

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Cristal USA, Inc. and International Chemical Workers Union Council of the United Food & Commercial Workers International Union, Petitioner. Case 08–RC–188482

May 10, 2017

ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND MCFERRAN

The Employer’s request for review of the Regional Director’s Decision and Direction of Election is denied as it raises no substantial issues warranting review.

Dated, Washington, D.C. May 10, 2017

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MISCIMARRA, dissenting.

I would grant review of the Regional Director’s finding that a bargaining unit consisting of Plant 2 South warehouse employees, excluding Plant 2 South production employees and Plant 2 North production employees, is appropriate. The Regional Director applied *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013) (“*Specialty Healthcare*”), in upholding the exclusion of the Plant 2 production employees, and I believe *Specialty Healthcare* was wrongly decided for the reasons ex-

pressed in *Macy’s, Inc.*, 361 NLRB No. 4, slip op. at 22–33 (2014) (Member Miscimarra, dissenting).

Additionally, although Plant 2 North and Plant 2 South are located on opposite sides of a public road, the facilities are functionally integrated to achieve the production of titanium dioxide. For example, Plant 2 North and Plant 2 South are connected by an underground system of pipes, and Plant 2 North’s production of another chemical, titanium tetrachloride, is subject to further processing in Plant 2 South. The warehouse employees in Plant 2 South and the production employees in Plant 2 North and Plant 2 South wear the same uniform, use similar protective equipment, attend the same orientation program, and receive the same employee benefits with regard to health insurance, retirement, holiday, and vacation, among other things. Moreover, the Regional Director’s Decision and Direction of Election indicates some interchange between Plant 2 South production employees and Plant 2 South warehouse employees, and all employees working in production positions in Plant 2 North and Plant 2 South and warehouse positions in Plant 2 South are affected by any startup or shutdown of operations. In these circumstances, I would grant review on the basis that substantial questions exist regarding whether the unit consisting exclusively of Plant 2 South warehouse employees erroneously disregards or discounts the community of interests these employees share with production employees in Plant 2 North and Plant 2 South and promotes instability by creating a fractured or fragmented unit. See *Macy’s, Inc.*, *supra*, slip op. at 27–29 (Member Miscimarra, dissenting); *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 10–18 (2015) (Member Johnson, dissenting).

Dated, Washington, D.C. May 10, 2017

Philip A. Miscimarra, Chairman
NATIONAL LABOR RELATIONS BOARD