

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

AMERICAN STEEL CONSTRUCTION, INC.

Employer

and

Case 07-RC-269162

**LOCAL 25, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL, ORNAMENTAL
AND REINFORCING IRON WORKERS
(IRONWORKERS), AFL-CIO**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held on December 10, 2020, before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.

I. Issue

The Petitioner seeks to represent a unit of the Employer’s employees comprised of all full-time and regular part-time journeyman and apprentice field ironworkers. The Employer seeks to include its drivers, painters, and inside fabricators in the bargaining unit in addition to the employees sought in the petition, maintaining that the petitioned-for unit does not exist and is inappropriate in any event.

II. Decision

A hearing officer of the Board held a hearing in this matter, the parties orally argued their respective positions prior to the close of the hearing, and filed post-hearing briefs. Based on the entire record of this proceeding and for the reasons set forth below, I find that the petitioned-for unit is inappropriate for the purposes of collective bargaining because it excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group. Because the Petitioner does not wish to proceed to an election in any unit other than the unit proposed in its petition, the petition is dismissed.

III. Relevant Facts

Located in Livonia, Michigan, the Employer fabricates and installs structural steel for a variety of commercial clients. The Employer’s business is not formally divided into departments, but functionally, the employees at issue in this proceeding work in the Employer’s fabrication shop making and finishing steel beams, stairs, handrails, and other architectural elements; work at job sites installing those finished parts; and transport

the finished parts and equipment between the shop and the job sites—or among job sites. There are 29 employees who perform these functions to varying degrees. Although the Employer asserts that employees do not have job titles, at hearing, the testimony established that employees are assigned to distinct functional roles, which employees perform for varying percentages of their time, as explained below.

Employees are hired with a variety of backgrounds and experience. Many have past training, experience, or certifications as welders, usually with using a metal inert gas (MIG) welder. If an applicant is seeking a position as a welder, the Employer administers a welding test. However, the Employer also provides the necessary training to employees in MIG welding and “stick” or arc welding; reading blueprints; the use of tools such as a frame square and tape measure; and the operation of equipment such as a cranes, lifts or hi-los—as well as in safety. Welders must have certifications. The use of lifts and hi-los requires an Employer-granted license. The Employer’s drivers have commercial driver’s (CDL) and chauffeur’s licenses for the variety of trucks and cranes used in their work. The Employer does not classify employees in the shop or on job sites as journeymen or apprentices, but as employees gain experience and show aptitude, they are trained to perform more functions in the shop as painters, welders, and fitters and on the job site as helpers, field installers, and team leaders.¹ Superintendent Sean Asbel does most of the training in the shop. Employees are trained on the job by their non-supervisory² team leaders at job sites in the field. Employees sometimes seek outside training to advance more quickly.

Employees generally, but not always, follow a path of working in the shop at first and then moving to job site work in the field. Superintendent Timothy Gordon hires employees and performs other human resources functions. He also assigns employees to their daily assignment in the shop or in the field. He posts the day’s assignments on a white board in the shop, which he texts to Superintendent Asbel. Employees who work in the field may also be notified with the next day’s assignment by telephone or text; they do not have to come to the shop to learn their assignment. Barring an unexpected absence or customer emergency, employees on a job site generally remain at the same site until the job is complete.

Employees who generally work at the shop may spend between zero and 30 percent of their time in some capacity in the field. Employees who generally work in the field may spend between functionally zero and 30 percent of their time in the shop. Essentially, an employee who usually works at the shop as a fitter, painter, or using a MIG welder may be assigned to work in the field on a job if there is a need, as well as to train them to move to the field. The newer employees may work as helpers—handing tools or materials to the field installers who are connecting steel on the job site using a stick welder, for example. However, if they have more experience in the field, they may assist with welding and connecting. Fitters, who produce layouts of beams and other

¹ The terms “job leader” and “foreman” were also used at times by witnesses to describe the same function.

² Team leaders cannot hire, fire, or discipline employees.

structural steel for use in the field, never leave the shop. As most of the employees working in the field originally came from the shop, if it rains; there is a customer-generated need; or they are injured, field installers and team leaders may be assigned to work as a fitter or as a welder in the shop. Alternatively, once at the shop, they may simply clean out and restock their work trucks, which carry the welders and tools used in the field. In addition, the drivers, who operate delivery trucks and flatbed trucks, may perform mechanical maintenance on their vehicles or at the shop during down times. The drivers may also operate cranes at the job site, if qualified. Finally, at times, fabrication is done in the field rather than in the shop. The record does not disclose whether the field installers fabricate parts in such instances—or whether shop employees are sent to do it.

In addition to the MIG welders, employees in the shop use blueprints to assemble parts and layout the jobs. They also use frame squares and tape measures to fit the beams and other steel products into the job site area. They have access to a layout table for fitting and a burn table for welding. The shop is located inside the Employer's Livonia facility, with a break room with tables, a coffee pot, a refrigerator, and a microwave. Employees in the field work outside at customer job sites. They may be working on lifts in the air or on their backs as they weld and connect the structural steel that they install. In addition to the stick welders, they use deck guns in their installation work. The employees in the field have access to a heated and lit storage container for their breaks and lunches. Alternatively, they may eat in their vehicles. Employees on a job site interact daily with other trades and the staff of the general contractor or client. Employees at the shop may stand by to address questions if a client visits the shop, but otherwise do not have on-the-job contact with outsiders as the shop is not open to the public.

The employees all attend a weekly safety meeting at the shop on Monday mornings. Both the shop and field employees are protected by Michigan Occupational Safety and Health (MIOSHA) and federal Occupational Safety and Health Administration (OSHA) regulations. However, OSHA³ has a specific regulation, Subpart R, relevant to the erection of steel, which only applies in the field. Employees are provided with safety equipment, which includes welding helmets and gloves for both shop and field employees. Employees working in the field are also provided with harnesses for above ground safety and hard hats because they work on construction sites. Employees working in the shop wear hard hats if something is being hoisted in the air at the shop. They also wear eye shields and hearing shields.

Employees in the shop refer their questions to Superintendent Asbel. Employees in the field are overseen by their team leader, who also assigns them to their tasks on the job site. The team leaders, in turn, seek further direction, when needed, from Superintendent Gordon. Superintendent Gordon designates the team leader for each job

³ At hearing, witness Dennis Aguirre attributed this regulation to MIOHSA. However, I take administrative notice that Subpart R is an OSHA regulation, 29 C.F.R. 1926 Subpart R. The MIOHSA rules applicable to hoisting and rigging are found at Part 26. Steel Erection.

and may, but rarely does, designate particular field employees to particular tasks at the job site. Superintendent Gordon visits job sites.

Employees in the shop usually work five days a week, from 6:00 AM – 2:30 PM, but may work six or seven days. Employees have a morning break of 15 minutes at 9:30 AM. All employees in the shop take lunch at the same time, breaking at 11:25 AM to wash up for five minutes prior to a half-hour lunch at 11:30 AM. Employees working in the field who need work trucks report to the shop at 6:00 AM. Work starts at the job site at 6:30 AM and ends at 2:30 PM. The job sites usually work six days a week. The expected break and lunch times are the same as at the shop but may vary depending on the weather and the work on site. Like the shop employees, employees at a job site take breaks and lunches together. Because they work in the elements, the team leader may call a longer break to allow employees to cool down or warm up in the onsite storage container. Then, the half-hour lunch may be later to ensure that employees are still able to keep pace with their day's work. Drivers on the road are not held to specific break and lunch times; they use their discretion.

Employee wages vary from \$15 an hour to approximately \$35 an hour, based on skill and experience. There is no strict relationship between seniority and wages. All employees are subject to the same employee handbook, which sets forth work rules, including those for time and attendance. Vacation is based on length of service. Holiday pay and life insurance are available for employees with 90 days of service. Health insurance is provided to employees with 60 days of service who work 30 or more hours per week. Employees have access to a 401(k) plan after one year of employment. All employees are provided with work jackets, hoodies, sweatshirts, and t-shirts to wear at work. It does not appear that the Employer provides paid sick leave benefits to its employees.

There is no record evidence of a history of bargaining at the Employer's facility.

IV. The Applicable Legal Standard

Section 9(a) of the Act has been interpreted to require the Board to determine not whether a unit sought is the only appropriate unit, or even the most appropriate unit, but rather if it is “an appropriate unit.” *Wheeling Island Gaming*, 355 NLRB 637, 637 n. 2 (2010) (citing *Overnite Transportation Co.*, 322 NLRB 723 (1996)). Yet, the Board also analyzes “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *PCC Structural Inc.*, 365 NLRB No. 160, slip op. at 11 (2017).

Under the framework the Board set out in *PCC Structural, Inc.*, the inquiry begins with a determination of whether the petitioned-for employees have shared interest sufficient to constitute an appropriate unit. If a determination is made that the petitioned-for unit is an appropriate unit, then the Board will consider “whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from that

unit to warrant a separate bargaining unit.” *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 11. In weighing the “shared and distinct interests of petitioned-for and excluded employees [...] the Board must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *Id.* (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). Once this determination is made, “the appropriate-unit analysis is at an end.” *Id.*

In making these determinations, the Board relies on its traditional community of interest analysis which examines:

...whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including an 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.

PCC Structural, Inc., 365 NLRB No. 160, slip op. at 11 (citing *United Operations*, 338 NLRB 123 (2002)).

Pursuant to *The Boeing Company*, 368 NLRB No. 67, slip op. at 3-4 (2019), my analysis therefore begins with examining the petitioned-for group of employees to determine whether they share a community of interest. I then examine whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members and consider the Board's decisions on appropriate units in the particular industry involved.

V. Analysis

I conclude that a bargaining unit consisting solely of all full-time and regular part-time journeyman field iron workers and apprentices is not appropriate for the purposes of collective bargaining in this case because the evidence is insufficient to establish that the Employer’s employees who work on job sites in the field as installers share a community of interest sufficiently distinct from excluded employees.

At the time of their hire, the petitioned-for employees generally start work in the shop and advance to the field. The Employer does not appear to have established formal requirements for skills, education, job qualifications for these employees. However, it is indisputable that the Employer values skills such as blueprint reading and stick welding in its field installers. Yet, the evidence also tends to show that ostensible shop employees may also have these skills and use them when working in the field, where they generally spend up to 30% of their time. Likewise, ostensible field employees may spend up to 30% of their time in the shop. Thus, while the work performed in these areas differs, employees generally have similar skills—if not to the same degree. See *Phoenician*, 308 NLRB 826, 828 (1992) (no special skills difference between golf course maintenance employees and landscapers). Likewise, this evidence demonstrates

significant employee interchange. See *Gray Drug Stores, Inc.*, 197 NLRB 924, 925 (1972) (frequent temporary transfers). Further, the shop and field employees have the same wages and benefits, *Allied Gear & Machine Co.*, 250 NLRB 679 (1980) and they are highly functionally integrated, *Transerv Systems*, 311 NLRB 766, 766 (1993) (high degree of functional integration where bicycle messengers may perform a complete pickup and delivery themselves, transfer the material to a driver for delivery, or deliver the material to the Employer's offices for sorting and transfer to a different messenger or driver).

Yet, when working in the field, employees do not share a workspace and general working conditions with employees working in the shop, *United Rentals, Inc.*, 341 NLRB 540, 541-42 (2004); have close, daily contact with their peers in the shop, *J.C. Penney Co.*, 328 NLRB 766, 767 (1999) (telemarketing department employees frequently contact employees in the customer service department to expedite rush orders or in relation to customer inquiries); or report to the same supervisors, *Sears, Roebuck & Co.*, 191 NLRB 398, 404-406 (1971) (appropriate unit where each group reports to different immediate supervisors but one centralized manager).⁴ Overall, the level of employee interchange and functional integration detailed above dwarfs such differences. See *United Rentals, Inc.*, 341 NLRB at 541 (overruling the Regional Director's direction of an election on the basis of significant overlapping duties and interchange, common labor relations control, common oversight and assignment of work, common hours of work, and similar wages and benefits).

Although the employees who generally work in the field appear to share a community of interest,⁵ their differences from the employees who generally work in the shop are not sufficiently distinct so as to warrant a separate bargaining unit. See *Wheeling Island Gaming*, 355 NLRB at 641-42. Rather, the record discloses and I find that, although employees working in the shop and in the field perform different functions, have different day-to-day-supervision, and different working conditions at their job locations, there is significant evidence of employee interchange, functional integration, common hours of work, the same wages and benefits, and

⁴ Difference in supervision is not a *per se* basis for excluding employees from an appropriate unit. *Texas Empire Pipe Line Co.*, 88 NLRB 631, 632 n. 2 (1950).

⁵ The Union argues in its post-hearing brief that the Employer's employees who work on job sites installing finished fabricated steel are a traditional craft unit. In determining whether a group of employees constitutes a craft unit, besides a history of collective bargaining, the Board looks at

Whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

Burns & Roe Services Corporation, 313 NLRB 1307, 1308 (1994).

The evidence tends to show that there is no history of collective bargaining with this Employer, no formal training or apprenticeship program for the Employer's field installers; the work of the installers is highly functionally integrated with the excluded employees; the Employer assigns work in the field according to need and ability; and the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. Therefore, I conclude the petitioned-for employees do not comprise a craft unit.

similar skills. There is a community of interest among all the employees. See *Berea Publishing Co.*, 140 NLRB 516, 518 (1963) (although employees engage primarily in different processes, employees do similar work, perform functions requiring similar skills, work moves from one department to the other for further processing, and employees in both departments share the same working conditions and overall supervision in a small plant).

The employees in the shop fabricate the steel parts that the drivers deliver and the field installers install. All of these employees' processes are needed for the Employer to function. This means that they work together frequently and interactively. Thus, the differences applicable to those employees who generally work in the field, as identified above, are insufficient to establish meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the petitioned-for unit members. See *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 11 (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)).

Finally, with regard to industry practice, Petitioner presented evidence of unit composition separating shop from field employees in what appear to be bargaining units where employers have recognized Petitioner as the Section 8(f) representative of their employees. Here, however, Petitioner seeks Section 9(a) status and the Board has found units consisting of both shop and field workers appropriate where the employer both fabricates and installs structural steel. See, e.g. *Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957).

VI. Order

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this matter to the undersigned Regional Director. Based on the entire record, I find:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. 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.⁶
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- e. There is no collective-bargaining agreement covering any of the employees in the unit sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.

⁶ The Employer, American Steel Construction, Inc., a Michigan corporation with an office and place of business located at 39157 Amrhien Road, Livonia, Michigan, is engaged in steel fabrication and installation. During the calendar year ending December 31, 2019, a representative period, the Employer purchased and received at its Livonia, Michigan facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.

- f. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **January 19, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on January 19, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be

filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: January 4, 2021



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