

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

PHS/MWA AVIATION SERVICES (WENCOR)

Employer

and

Case 21-RC-184349

**INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 947, AFL-CIO**

Petitioner

DECISION AND ORDER

Petitioner seeks to represent a unit of all Technicians in the Cargo Department employed by the Employer at its Temecula, California facility, where the Employer is engaged in the business of providing Federal Aviation Administration (FAA) repairs, specializing in component repair and overhaul of aircraft components.¹ The Employer maintains that the unit sought by Petitioner is not appropriate and that the only appropriate unit must also include technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments, as well as technicians in the Machine shop, Electronic-Engineering Lab, Calibration Department, and inspectors in Non-Destructive Testing employed by the Employer at its Temecula, California facility.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As described below, based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. 727 F.3d 552 (6th Cir. 2013), I find that the petitioned-for unit limited to the Employer's full-time and regular part-time Cargo Technicians is not appropriate, and that the appropriate unit must also include Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation departments, a unit larger than that petitioned for but smaller than that proposed by the Employer.

Inasmuch as the Petitioner has stated that it does not wish to proceed to an election in any unit other than the petitioned-for unit, which I have found to be not appropriate, I am dismissing the petition.

I. THE EMPLOYER'S OPERATIONS

1. The Physical Plant

The Employer is engaged in the overhaul and repair of subcomponents of military and commercial aviation aircraft, listing Lufthansa, United, KLM, and Delta among its customers. To accomplish this, it maintains an operational pool of employees, including technicians,

¹ The Petitioner amended its original petitioned-for unit to exclude technicians in the Machine Shop.

deployed throughout various product lines to meet customer requirements. Most work is subject to a Component Maintenance Manual (CMM) created by the manufacturers of the components as a guideline to performing their repair and overhaul.

The physical plant consists of two adjacent buildings in a business park, separated by a 30-foot-wide alley used primarily for deliveries. The two buildings are referred to by their respective street addresses as the Rio Nedo Building and the Alvarado Building, or Building 1 and Building 2, respectively.

The Employer's employees, including the Technicians, are dispersed between the two buildings in departments described in more detail below. Some departments have physical boundaries separating them from other departments in the building, but most are contained within open floor space. The Alvarado Building contains two contiguous suites known as "A" and "B," connected with a door.

Technicians from various departments who have been certified to paint share the paint booths located in each building, depending on scheduling needs and which booth is operational. The "media blaster" which blasts high-pressure granular plastic to remove paint, grease, and other debris from components is located in Building 1 and is shared by all departments.

Aircraft units sent for repair and overhaul are received in the Shipping and Receiving Department located in the Alvarado Building, and then are dispersed to the various departments as required before being shipped back to the customer. Upon the unit's arrival, Technicians may go to the Receiving Department to perform a "visual" inspection in order to make a preliminary assessment of the needed repairs in the various departments.

2. The Technicians

Of the approximately 118 employees at the Temecula, California facility, about 57 of them are classified as Technician I or Technician II, referred to collectively as Technicians, who perform inspections, teardown, troubleshoot, repair, and overhaul of the aviation components or subcomponents. Technician I is the entry-level position, and all Technicians at this level have the same job description regardless of the department in which they work at any given time. Technician II is the more advanced position, exemplified by more experience and diverse background. As discussed in further detail below, Technicians are not hired into any particular department, and they are largely interchangeable.

3. The Departments

The Employer's operation is divided into various departments or "product lines" based on function: Cargo, Accessory, and Machine Shop are located in Building 1, and the Actuation, Power and Control, and Galley are located in Building 2, along with Non-Destructive Testing (NDT), Electrical Engineering Lab (EEL), and Calibration. Each department has its own supervisor, who reports to the General Manager. The respective supervisors are responsible for:

work scheduling; overseeing work flow; interfacing with customer service and sales; dividing up and assigning workflow, and allocating manpower assets among the various product lines.²

The Employer conducts production meetings twice a week to discuss manpower requirements throughout the facility based on work requirements and deadlines. These meetings are attended by the General Manager and all the respective department supervisors, as well as the purchasing department, quality control, accounting, and customer service. Together, they determine which employees and how many to move among the various departments to meet their production requirements.

a. The Cargo Department

The Cargo Department is responsible for the repair and overhaul of anything having to do with the cargo bay of the aircraft, including: electromechanical and mechanical power-drive units (PDUs) that move cargo into and out of the aircraft cargo hold; ball mats (large rubber mats filled with ball bearings for ease of moving); and stop locks and latches utilized to secure cargo and the cargo hold. This department has a fairly defined work area in Building 1 in that it is separated by a wall from the Accessory Department. Inasmuch as components in the cargo bay take considerable abuse, nearly all of the components worked on in the Cargo Department require painting in the nearby paint boot. The Cargo Department regularly seeks assistance from the NDT Department, which conducts required non-intrusive testing on the components to look for hidden damage not visible to the eye. Technicians in the Machine Shop also assist the Cargo Department for specific repairs to components, including screw removal.

b. The Accessory Department

The Accessory Department was once part of the Cargo Department, but now is separate and has its own supervisor. This “catchall” group is the largest department, and performs electromechanical linear actuation, as well as integrating pump and motor functions, for example on aircraft lavatories. As described below, this department regularly works with the Power and Control Department, the Machine Shop, the Electronic Engineering Lab (EEL), and NDT as required.

c. The Actuation Department

The Actuation Department inspects and performs repairs on flight control parts, primarily actuators that are hydraulic servo valves. Technicians in this department can send valves to the Power and Control Department for testing on the servo valve test stand located there, whereafter the part is returned to Actuation to put back in the unit.

² There are also employees referred to as “leads” in some departments who mainly provide technical support based on their experience and do not have the authority to hire, fire, promote, discipline, or discharge employees. No party took a position on whether the leads should be included in an appropriate unit. The status of the leads is irrelevant, however, given that the petition is being dismissed.

d. Power and Control Department

The Power and Control Department (P&C) also works on hydraulic servo valves that control the actuators, which are components that work with the autopilot system to keep the aircraft level. P&C essentially maintains the servo valves that have been evaluated by the Actuation Department.

e. The Galley Department

The Galley Department repairs and overhauls chillers, ovens, coffee makers, and other appliances used in the aircrafts galley or on-board kitchen. The technicians in this department must have electrical expertise, but are often shifted to the Cargo or Actuation Departments when Galley is not busy.

f. Machine Shop

The Machine Shop designs and builds specialized tools and test equipment needed to diagnose and perform necessary repairs by the other departments as described above. Generally, these specialized tools do not exist on the floor and must be created. In this regard, the Technicians from the other departments bring the troublesome component to the Machine Shop and describe their particular needs; for example, the extraction of a broken-off screw that must be removed without damaging the component. Technicians from the Machine Shop can also go to the department where the component is located if it is too large or cumbersome to move, for example the ball mats worked on by the Cargo Department.

4. Operational Support Areas

The Electronic Engineering Lab (EEL), Non-Destructive Testing Department (NDT), and the Calibration Department are considered operational support areas, in that they relate to the performance of repairs and overhaul of components, but are not involved in doing the actual repairs. EEL, NDT, and Calibration are part of the Quality Control Group, along with the Safety and Quality Control Departments.

a. Electronic Engineering Lab (EEL)

EEL has two Technicians who work on electrical components, primarily circuit boards, and is sought out by other departments who may have issues with electronics in the components they are repairing. EEL Technicians may go to the other departments, like Galley and Accessory. Occasionally, they are called to the Cargo Department to help the Technicians there troubleshoot potential electronic issues with PDUs before disassembly of the component. EEL also builds test equipment needed to test other test equipment used in the other departments. Generally, however, smaller components are taken to the EEL because of electrostatic discharge issues.

b. Non-Destructive Testing

NDT – Non-Destructive Testing – has Inspectors who internally inspect a component before that component has been disassembled. To achieve this, they use magnetic particles and dye-penetrant inspections to detect and locate hidden damage within a particular component referred to them by other Departments. NDT interfaces with other departments, including Cargo, Actuation, and Power and Control when requested or required, either by sending inspectors to the respective departments to collaborate on determining the necessary level of breakdown of the component; or the part at issue may be taken to the NDT department itself, where specialized equipment, including the requisite darkroom are located. NDT works regularly with Technicians in the Cargo Department on components that are heavily used and often mistreated, requiring inspection for internal or hidden damage. However, the employees in this department are classified as Inspectors, and not Technicians.

c. Calibration

Calibration, also part of the Quality Control Group along with EEL and NDT, consists of one Calibration Technician who floats through all departments and works with their Technicians to ensure that all tooling and test equipment is calibrated to customer and/or FAA specifications. Calibration performs regularly-scheduled inspection and adjustment of certain equipment every six months. In addition to mandated inspections, Calibration can also be done outside the regular rotation if a Technician in another department observes a gauge or readout on a test bench that appears inaccurate. In these instances, the Calibration Technician goes to that department and helps troubleshoot and address the incorrect reading. Small parts may be taken directly to Calibration for adjustment. The Calibration Department works on occasion with the Cargo Department calibrating specialized tooling utilized there.

5. Terms and Conditions of Employment of the Technicians

All applicants for Technician I and II complete the same application form, and are assigned to specific departments based on their respective skill set and Employer needs after an offer of employment is made. There are no special qualifications to work in a particular department, with the exception of EEL, which requires a soldering certificate for work on circuit boards. All Technicians must provide basic tools based on a general tool list mandated by the Employer.

The Employer places its employees, including the Technician I and Technician II, in various grades ranging from 1 to 10 based on experience, skill set, and time in service. Most Technicians are in and can progress through Grades 3, 4, and 5. All Technicians are paid hourly based upon their grade and whether they are classified as I or II. There is no difference in grade or pay by department.

All newly-hired Technicians I and II participate in the same “on-boarding” process, regardless of which department they are assigned to. All attend the same new-hire training, again regardless of department, and thereafter receive the same recurrent annual training mandated by the FAA. All receive the same 1st day orientation, including a company overview and lectures on sexual harassment and electrostatic discharge.

All Technicians I and II are subject to the same annual evaluation form, regardless of their department. Supervisors from several departments can participate in and provide input into a Technician's evaluation if that Technician has rotated or floated through several departments during the evaluation period. However, the Technicians are evaluated on their entire body of work during that period. The General Manager reviews and signs off on all evaluations.

All Technicians I and II receive the same benefits package, which includes healthcare, dental and vision care, a 401(k) plan, an Employee Assistance Program (EAP), vacation, sick leave, and floating holidays.

Most Technicians work from 5:30 a.m. to 2:00 p.m., regardless of department, with variation allowed for personal issues. They share the same meal period, and partake together in one of the lunchrooms located in the two buildings. All Technicians wear the same uniform regardless of their department, except for those in EEL and Calibration.³

Cross-training for different departments is made available to all Technicians, as discussed in further detail below.

6. Interchange of Technicians between Departments

As noted above, all Technicians are given the opportunity to cross-train to work in departments other than their "home," or normally-assigned department to allow them to move where required. This cross-training is generally accomplished by aligning the trainee with a more experienced Technician in the department, or by training on a particular component. Those not specifically trained on a component can still repair and/or overhaul it, but cannot sign off on the work.

As noted above, the respective department Supervisors and others have Production Meetings with the General Manager twice a week to discuss the allocation of manpower – particularly Technicians – based on workload and workflow. The Supervisors ask for additional resources based on their respective department's "turn time." The other Supervisors are then polled by the General Manager as to who has excess manpower. Technicians are then reallocated based on their expertise and the needs of the department with the need. Those who have expressed an interest in working in other departments or who have availed themselves of the cross-training available to all Technicians are reallocated first, but any Technician in a department that lacks work can be required to reallocate.

Turn-around time for repairs is dictated by the customer. Since parts are often in "failure" mode when brought to the Employer, the work volume and timing cannot be anticipated in advance, and thus manpower has to be reallocated quickly and on short notice, necessitating the twice-weekly Production Meetings. Many customer contracts have penalty clauses of either cash or credit for repairs that are not completed on schedule.

³ The record does not describe these uniforms or say who provides them.

Among the factors considered by the Department Supervisors and the General Manager for allocation of manpower during the Production Meetings are: (1) cost expectations and deadlines of the customers; (2) the desire to add resources to more profitable areas; (3) a review of pending orders and customer concerns that can be addressed by the reallocation of manpower; and (4) the volume and size of incoming orders. Generally, the Cargo Department has the tightest turn-around time, often with only 5 days to evaluate, quote, repair, retest, and recertify the component, so labor is consistently reallocated there to meet deadline demands.

No formal transfer is effectuated or memorialized: reallocated Technicians physically work in other departments as needed. Technicians can even help out in other departments without having been relocated, particularly in Cargo, Actuation, and Power and Control. The duration of the reallocation is generally not set in advance, but determined by workflow demands.

The reallocated Technicians report to the Supervisor in the department to which they are assigned, inasmuch as that Supervisor knows the workload requirements and the customers' requirements. Reallocations can last for varied amounts of time: weekly, daily, or even hourly; for example, a Technician who has completed a task but still has hours left on his shift can be reallocated on the spot to another Department to help out. Thus, a Technician could work in two or more departments in a single day if needed. This "fluidity" is desirable because Technicians are an expensive commodity and the ability to float between departments at will allows the Employer to maintain a "lean" workforce without excess or unnecessary labor costs.⁴

With regard to the Cargo Department at issue herein, the record shows that Technicians in other departments are most often reallocated to the Cargo Department given the short turn-around times described above. Generally, one or two Technicians are assigned to this department from other departments weekly. If a reallocation to the Cargo Department is for an extended period, the transferee is given training to allow them to then sign off on the work being performed in the Cargo Department.

Technicians in the Cargo Department are also reallocated as needed to other departments, although this outflow is less common, given the work demands in Cargo. The Employer's pay system, known as PAYCOM, requires a thumbprint login each time an employee enters a different department or "cost center" to allow payroll to charge hours accordingly and to determine profit and loss margins for each department. This system is apparently loosely enforced, but does show a certain employee who worked in the Cargo, Galley, and Power & Control Departments within one 6-week period, and another who floated from Cargo to the Accessory Department.

II. ANALYSIS

A. Board Law

⁴ Permanent transfers, effectuated by the General Manager and Human Resources, are apparently rare, and usually dictated by consistent need in a particular department that would justify a permanent transfer, along with employee preference and the avoidance of extensive overtime.

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. *Specialty Healthcare*, supra, slip op. at 7.

Thus, the first inquiry is whether the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. In doing so, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002); see also *Specialty Healthcare*, supra, at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare*, supra, at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip. op. at 3, fn. 8 (2011).

B. Application of Board Law to this Case

The issue to be determined is whether the petitioned-for unit of Technicians I and II in the Cargo Department is an appropriate unit because it is a readily-identifiable group of employees that shares a community of interest, or whether there is an overwhelming community of interest between those employees and the Technicians working in the Accessory, Power and Control, Galley, and Actuation Departments, along with the employees working in the Operational Support Group of Electronic Engineering Lab (EEL), Non-Destructive Testing (NDT), Calibration, and those in the Machine Shop.

Based on the entire record, including the oral arguments proffered by the parties, I have concluded that the Employer has met its burden of proving that certain additional employees should be included in the appropriate unit beyond those sought by the Petitioner, specifically those Technicians in the Accessory, Power and Control, Galley, and Actuation Departments.

In this regard, the record evidence does not lead to a conclusion that the community-of-interest factors would reasonably support drawing the unit's boundaries to include the Technicians sought by Petitioner in the Cargo Department, but *not* those in the Accessory, Power and Control, Galley, and Actuation Departments whom the Employer would include. *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011). In reaching the conclusion that the Technicians in the additional departments listed above must be included because there is "no legitimate basis upon which to exclude" them (to use the language of the District of Columbia Circuit Court in *Blue Moon Vegas, LLC v. NLRB* supra at 421), I note the following:

- The Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments appear to be one functional unit of technicians plant-wide who work on different components of the same product where all of the departments are integrated to meet customer demands.
- The Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments have the same qualifications, complete the same applications, receive the same orientation, and are not hired into or assigned to specific departments until after they are employed.
- The Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments have a high level of cross-training across department lines, and there is regular and sustained interchange of Technicians between departments based on customer needs, including frequent transfers into and out of the petitioned-for Cargo unit.
- The Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments have frequent work-related contact with one another to collaborate on assessing, planning, and implementing needed repairs and overhauls of customers' equipment.
- The Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments are compensated in the same manner, receive the same benefits, and are subject to the same work rules.

While Petitioner argues that the petitioned-for Technicians in the Cargo Department have their own supervision, perform unique work, and lack functional integration with the added Technicians in the other departments, these contentions are not supported by the evidence. Although the Cargo Department works on distinct components such as PDUs and ball mats, all Technicians appear to be fungible in working on these components. Moreover, other departments regularly assist the Cargo Department in their work, serving to demonstrate that it is not a unique department but part of an integrated operation to repair and overhaul aircraft parts.

Thus, these minimal differences cited by Petitioner are insufficient when compared to the fact that the employees in the petitioned-for unit constitute a fractured unit in that the employees in the Cargo Department share common wages and methods of compensation with these other

departments, have common benefits and working conditions with these other departments, and regularly interchange with one another.

Using the same analysis, I find that the Technicians in the Operational Support Group, specifically those in Electronic Engineering Lab, Non-Destructive Testing, and Calibration do not share such an overwhelming community of interest with the Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments so as to compel their inclusion. In this regard, the record shows that these employees have specialized skills and use specialized equipment not shared with the other Technicians in the appropriate unit found above. Moreover, they are admittedly part of a different functional group designed to support the work done by the Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments and do not actually perform the work at issue. For these reasons, I find that the Employer has not met its burden of showing that they have such an overwhelming community of interest with the Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments such that they must be included.

Moreover, I further conclude that those Technicians in the Machine Shop do not share such an overwhelming community of interest with the Technicians in the unit that I have found appropriate inasmuch as there is virtually no evidence of interchange by the Technicians in the Machine Shop with those in the other departments. Rather, the Technicians in the Machine Shop provide specialized support to those in the other Cargo, Accessory, Power and Control, Galley, and Actuation Departments and apparently do not repair or overhaul components. For these reasons, I find that the Employer has not met its burden of showing that the Technicians in the Machine Shop have such an overwhelming community of interest with the Technicians in the Cargo, Accessory, Power and Control, Galley, and Actuation Departments such that they must be included.

Since I have found the petitioned-for unit not to be an appropriate unit, and the Petitioner has indicated that it does not wish to proceed to election in an alternative unit, the petition is hereby DISMISSED.

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 hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

⁵ The parties stipulated at the hearing that the Employer is a California corporation with its principal place of business and facilities located at 42355 Rio Nedo, Temecula, California, and 42374 Avenida Alvarado, Suites A and B, Temecula, California, the only facilities involved herein, and is engaged in the business of providing Federal Aviation Administration (FAA) repairs, specializing in component repair and overhaul. During the past calendar year, a representative period, the Employer purchased and received at its Temecula, California facility goods valued in excess of \$50,000 directly from suppliers located outside the state of California.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. No 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.

ORDER

It is hereby ordered that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, a request for review may be filed with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by November 3, 2016.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: October 20, 2016.



WILLIAM M. PATE, JR.
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 21
888 S Figueroa St Fl 9
Los Angeles, CA 90017-5449

