William Marchbank, but both groups report secondarily to Boyd Foster.

The Petitioner contends that the Decision in *Sunoco Inc.,* Case 4–RC–20257 is determinative of the instant case because of its finding that the Exton employees constituted a separate appropriate unit and that Twin Oaks Drivers should not be included in that unit. However, at the time of that Decision, the Exton Drivers and the Twin Oaks Drivers were not covered by a common contract. Moreover, in that case PACE sought a presumptively appropriate single-location unit, while in this case the AID seeks a multi-facility unit, to which no presumption applies.

Based on the foregoing, I find that it is appropriate to include the Exton employees in a single unit together with the Twin Oaks, Malvern and Willow Grove employees.[10]

IV. 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.

[10] Although at the present time, the Malvern and Willow Grove terminals do not employ any Drivers or Mechanics, these terminals have employed such employees in the past. In fact, as evidenced by the recent transfer of employees from Malvern to Twin Oaks and the earlier transfer of employees from Exton to Twin Oaks, the stationing of Drivers at particular terminals is a somewhat fluid process. As the Petitioner has petitioned for employees in these terminals and no party has opposed their inclusion, I shall include them in the unit.

All parties agree that regular seasonal Heating Oil Drivers, who work during the winter season, should be included in the appropriate unit. Regular seasonal Heating Oil Drivers have been included in the classifications in the collective-bargaining agreement and have been eligible for benefits and pay raises depending on their number of hours worked. In past years, the Employer has employed approximately 30 to 35 seasonal employees. Although this is a sizable number, it is insufficient to require that the election be delayed until the winter season. See *Bituma Corp. v. NLRB,* 23 F.3rd 1432 (8th Cir. 1994), enforcing 310 NLRB No. 167 (1993); *NLRB v. Broyhill Co.,* 528 F.2nd at 719, 722 (8th Cir. 1976).

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)(l) 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 Transport Drivers and Heating Oil Drivers, (including regular seasonal Heating Oil Drivers), Garage Mechanics, Service Station Mechanics, and Burner Service Mechanics employed by Sunoco, Inc. (R&M) at its Twin Oaks, Malvern, Willow Grove, and Exton, Pennsylvania terminals and **excluding** all other employees, office clerical employees, managerial employees, guards and .supervisors as defined in the Act.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner should advise the undersigned Regional Director as to whether or not it wishes to proceed to an election in the unit found appropriate, and the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if necessary. See *NLRB Case handling Manual (Part Two), Representation Proceedings,* Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car,* 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a separate ballot election among the employees 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 **Atlantic Independent Union; United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 2-901; AFL-CIO; or Neither.** 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.

To ensure that all eligible voters may have the opportunity to be informed of the issues in the

B. Employer to Submit List of Eligible Voters

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 October 24. 2005. 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) 5977658, or bye-mail to Region4@NLRB.gov.[11] 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.

[11] See OM 05-30, dated January 12,2005, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlrb.gov.

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 stops employers from filing objections based on non-posting of the election notice.

VI. 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 bye-mail. For details on how to file a request for review by email, see http://gpea.NLRB.gov/. This request must be received by the Board in Washington by 5:00 p.m., EDT on October 31.2005.

Signed: October 17, 2005 at

Philadelphia, Pennsylvania

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