

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POWER HOME SOLAR LLC
Employer

and

Case 07-RC-279452

LOCAL 58, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS (IBEW), AFL-CIO
Petitioner

ORDER

The Employer's request for review of the Acting Regional Director's Decision and Direction of Election¹ and of the Regional Director's Supplemental Decision on Objections and Certification of Representative is denied as it raises no substantial issues warranting review.

¹ In denying review, we do not pass on the Employer's contentions concerning the Assistant Project Managers' alleged Sec. 2(11) status because the Acting Regional Director properly exercised his discretion to vote them subject to challenge and their ballots proved non-dispositive. Accordingly, this issue is not before the Board.

In denying review of the Acting Regional Director's Decision and Direction of Election, we note initially that the three-step analysis set forth in *The Boeing Co.*, 368 NLRB No. 67 (2019), applies only when a non-petitioning party asserts that the petitioned-for unit is inappropriate unless the unit *includes* certain additional employee classifications; it does not apply where, as here, a party contends that the petitioned-for unit is inappropriate unless it *excludes* certain petitioned-for classifications. Instead, the relevant inquiry here is simply whether the petitioned-for employees share a community of interest sufficient to find that the petitioned-for unit is appropriate. See, e.g., *Johnson Controls, Inc.*, 322 NLRB 669, 670 (1996).

Applying that test, we find that the petitioned-for unit is appropriate. The petitioned-for employees perform their work in a highly integrated fashion, with their respective job duties and functions broadly focusing on solar panel installation, repair, and/or service. (In so finding, we do not rely on the Acting Regional Director's characterization of functional integration but instead observe that it exists where employees must work together and depend on one another to accomplish their tasks—see, e.g., *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024–1025 (2004); *Casino Aztar*, 349 NLRB 603, 605 (2007).) All petitioned-for employees have similar skills and training. They constitute the entirety of the Employer's field employees, performing hands-on work for solar panel installation, repair, and service. They all have frequent in-person contact with one another during installation and at morning meetings, and they communicate via phone and electronic methods. They also have some temporary interchange (at least among Service Team employees, Installers, and Electrician Helpers) and permanent interchange (i.e., promotions). All petitioned-for employees report to and/or are overseen by Regional Manager Kelley and Project Manager Woznack when working at a job site. Finally, they share many terms and conditions of employment. Although in several instances the Acting Regional

JOHN F. RING,	MEMBER
GWYNNE A. WILCOX,	MEMBER
DAVID M. PROUTY,	MEMBER

Dated, Washington, D.C., May 9, 2022.

Director erroneously analyzed separate community-of-interest factors as single, combined factors, we find that this error was harmless because, for the reasons stated above, the petitioned-for employees share a sufficient community of interest.

In denying review of the Acting Regional Director’s finding that the Employer did not establish that Electricians or Crew Leads are supervisors within the meaning of Sec. 2(11) of the Act, we agree that the Employer did not meet its evidentiary burden with respect to any supervisory indicium under Sec. 2(11) of the Act. In so doing, we do not rely on the Acting Regional Director’s statement that there is no “record evidence showing that crew leads provide feedback to upper management regarding the deficient performance of installers.”

Members Wilcox and Prouty agree that, under the majority opinion in *Aspirus Keweenaw*, the Acting Regional Director did not abuse his discretion in ordering a mail ballot election. 370 NLRB No. 45 (2020). They further note that, while neither were members of the Board when *Aspirus Keweenaw* was decided, they are open to considering arguments regarding modernizing the Board’s election methods in a future appropriate proceeding.

In regard to the Regional Director’s decision to overrule the objections concerning 12 ballots that were purportedly mailed prior to the count but not received, Member Ring notes the concerns he has previously expressed over problems with mail ballot procedures exacerbated by Postal Service delivery issues and whether employees’ Sec. 7 rights are being properly effectuated through mail-ballot elections. See *KMS Commercial Painting, LLC*, 371 NLRB No. 69, slip op. at 2 (2022) (Member Ring, concurring). In the instant case, he agrees with the denial of review based on the absence of an unusually low turnout, the length of time between when the ballots were mailed and the ballot count (over one month), and that only one ballot was received after the count (as confirmed by the Board’s records). Cf. *CenTrio Energy South*, 371 NLRB No. 94 (2022).