

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

ALLIANCE ONE TOBACCO USA

Employer - Petitioner

**Cases 11-UC-93
11-RC-6699**

and

**BAKERY, CONFECTIONERY, TOBACCO WORKERS & GRAIN
MILLERS INTERNATIONAL UNION, LOCAL 270-T**

Union – Petitioner

**REGIONAL DIRECTOR’S
DECISION AND DIRECTION OF ELECTION AND ORDER CLARIFYING UNIT**

The Employer, Alliance One Tobacco USA, is a Virginia corporation with three facilities located in Wilson, North Carolina, and one facility in Farmville, North Carolina, where it is engaged in the processing of tobacco. At issue in this decision are both a unit clarification petition and a representation petition. The Employer filed the petition in Case 11-UC-93 seeking to clarify the current bargaining unit, which consists of employees who are employed at its Stantonsburg Road (Stantonsburg) and South Tarboro Street (Cut Rag) facilities in Wilson, by excluding employees who are employed at the Employer’s more recently-created Baldree Road (Baldree) facility in Wilson. Regarding the petition in Case 11-UC-93, the Union contends that the Baldree employees should be accreted into the existing bargaining unit of Stantonsburg and Cut Rag employees.

Subsequent to the Employer’s filing the unit clarification petition, the Union filed the petition in Case 11-RC-6699, asserting that, if accretion is not ordered in Case 11-UC-93, it would seek an *Armour-Globe* election, through which the Baldree employees would vote on

whether they desired to be represented by the Union as part of the current bargaining unit of Stantonsburg and Cut Rag employees. In response, the Employer argues that no election should be directed solely for the Baldree employees, because the interests of those employees are so closely aligned with the interests of employees at the Employer's Farmville facility that only a multi-location unit is appropriate. Finally, the Union states that, should an *Armour-Globe* election not be directed, the Union is willing to proceed to an election on its petition in Case 11-RC-6699 in a single-plant unit consisting of only those employees at the Baldree facility. As petitioned for in Case 11-RC-6699, such a unit would consist of all full-time and regular part-time employees of the Employer employed at its Baldree Road, Wilson, North Carolina, facility, excluding all administrative clerical employees, managers, guards and supervisors as defined by the Act.

As evidenced at the hearing and in the briefs of the Employer and the Union, the issues presented are as follows:

1. In regard to Case 11-UC-93, whether employees employed at the Baldree plant should be accreted into the existing bargaining unit of employees in the Employer's Stantonsburg and Cut Rag facilities. The Employer maintains that such an accretion should be denied because the Baldree employees do not share a sufficient community of interest with the employees employed at Stantonsburg and Cut Rag. In opposition, the Union argues that a community of interest does exist that would warrant the accretion.
2. In regard to Case 11-RC-6699, whether an *Armour-Globe* election should be conducted among the Baldree employees, which would permit those employees to vote on whether they desired to be represented by the Union as part of the existing

bargaining unit of Stantonsburg and Cut Rag employees. The Employer contends that an *Armour-Globe* election is inappropriate for the Baldree employees, because they do not share a sufficient community of interest with the bargaining unit employees who the Union currently represents. The Union states that because there is a strong community of interest among all the employees at the three Wilson facilities, an *Armour-Globe* election is appropriate for the Baldree employees, should the Union's request for accretion be denied.

3. In regard to Case 11-RC-6699, whether an election should be directed in a unit comprised solely of the employees employed at Baldree. The Employer contends that there is an overwhelming community of interest and functional integration between the employees at Baldree and the employees at its Farmville facility, such that a stand-alone unit of only the Baldree employees is inappropriate. The Union disagrees and argues that there is insufficient evidence of a shared community of interest between Baldree and Farmville employees so as to support the conclusion that a stand-alone unit is inappropriate.

I have considered the evidence and the arguments presented by the parties on the issues. I have concluded that the employees employed at the Employer's Baldree facility do not share a sufficient community of interest either with the Stantonsburg/Cut Rag unit or the Farmville unit to warrant their inclusion in those units. I further find that the Baldree employees constitute an appropriate single-facility bargaining unit. Accordingly, I shall direct an election in the unit described below.

To provide a context for my discussion of the issues, I will first provide an overview of the operations of the Employer. I will then set out the applicable legal standards pertaining to the

two petitions, after which I will provide a detailed discussion of the relationship of the Baldree employees to the Employer's other employees employed at its Stantonsburg, Cut Rag and Farmville facilities. I will then provide my analysis of the community of interest between the Baldree employees and employees at the Employer's other three facilities, after which I will set out my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer is involved in purchasing, processing, storing and shipping tobacco and tobacco products to cigarette manufacturers on a world-wide basis. Of its five regions, the North American region consists of Canada, Guatemala, Mexico and the United States. This region includes six facilities located in North Carolina. Two of those operations, one in Winston-Salem and the other in King, are not at issue in this matter. The remaining four North Carolina facilities of the Employer are: (1) the Stantonsburg facility, which processes and finishes raw leaf tobacco purchased from growers; (2) the Cut Rag facility, which cuts, flavors and conditions previously-processed tobacco, so that the tobacco is suited to be immediately rolled into cigarettes; (3) the Baldree facility, which has as its single purpose the screening or cleaning of scrap tobacco provided by and returned to its sole customer, Philip Morris; and (4) the Farmville location, which, like Stantonsburg, is a leaf processing operation, but slightly smaller in size than Stantonsburg. The record establishes that the distance between Stantonsburg and Cut Rag is 3.26 miles; between Stantonsburg and Baldree, 2.5 miles, and between Baldree and Farmville, 21.36 miles.

The Union has represented a bargaining unit consisting of the production and maintenance employees at Stantonsburg and Cut Rag for many years. The parties recently signed a successive three-year collective bargaining agreement dated April 1, 2008, which covers those employees.

The current collective bargaining agreement between the parties contains a recognition clause in Article 1 that describes the bargaining unit as follows:

The Company recognizes the Union as the sole and exclusive collective bargaining agency [sic] for all its employees at the Company plants in Wilson, North Carolina, except the Administrative Clerical employees, managers, supervisors, assistant supervisors, buyers, full-time watchperson, salaried mechanics, and all other supervisory employees with the power to effectively recommend tenure of employment, during the life of his agreement, in all matters pertaining to wages, hours and working conditions.

This language is identical to the recognition clause in the predecessor agreement between the parties effective August 1, 2005. In regard to the Employer's Farmville facility, the hourly production and maintenance employees there are represented by a different local of Petitioner's international union, that is, Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, Local 274-T, which is not a part of this proceeding.

The Stantonsburg plant, as a leaf processing facility, obtains its leaf tobacco both from farmers and from customers providing their own tobacco. Since the tobacco that is received has been somewhat dried, it has to be hydrated before it is processed. There are conditioning cylinders at Stantonsburg which put moisture into the tobacco to make it pliable in advance of processing. In the processing operation, the tobacco is separated by grades and then blended according to specifications established by the customer. After it is blended, the tobacco is searched or picked for foreign materials. Then a thresher cuts the tobacco, and next the stem is separated from the leaf. The Employer thus ends up with three products: stems, scraps, and lamina, which is made up of redried strips of leaf tobacco and is used for making cigarettes. The tobacco is then moved to a shipping area where it is held pending completion of quality control tests. Next, it is moved either to storage or directly to one of the eight or nine customers of the Employer who uses the lamina to fabricate cigarettes.

Stantonsburg, at full operation, employs about 800 employees who work two ten-hour shifts. One shift begins at 7:00 a.m. and the other starts at 6:00 p.m. Stantonsburg is a seasonal operation that begins about the first part of August and continues until mid to late-February. During the off-season, there are approximately 110-120 employees at Stantonsburg, including staff employees. Processing of the tobacco takes place on two floors and three production lines. Each line is separate and consists of a feeder, picking area, threshing area, redrying area and packing area. The equipment in the threshing area and redrying area is estimated to extend approximately 1,000 yards, which is the entire length of the Stantonsburg plant.

Cut Rag is a year-round operation that employs about 72 employees who work one shift from 7:00 a.m. to 4:00 or 5:00 p.m. There is only one production line at the Cut Rag facility which is about 1,000 feet long. At Cut Rag various forms of tobacco arrive from processing plants such as Stantonsburg. The tobacco received may be a flue-cured tobacco, a burly tobacco, an oriental tobacco, or other forms. Then according to a recipe of a customer, the tobacco is placed in a feeder or silo to generate a specific blend designated by the customer. Next the blended tobacco is cased, which is the adding of sugar, cocoa or different flavorings to make the tobacco sweet. After being cut by a very fine cutter, the tobacco is then dried, packaged into a case and shipped to a cigarette manufacturer. Cut Rag has no customers, such as Philip Morris, which are major tobacco companies. Rather, Cut Rag has a total of about seven or eight small cigarette makers as its customers.

Farmville is a processing plant just like Stantonsburg, but it is smaller with only two production lines. During full operation, the approximately 700 employees at Farmville work on a three-shift basis.

The Baldree facility, also referred to as Class Blending, is a recently-created cleaning process for scrap tobacco, which all comes from the sole customer for this plant, Philip Morris. The Employer first began hiring employees for Baldree in May 2007. There are twenty employees at Baldree who work on one production line that is about 500 feet long. The Baldree plant is not seasonal, as the plant operates year-round. At Baldree the only pieces of equipment are feeders in which the arriving scrap tobacco is dumped. The scrap tobacco is then cleaned and sized by passing it through shakers and screens of various dimensions. The dirt, sand and trash are separated and removed from the scrap tobacco, which, at the end of the process, drops into a box. The box of cleaned scrap tobacco is then sealed and shipped back to Philip Morris.

II. THE DISPUTE OVER THE BALDREE FACILITY

After the Baldree plant began operations in 2007, but prior to negotiations for the current contract, the Union requested that the Employer voluntarily recognize the Union as the representative of the employees at Baldree. The Employer declined. The Employer and Union engaged in contract negotiations and executed the current contract on April 1, 2008. It is undisputed that the Union did not make any proposals to specifically include the Baldree facility into the existing unit during those negotiations. Soon after the parties signed the current collective bargaining agreement, however, the Union presented the Employer with signed authorization cards from a claimed majority of employees at the Baldree facility. The parties stipulated that the Employer has refused to recognize the Union as the representative of its hourly Baldree employees.

In a letter to the Employer dated April 14, 2008, the Union asserted that the current collective bargaining agreement “gives the Union jurisdiction over any Wilson Alliance One facility.” The Employer responded in writing that its position regarding recognition of the Union

for Baldree employees was unchanged and that the Union waived its right to make a representation claim by failing to raise the issue in contract negotiations.

On April 22, 2008, the Union filed a grievance claiming the Employer violated the collective bargaining agreement by not recognizing the Union as bargaining representative for the Baldree employees. The Employer denied the grievance. Thereafter, on May 2, 2008, the Union filed an unfair labor practice charge in Case 11-CA-21923, alleging that the Employer violated the Act by refusing to recognize the Union as representative of the Baldree employees. The Employer filed an unfair labor practice charge in Case 11-CB-3925 on May 8, 2008, alleging that the Union's demand for recognition violated Section 8(b)(1)(A) and (2) of the Act. These unfair labor practice charges are currently being held in abeyance in the Regional Office pending the decision in this matter.

III. THE UC AND RC PETITONS

As set out fully below, the applicable legal principles compel the conclusions that the Baldree employees should not be accreted into the existing Stantonsburg/Cut Rag unit, and that an Armour-Globe election is not appropriate. Further, application of Board law to the evidence mandates the conclusion that the Baldree facility, as a single-plant facility, constitutes an appropriate unit.

1. Applicable Legal Principles

In regard to the unit clarification petition, the Board has long “followed a restrictive policy in finding accretions to existing units because the Board seeks to insure that the right of employees to determine their own bargaining representatives is not foreclosed.” *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). The Board's reasoning provides that it

will not, under the guise of accretion, compel a group of employees, who may constitute an appropriate unit, to be included in an overall unit without allowing those employees

the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them.

Melbet Jewelry Co., 180 NLRB 107, 110 (1970).

In the accretion context, in order to determine whether new employees share sufficient common interests with members of the existing bargaining unit, the Board weighs various factors including “integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history and interchange of employees.” *Progressive Die Service Co.*, 323 NLRB 183, 186 (1997) (citations omitted).

In regard to the possibility of an *Armour-Globe* election pursuant to the representation petition, the Board examines whether the employees at issue share a sufficient community of interest with bargaining unit employees to warrant an opportunity to be included in the unit. As the Board stated in *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990):

A self-determination election is the proper method by which a union may add unrepresented employees to the contractual unit. In this regard, it is necessary to determine the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972).

In addition, the Board’s general rule in representation petitions is that a single-plant unit is presumptively appropriate, unless the employees at the plant have been merged into a more comprehensive unit by bargaining history, or the plant has been so integrated with the employees in another plant as to cause the single-plant unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *Budget Rent A Car Systems*, 337 NLRB 884 (2002); *Dattco, Inc.*, 338 NLRB 49 (2002) The burden is on the party arguing against the finding that the single-plant unit is

appropriate. *Trane*, supra, at 867 (party opposing the single-facility unit had the heavy burden of rebutting its presumptive appropriateness.) In considering whether the single-facility presumption has been rebutted, the Board examines traditional community-of-interest factors, including: central control over labor relations, local autonomy, interchange of employees, similarity of employee skills, functions and working conditions, supervision, geographic separation, plant and product integration and bargaining history. *Trane*, supra, 867; *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Mercy Health Services*, 311 NLRB 367 (1993)

Thus, the Union bears the burden on the accretion and *Armour Globe* issues, and the Employer bears the burden of establishing that a stand-alone unit of only Baldree employees is not appropriate. The criteria set out above will be discussed below in a review of the relationship of the Baldree employees to the employees at Stantonsburg and Cut Rag employees and the relationship of the Baldree employees to the Farmville employees.

2. Interchange of Employees

Interchange of employees between Baldree and the other two Wilson locations is almost nonexistent. When the Baldree facility, which had been a warehouse, was being prepared as a production plant in the spring of 2007, and before production employees were hired, some painters and three janitors from the Stantonsburg plant were sent to the Baldree facility to help ready it for operation. They appeared to have temporarily worked at Baldree for one to two weeks before returning to Stantonsburg. After Baldree began production, one employee from Stantonsburg did work for one week at Baldree, after which he returned to work at Stantonsburg. This sole temporary transfer of an employee was arranged between plant managers and, according to the Employer, is an incident contrary to its fixed policy that there is to be no interchange between employees at Baldree and the other two Wilson facilities. As an example of

the application of its policy, the Employer presented evidence of an employee at Stantonsburg who had to quit her job and forfeit her considerable plant seniority before she could be hired as a new employee at Baldree. Thereafter, when she was subsequently laid off at Baldree, she had to apply as a new employee to work again at Stantonsburg. Thus, the record does not support a finding that there is interchange between Baldree employees and employees in the Stantonsburg/Cut Rag unit.

In regard to interchange between Baldree and Farmville, however, the Employer states that it permits both permanent and temporary transfers of employees between the two locations. Though the Farmville plant has its own collective-bargaining contract and is over 20 miles from the Baldree operation, vacant employee positions at each facility are posted for bid by employees at both plants. Although the record shows that no permanent transfers have taken place, the Employer notes that a Farmville employee recently unsuccessfully bid on the position of scale house clerk at Baldree. Temporary transfers of employees between Baldree and Farmville, however, have occurred. In late 2007, four Baldree employees were temporarily assigned to work at Farmville for periods of about one to three weeks. In March 2008, four employees from Farmville temporarily worked at the Baldree plant for three days. Since Farmville is a seasonal operation, the Employer allows Farmville employees who have been laid off work to indicate their desire to work during their off season at the year-round operation at Baldree. One employee is currently in this program. After being laid off at Farmville, at his request, he was then transferred to Baldree as a probationary employee for a 30-day period, after which he was moved to the general laborer rate. The evidence shows he will work approximately two to three months at Baldree before returning as an employee at Farmville, and that his seniority at Farmville will not be impacted by his having worked at Baldree. The record does not show what

work any of these temporarily-transferred employees performed, but they did work among the permanent employees in the plant to which they were transferred.

3. Supervision

The Baldree facility is headed by a plant manager who has no authority over employees working elsewhere for the Employer at Stantonsburg, Cut Rag or Farmville. Reporting to the Baldree plant manager are three supervisors with the titles: Processing Lead, Blending Lead and Shipping/Receiving Lead. These three supervisors supervise the twenty Baldree employees for all day-to-day matters. The record is clear that there is no common supervision between the Baldree location and any of the other three sites of the Employer at issue herein.

4. Centralized Control of Labor Relations

The Employer has chosen to separate the four plants under discussion into two distinct groups for the handling of all of the daily human resources and labor relations functions. Specifically, the Stantonsburg and Cut Rag facilities, which are represented by the Union, are the responsibility of Human Resource Manager Sandy Barnes, who is located in Wilson. The Baldree and Farmville plants, along with a storage facility in Danville, Virginia, are under the direction of Human Resource Manager Brent Langley whose office is in Farmville. Both Barnes and Langley report to Regional Human Resources Director Randy Willis for human resources and labor relations matters.

Neither Barnes nor Langley has any authority over, or contact with, employees at the plants for which they are not directly responsible. For example, Barnes administers the benefits plan, is responsible for time and payroll, health services, and workers' compensation, and maintains employee records only for employees employed at Stantonsburg and Cut Rag. Langley duplicates these same labor relations functions for employees employed at Baldree and

Farmville. Neither Barnes nor Langley has access to the employee records maintained by the other. When an employee quit work at Stantonsburg and was hired as a new employee at Baldree, a new personnel file was created for her at Baldree, and her former personnel file remained at Stantonsburg.

Barnes makes all hiring decisions for Stantonsburg and Cut Rag. Similarly, she is ultimately responsible for implementation of all employee discipline and decisions to terminate employees in both those two plants. Langley performs these same duties for the Baldree and Farmville operations, which have the same attendance and disciplinary policies for employees. Also there is the same drug testing program at Baldree and Farmville, and all employees at those two plants are subject to random drug testing. The Employer does not conduct random drug testing of employees at Stantonsburg and Cut Rag.

5. Overall Working Conditions

The Employer strongly argues in its brief that there is “virtually no similarity” between the production process of Baldree and the leaf processing operation of Stantonsburg and the flavoring, cutting and conditioning process of Cut Rag. Both parties agree that the operations at Stantonsburg and Farmville are essentially the same. Thus, any comparison of conditions of employment regarding the Stantonsburg operation to that of Baldree would equally apply to the Farmville operation. The parties further agree in their briefs that because the Cut Rag operation is even more sophisticated than the Stantonsburg process, the working conditions for employees at Baldree would be closer in nature to the employee working conditions found at Stantonsburg. Therefore, a comparison of the operations at Baldree and Stantonsburg is acknowledged to be more meaningful than a comparison between the processes at Baldree and Cut Rag.

In examining the operations at Baldree and Stantonsburg, the Union contends they are somewhat similar because at Stantonsburg the tobacco leaf is initially screened, sorted and cleaned while at Baldree scrap tobacco is screened and cleaned. However, the Employer disputes this claim of similar processes and maintains that the operations at Stantonsburg are much more complicated and involved than the basic scrap tobacco cleaning performed at Baldree. This difference in employee skill levels is readily seen by a comparison of the employee positions at the different plants. The employee positions at Baldree are: General Laborer, Clerk, Forklift Driver and Skilled Mechanic. While these same employee positions are also found at Stantonsburg and Cut Rag, those two plants also have employee positions for Operators of different kinds, Data Entry, Quality Control and Drivers with CDL licenses. Indeed, the record reflects that including forklift operators, there are 150 to 200 operators at Stantonsburg during full operation, whereas there are only 3 or 4 operators, most probably forklift operators, at Baldree.

At Stantonsburg the employees must first use a large blade to split the bales of leaf tobacco, while at Baldree the tobacco arrives from Philip Morris in boxes that are dumped for processing. There are 15 or so employees at Stantonsburg who sit on stools adjacent to a conveyor belt on each line and who pick foreign material out of the leaf tobacco. There are no such sweeper/picker positions at Baldree. After passing through the picking line at Stantonsburg, the tobacco is placed in a machine called an ordering cylinder operated by employees, which is essentially a large metal drum that spins around and adds moisture to the tobacco. There are no ordering cylinders at Baldree. Next, the tobacco at Stantonsburg passes through a series of threshing machines operated by employees, where the tobacco leaf and stem are separated. There are no threshing machines at Baldree. At Stantonsburg, after being

threshed, the tobacco goes into another ordering cylinder followed by a redrying machine, both of which are operated by employees. These types of machines are not present at Baldree. At the end of the production process in Stantonsburg, the tobacco ends as a fairly large leaf of tobacco, which is then hydraulically pressed into boxes by employees operating the presses. By contrast, at the end of the production process in Baldree, the tobacco comes out with a consistency as fine as sand. As the end product simply drops into a box, there are no hydraulic presses at Baldree.

Due to the need to maintain strict controls over the tobacco processed at Stantonsburg, that facility has its own quality control lab. Among other things, the approximately 40 employees who work in the quality control lab at Stantonsburg test the tobacco for moisture content, nicotine, sugars, alkaloids, temperature and foreign matter. There is no quality control lab or related sophisticated or specialized equipment found at Baldree. The only control used at Baldree is the weighing of the end product.

Finally, the work performed at Cut Rag, as reflected in the record and in the opinion of both parties, is even more sophisticated and dissimilar from the work at Baldree than that at Stantonsburg. The record shows that none of the machinery and equipment used by employees at Cut Rag is used at Baldree.

6. Wages, Benefits and Working Conditions

Currently, the wages paid at Stantonsburg and Cut Rag are slightly higher per hour than those at Farmville, which in turn are slightly more per hour than those for the same employee positions at Baldree. This is true for each of the four bargaining unit positions identified at Baldree. For example, a general laborer working at Stantonsburg or Cut Rag earns \$8.00 per hour, but a general laborer employee at Farmville earns \$7.60 per hour, while a general laborer at Baldree is paid \$7.50 per hour. However, the Employer presented testimony that in July 2008, the one-year

anniversary for the Baldree plant, it intends to raise the hourly rate of pay for the twenty Baldree employees to the pay level of Farmville employees in similar positions.

The employees at Baldree and Farmville have the same holiday and life insurance benefits, whereas those benefits for Stantonsburg and Cut Rag are slightly different. The medical insurance plans for Baldree, Farmville, and the Stantonsburg/Cut Rag unit are all different. Stantonsburg and Cut Rag employees receive service pay at age 65 and disability pay, but Baldree and Farmville employees do not. The funeral leave for Farmville, Stantonsburg and Cut Rag employees is the same while funeral leave for Baldree employees is one day less.

IV. ANALYSIS

I will first address the unit clarification petition, which I am granting, after which I will set out my reasoning concerning my decision not to direct a self-determination election under Armour-Globe. I will then explain the reasoning underlying my conclusion to direct an election in a stand-alone unit of certain Baldree employees.

1. The unit clarification petition will be granted by excluding the Baldree employees.

As set out above, the Board holds that employees to be accreted must share an overwhelming community of interest with employees in the existing unit. The record does not establish such a community of interest. That is, Stantonsburg operates on a seasonal basis, while the Baldree plant operates year-round. Stantonsburg employees work on a two-shift basis, while Baldree employees work a single shift each day. There is no interchange of employees and no shared supervision between these two groups of employees. The Stantonsburg and Cut Rag employees have different work environments; use different equipment and machines; perform different job functions; and process different types of tobacco products from the Baldree employees. On a day-to-day basis, the Baldree employees and the Stantonsburg and Cut Rag

employees have totally separate human resources and labor relations programs administered by different managers. Further, the Baldree employees and the Stantonsburg and Cut Rag employees do not have common wage rates or benefits; and the Baldree plant is geographically separated by two or more miles from the other two Wilson facilities.

The foregoing demonstrates that there is no significant community of interest between the Baldree employees and employees in the existing bargaining unit, and I find that the Baldree employees should not be accreted into the existing unit. In this regard, and contrary to the Union's contention, the unit recognition language in the recent contract for Stantonsburg and Cut Rag employees does not give the Union the right to represent employees outside of the bargaining unit for those two established plants, nor does it give the Union the right to represent employees at all future operations in Wilson. The recognition clause was adopted in 2005 from the contract between the Union and the predecessor employer. As the Board has noted, however, "the inclusion of the address in the recognition clause does not, as a matter of law, give the Union enhanced rights to represent employees at new operations that may be added at that address." *Archer Daniels Midland Co.*, supra, 333 NLRB at 767. Moreover, in the recent 2008 negotiations, when the existence of the Baldree operation was known, the parties did not even discuss the recognition of the Baldree employees, let alone agree upon their inclusion in the existing unit. Accordingly, for all of the foregoing reasons, the Union's reliance on the contractual recognition clause here is misplaced.

Based on the foregoing, I shall grant the petition to clarify the existing Stantonsburg/Cut Rag unit to exclude employees employed at the Employer's Baldree Road facility.

2. There is an insufficient showing of community of interest to mandate an Armour Globe election.

As set out above, there is virtually no community of interest between Baldree employees and those employees in the current unit. For the same reasons that underlie my decision to grant the Employer's unit clarification petition, therefore, I find that the record does not support a determination that employees at Baldree share a sufficient community of interest with the employees in the Stantonsburg/Cut Rag bargaining unit to permit an *Armour-Globe* election.

3. As the Employer has not rebutted the single-facility presumption, a stand-alone unit of Baldree employees is appropriate.

Regarding the Employer's position that the only appropriate bargaining unit for the Baldree employees is a multi-location unit, comprised of both the Baldree employees and the Farmville employees, I disagree. Rather, I find that the record evidence fails to demonstrate a sufficient community of interest between the Baldree and Farmville employees to overcome the Board's presumption that a single facility is an appropriate bargaining unit. In making this determination, I am not unmindful that there have been some temporary transfers of employees between the two facilities, and that there exists the possibility of permanent employee transfers. However, this interchange of employees does not compel a finding of community of interest sufficient to overcome the single-facility presumption. On this point, I note that in the case of *J & L Plate*, supra, 310 NLRB at 430, there were 20 temporary transfers of unit employees between two facilities in a 3 to 4 year period, some of which lasted for extended periods; yet the Board still found a single-facility unit appropriate. The record also establishes that the Baldree and Farmville operations share a common human resources and labor relations manager, who applies the same employee policies at each location. I do not find, however, that these community-of-interest factors are sufficient to overcome the presumptive appropriateness of a single-facility unit, for the reasons that follow.

As an initial matter, the Baldree and Farmville plants are geographically separated by over 20 miles. Other than the above-noted employee transfers, there is virtually no evidence of contact between employees of the two plants. The employees at Farmville are required to work on a three-shift per day schedule, while Baldree employees have just a one-shift operation. The Baldree operation has complete local autonomy from all other locations and processes of the Employer. Baldree is a year-round operation, while Farmville operates on a seasonal basis between August and February. As a leaf processing facility like Stantonsburg, the Farmville plant has a different work environment; uses different equipment and machines; performs different job functions; and processes different types of tobacco products from the Baldree plant. To date, the employees at Baldree and Farmville who work in the same positions have different hourly pay rates, with the Baldree employees' being paid slightly less. The fringe benefits for Baldree and Farmville, although expected to be similar in the future, are now slightly different. There is no common supervision between Baldree and Farmville facilities. Finally, the Farmville employees are represented by another local union of the same international union of which Petitioner is a constituent local, and, as Baldree is a recently-created facility, there is no history of union representation.

The Employer cites *R & D Trucking, Inc.*, 327 NLRB 531, 532 (1999) for its contention that only a multi-location unit is appropriate. Its reliance is misplaced. First, in *R & D Trucking* the employer had no physical presence at the second facility, where three of its truck drivers were stationed. The employer neither leased or owned space at that second facility, which was owned and operated by a customer of the employer. Second, contrary to the Employer's assertion on brief, the Board specifically found that employees at the two locations were commonly supervised by the employer's president. Indeed, the Board emphasized this common

supervision in reversing the decision of the regional director in that case, and in finding that the single-facility presumption had been rebutted.

Having determined that both an *Armour-Globe* election, as well as inclusion in a multi-facility bargaining unit, are inappropriate for the Baldree employees, I further find that the presumptively appropriate single-plant unit of employees employed by the Employer at its Baldree Road, Wilson, North Carolina, facility is an appropriate bargaining unit. *Archer Daniels Midland Co.*, supra; *Warner-Lambert, Co.*, supra; *Trane*, supra; *J & L Plate*, supra.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The 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 Union-Petitioner involved 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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including general laborers, utility employees, clerks, forklift drivers, and skilled mechanics employed by the Employer at its Baldree Road, Wilson,

North Carolina, facility, excluding all clerical employees, processing leads, blending leads, shipping/receiving leads, and guards and other supervisors as defined in 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 purposes of collective bargaining by Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, Local 270-T. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are

engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U. S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, NC 27116-1467 on or before **July 18, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336/631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estop employers from filing objections based on nonposting of the election notice.

VII. ORDER

It is ordered that the Employer's petition for unit clarification is granted, and the bargaining unit of employees employed at the Employer's Stantonsburg and Cut Rag facilities located in Wilson, North Carolina is clarified to exclude employees employed at the facility located at Baldree Road, Wilson, North Carolina.

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 St. N. W. Washington, DC 20570 and received by the Board in Washington **by July 25, 2008**. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance

in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Winston-Salem, North Carolina, on the 11th day of July, 2008.

Willie L. Clark, Jr., Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467