

56 PERB ¶ 4408

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**UFCW DISTRICT UNION LOCAL ONE,**

**Petitioner,**

**-and-**

**MERRELL DAIRY, LLC**

**CASE NO. CU-6713**

**Employer.**

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**GLADSTEIN, REIF & MEGINNISS, LLP (AMELIA K. TUMINARO and  
KENT Y. HIROZAWA of counsel) for Petitioner**

**FISHER & PHILLIPS LLP (JOSHUA H. VIAU and BORIS GAUTIER of  
counsel), for Employer**

**DECISION OF HEARING OFFICER**

On March 1, 2023, the UFCW District Union Local One (Local One or Petitioner) filed a petition concerning the representation of agricultural employees of Merrell Dairy, LLC (Merrell Dairy or Employer) pursuant to § 705 of the State Employment Relations Act (SERA or Act), as amended by the Farm Laborers' Fair Labor Practices Act (FLFLPA).<sup>337</sup> The petition was accompanied by signed dues deduction authorization cards from Merrell Dairy's employees. The petition sought a unit of "[a]ll full time and regular part time agricultural workers employed by the Employer, but excluding supervisors, family

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<sup>337</sup> L. 2019, c. 105; L. 2020, c. 58.

members of the Employer, mechanics, truck drivers, and temporary workers.<sup>338</sup>

Merrell Dairy filed a response to the petition, asserting numerous reasons why certification was allegedly not appropriate. Merrell Dairy asserted that there was no basis for excluding regular full-time and regular part-time mechanics and truck drivers from the proposed bargaining unit.<sup>339</sup> Merrell Dairy also claimed that the petition was fatally defective in that it did not accurately identify the site of employment of the individuals petitioned for.<sup>340</sup> Merrell Dairy also averred that “upon information and belief,” the purported signatures on the dues deduction authorization cards submitted by Local One “may not be valid” and that the dues deduction cards should be rejected if they were not in the native language of the signor.<sup>341</sup>

The petition was amended on March 17, 2023,<sup>342</sup> March 21, 2023,<sup>343</sup> March 30, 2023,<sup>344</sup> and April 18, 2023.<sup>345</sup> In the final petition, Local One sought certification for a unit of “[a]ll full time and regular part time agricultural workers employed by the Employer, but excluding supervisors, family members of the Employer, office clerical employees, mechanics, truck drivers, lead milkers, lead herdspersons, general farm workers whose principal duties consist of providing transportation to workers and/or cleaning break rooms,

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<sup>338</sup> Hearing Officer (HO) Ex 1.

<sup>339</sup> HO Ex 5, at 1. Merrell Dairy did not object to the exclusion of supervisors, unpaid family members of Merrell Dairy, and temporary employees. *Id.*

<sup>340</sup> *Id.*, at 2.

<sup>341</sup> *Id.*, at 2.

<sup>342</sup> HO Ex 6.

<sup>343</sup> HO Ex 8.

<sup>344</sup> HO Ex 12.

<sup>345</sup> HO Ex 19.

bathrooms, offices or worker housing, and temporary workers.”<sup>346</sup>

Merrell Dairy filed an amended statement of position in response to the March 30, 2023 amended petition. In this statement of position, Merrell Dairy asserted that a wall-to-wall unit, including feeders,<sup>347</sup> mechanics, truck drivers, and office workers, was appropriate because Merrell Dairy’s operations are a “functionally integrated operation.”<sup>348</sup>

Merrell Dairy also submitted an amended statement of position in response to the April 18, 2023 petition. In this statement of position, Merrell Dairy reiterated its position that an employer-wide unit is the only appropriate unit and that office clerical employees, mechanics, truck drivers, lead milkers, lead herdspersons, all general farm workers, and paid family members should be included in the unit. Merrell Dairy also asserts that the only supervisors at Merrell Dairy are Karen Merrell and her husband.

A conference was held with the parties on March 24, 2023.<sup>349</sup> A hearing was held on April 17, 2023 and April 26, 2023. Both parties were represented at the conference and hearing. Each party filed a post-hearing brief.

## **FACTS**

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<sup>346</sup> *Id.* The April 18, 2023 petition also corrected the technical deficiency of listing the wrong address at which employees are employed. *Id.*

<sup>347</sup> The March 30, 2023 petition sought to exclude feeders, in addition to the exclusions already listed. After the first day of the hearing, however, Local One sought to amend its petition to include feeders in the petitioned-for unit. There is, therefore, no dispute regarding the inclusion of feeders in the proposed unit.

<sup>348</sup> HO Ex 18, at 4.

<sup>349</sup> HO Ex 11.

Karen Merrell testified on behalf of Merrell Dairy. Merrell testified that she is an owner and manager of Merrell Dairy, which has been in operation under its current structure since 2010. Merrell Dairy has been in existence since around 1926.

Merrell testified that she oversees all the day-to-day operations as well as personnel at Merrell Dairy. In terms of personnel job duties, Merrell testified that she was “all over the dairy in various roles.”<sup>350</sup> Merrell testified that she was involved in interviewing and hiring new workers, as well as overseeing the payroll records and all the personnel records.

Merrell testified that Merrell Dairy currently has between 62 and 64 employees. Merrell testified that Merrell Dairy found potential employees by putting ads on Indeed and Craig’s List, by recruiting through colleges and ads with shopper, and through employees and word of mouth. Merrell testified that any employee can recommend or recruit workers. After receiving a referral, Merrell testified that she would try to find out “as much information about that individual, depending on their worker history, how long they’ve worked or if they are kind of [] newer to the work environment.”<sup>351</sup> Merrell testified that she would use a translator with Spanish-speaking employees and that she may ask the person who made the referral what they could tell her about the individual. After gathering information, Merrell testified that she would do her own “independent evaluation” and reference checking and would determine whether Merrell Dairy wanted to hire the

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<sup>350</sup> Tr, at 17 (Merrell).

<sup>351</sup> Tr, at 18 (Merrell).

individual.<sup>352</sup> Merrell testified that she made the decision whether to hire an applicant.

Merrell testified regarding three employees that Local One seeks to exclude as supervisors—Ramiro Puac, also known as Alex; Rudy Puac; and Elsa Puac. Merrell testified that Ramiro Puac was listed as a milker, but “[p]robably the more correct term would be a lead milker.”<sup>353</sup> Merrell testified that Ramiro Puac had been employed by Merrell Dairy since 2011. Merrell testified that Ramiro Puac works in the parlor with the milkers, does all the primary milker training, repairs equipment in the parlor and oversees and directs work according to Merrell’s instructions. Merrell testified that Ramiro Puac does not make any hiring, firing, or disciplinary decisions. When asked if Ramiro Puac made recommendations for those actions, Merrell responded, “I would not say recommendations. He provides facts.”<sup>354</sup> Merrell testified that she would conduct an independent investigation and determine what action to take, if any, based on the facts provided by Ramiro Puac.

Merrell testified that she does the scheduling for the milkers, and that after she distributes the schedule to Ramiro Puac, he and another employee usually post the schedule in the break rooms. Merrell testified that Ramiro Puac would translate and make sure all of the milkers are aware of any updates in the schedule. Merrell testified that Ramiro Puac also fills in when milkers are absent or on vacation.

Merrell testified that Rudy Puac is a lead herdsman. Merrell testified that Rudy

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<sup>352</sup> Tr, at 19 (Merrell).

<sup>353</sup> *Id.*

<sup>354</sup> Tr, at 20 (Merrell).

Puac's duties include taking care of fresh cows and sick cows and that "[h]e's working right along with all the other herds people in the farm."<sup>355</sup> Merrell testified that Rudy Puac translates for her to other herds staff and directs work according to her instructions. Merrell testified that Rudy Puac does not have the authority to make decisions regarding hiring, firing, or discipline. Merrell also testified that Rudy Puac does not make recommendations, but can present facts, which Merrell will then investigate and determine the course of action.

Merrell testified that Elsa Puac is a herds person and is considered a "lead" from the standpoint that she is Merrell Dairy's sole night herds person.<sup>356</sup> Merrell testified that Elsa Puac directs work according to Merrell's instructions if there are problems or an issue that needs to be addressed. Merrell testified that Elsa Puac may need to give a message to milkers or may work with the manure barn staff to address any issues there. Merrell testified that she considered Elsa Puac a "working foreman" and that she did not have the authority to hire, fire, or make disciplinary decisions. Merrell testified that Elsa Puac could not make recommendations but could present facts which Merrell independently investigates and makes a decision regarding. Elsa Puac earns \$17.00 per hour.<sup>357</sup>

Merrell Dairy submitted a screen shot of employees' signatures, which Merrell testified were obtained from employment records, primarily employment agreements.<sup>358</sup>

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<sup>355</sup> Tr, at 21 (Merrell).

<sup>356</sup> Tr, at 22 (Merrell).

<sup>357</sup> Employer Ex 16.

<sup>358</sup> Employer Ex 2, at 3-9, which is also in the record as part of HO Ex 5.

Merrell Dairy also submitted job descriptions for titles in the petitioned-for unit, along with job titles that Merrell Dairy contends must be included to make the unit appropriate.

The job description for “accounting clerk” included the following duties:

- Get, sort, and open mail.
- Enter accounts payable and verify pricing and delivery of products. Reconcile vendor statements to A/P records. Call vendors to resolve discrepancies.
- Prepare accounts payable checks as directed.
- Deposit checks.
- Distribute payroll checks.
- Reconcile bank accounts.
- Help employees complete new employee documents.
- File and retain necessary records.
- Answer phone. Take messages. Send and receive faxes.
- Enter animal data into dairy management software.
- Prepare paperwork and samples (milk, feed, animal tissue, manure, and sand) for laboratory submission and animal movement.
- Maintain inventory, order, and distribute pharmaceutical products to animal care employees.
- Other duties as assigned.<sup>359</sup>

Merrell testified that sometimes the herd staff or calf people will bring samples to the accounting clerk. Other times, Merrell testified that the accounting clerk would go into the barns and collect the samples from the refrigerators and freezers where other employees put the samples. Merrell testified that the accounting clerk will also make bottles for collecting milk samples and will distribute them for the herds people. Merrell testified that pharmaceutical products come into the office, and the accounting clerk manages and distributes the inventory. If calf, maternity, or herds people need vaccines or antibiotics, they make a list, come to the office, and the accounting clerk distributes the necessary

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<sup>359</sup> Employer Ex 2, at 10-11.

products.

Merrell testified that the accounting clerk interacts with all the employees at the farm and is “the face of the window.”<sup>360</sup> Merrell testified that the accounting clerk also prepares the health charts for the movement of animals to Merrell Dairy’s heifer grower in Colorado. Merrell also testified that the accounting clerk will “pitch in” and transport an employee if necessary, move vehicles around, or pick up parts if necessary.<sup>361</sup>

As of March 26, 2023, there is one accounting clerk at Merrell Dairy, who earns \$900 per week.<sup>362</sup>

The job description for “Bedding” includes the following duties:

1. Operation of equipment
  - Maintenance and operation of applicable equipment to add bedding (sand and manure solids) and groom freestalls.
  - Maintenance and operation of applicable equipment to move calves, clean calf facilities, and spread new sand for calf hutches.
  - Maintenance and operation of applicable equipment to scrape, load, transport, and unload manure at the manure processing facility or spread in fields.
  - Maintenance and operation of applicable equipment to clean and add bedding (shavings and straw) to bedded packs.<sup>363</sup>

As of March 26, 2023, there is one bedding employee at Merrell Dairy, who earns \$15 per hour.<sup>364</sup>

The job description for “Calf Team Leader” includes the following duties:

1. Caring for calves 0-3 months of age

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<sup>360</sup> Tr, at 34 (Merrell).

<sup>361</sup> Tr, at 35 (Merrell).

<sup>362</sup> Employer Exs 3 and 15.

<sup>363</sup> Employer Ex 2, at 11.

<sup>364</sup> Employer Exs 3 and 15.



- Observe calves for sickness, lameness or any abnormality and treat them according to established protocols.
- Vaccinating and dehorning of calves and removing extra teats.
- Routine sorting and moving of calves from hutch to hutch or group to group.
- Feed grain, hay, and milk.
- Provide water to animals.
- Maintain clean and dry bedding by adding shavings or straw as needed.

2. Operation of equipment:

- Operate and train staff in the safe operation of skid steer loaders, milk pasteurizer, milk tank truck, pressure washer, and other equipment related to operation of the calf facility.

3. Facility operation:

- Notify facilities maintenance staff of facilities and equipment in need of repair.
- Assist with the maintenance of the calf facility.

4. Other duties as assigned.<sup>365</sup>

As of March 26, 2023, there is one calf team leader at Merrell Dairy, who earns \$16 per hour.<sup>366</sup>

The job description for “Calves” includes the following duties:

1. Caring for calves 0-3 months of age
  - Observe calves for sickness, lameness or any abnormality and treat them according to established protocols.
  - Vaccinating and dehorning of calves and removing extra teats.
  - Routine sorting and moving of calves from hutch to hutch or group to group.
  - Feed grain, hay, and milk.
  - Provide water to animals.
  - Maintain clean and dry bedding by adding shavings or straw as needed.
  - Take tissue and blood samples for routine testing.
  - Maintain calf identification - tagging.

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<sup>365</sup> *Id.*, at 11-12.

<sup>366</sup> Employer Exs 3 and 15.

- Clean and disinfect calf feeding equipment.
- Maintain Dairy Comp records.
- 2. Operation of equipment:
  - Safe operation of skid steer loaders, milk pasteurizer, milk tank truck, pressure washer, and other equipment related to operation of the calf facility.
- 3. Facility operation:
  - Assist with the maintenance of the calf facility.
- 4. Other duties as assigned.<sup>367</sup>

As of March 26, 2023, there are four “calves” employees at Merrell Dairy, who each earn \$14.20 per hour.<sup>368</sup>

The job description for “Facilities Maintenance” includes the following duties:

1. Day to day maintenance of all farm buildings and related mechanical support systems.
  - Responsibilities include repair and maintenance of buildings and equipment.
  - Responsibilities will include but are not limited to duties associated with the dairy barn operations, heifer barns, and houses on the farm.
  - Tasks may include maintaining manure systems, ventilation and cooling systems, livestock housing and handling systems, milking systems, water systems, and operating equipment.
2. Maintaining all the properties, which includes but is not limited to mowing, weed eating, trimming bushes and trees, spraying weeds, snow removal, and ensuring garbage and other items are picked up.
3. Unloading supplies and animals delivered to the farm, including unloading and stacking hay and straw bales.
4. Other duties as assigned.<sup>369</sup>

As of March 26, 2023, there are two facilities maintenance employees at Merrell Dairy, who earn between \$20 and \$22 per hour.<sup>370</sup>

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<sup>367</sup> Employer Ex 2, at 12.

<sup>368</sup> Employer Exs 3 and 15.

<sup>369</sup> Employer Ex 2, at 12-13.

<sup>370</sup> Employer Exs 3 and 15.

The job description for “Feeder” includes the following duties:

1. Equipment operation.
  - Equipment will include payloaders, tractors, skid steer loaders, mixer wagons, straw grinders, and trucks.
  - Responsible for reporting all mechanical failures to shop personnel to ensure that prompt repair is initiated.
2. Will be required to maintain ingredient inventory by reporting needs to the farm office.
3. Mixing feed, removal of refusal, delivering new feed to cattle and cleaning and maintaining the bunk silo. You are expected to follow ration and procedure instructions as recommended by the consulting nutritionist.
4. Operation of computer feeding software.
5. Monitor and order commodity ingredients.
6. Other duties as assigned.<sup>371</sup>

Merrell testified that feeders regularly interact with herds people “from the standpoint of animal groups and numbers, the cows.”<sup>372</sup> Merrell testified that when animals are moved, herds people need to inform the feeder so that he feeds the right amount for the groups as the counts change and that the feeders have to coordinate with the herds people. Merrell testified that feeders will fill in and do the process that the herds people normally do depending on the schedules. Merrell testified that feeders interact with truck drivers and that feeders and truck drivers work in the same locations. Merrell testified that feeders will coordinate with the milkers from the standpoint of feeding and “pushing up feed” and that milkers and feeders “are pushing different times of the day.”<sup>373</sup>

Merrell testified that feeders use pay loaders, tractors, skid steer loaders, and

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<sup>371</sup> Employer Ex 2, at 14.

<sup>372</sup> Tr, at 36 (Merrell).

<sup>373</sup> Tr, at 37 (Merrell).

trucks, and that the bedding person, the general farm workers, the mechanics, and the field crop people operate most of the same equipment. Merrell testified that truck drivers operate pay loaders and skid steers and that herd staff operate skid steers and push up feed at times. Merrell testified that maternity staff and milkers also “push and feed at times.”<sup>374</sup>

Merrell testified that the relief feeder’s primary duties “would be more in line with the general farm employee.”<sup>375</sup> Merrell testified that the relief feeder turns sand pedals, moves sand, and operates a pay loader, truck, and skid loaders. Merrell testified that the relief feeder functions as a feeder on other feeders’ days off. Merrell testified that who ends up being a relief feeder “really depends on what the qualities and the qualifications are and the experience of particular employees.”<sup>376</sup>

As of March 26, 2023, there are four feeders at Merrell Dairy, who earn between \$16.50 and \$22.50 per hour.<sup>377</sup>

The job description for “General Farm Worker” includes the following duties:

1. Equipment and Vehicle Operation
  - Operation and maintenance of applicable equipment (skid loaders, tractors, and spreaders) for cleaning barns, grooming stalls, and bedding cattle.
  - Operation and maintenance of applicable equipment (payloader and tub grinder) for chopping straw.
  - Operation and maintenance of applicable equipment for moving cattle and calves.

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<sup>374</sup> Tr, at 39 (Merrell).

<sup>375</sup> Tr, at 41 (Merrell).

<sup>376</sup> Tr, at 44 (Merrell).

<sup>377</sup> Employer Exs 3 and 15.

- Operation and maintenance of applicable equipment and hand tools for landscaping, lawn mowing, and general cleanup.
- Operation and maintenance of vehicles for transporting employees.
- 1. Cleaning and Sanitation
  - Garbage removal.
  - Cleaning and sanitation of cattle housing and equipment.
  - Cleaning and sanitation of employee break rooms, office areas, milk rooms, and milking centers.
  - Cleaning and sanitation of employee housing.
- 2. Assist facilities maintenance staff with maintenance and repair of farm buildings, property, equipment, and houses.
- 3. Assist calf care employees and herdspersons with care of cattle and calves.
- 4. Various manual chores including:
  - Manual tire placement and removal on bunks.
  - Manual unloading and stacking small square bales of straw and hay.
- 5. Other duties as assigned.<sup>378</sup>

Merrell testified that the general farm worker job classification was “kind of a catchall category for various people that don’t fit in another such category.”<sup>379</sup> Merrell testified that Daniel Merrell, her son, is paid for the work he does on the farm and performs some calf feeding and duties in the calf department, helps with facilities maintenance, and operates some equipment and picks up parts if necessary. Merrell testified that David Merrell, also her son, performed similar duties, but did not work as much in the calf department. Merrell testified that David Merrell works more in facilities maintenance, operates equipment, and “fills in wherever needed.”<sup>380</sup>

Merrell testified that Pamela Burgess performs cleaning duties in the parlors, break room, and bathrooms. Merrell testified that Burgess also oversees the cleaning, repairs,

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<sup>378</sup> Employer Ex 2, at 14.

<sup>379</sup> Tr, at 67 (Merrell).

<sup>380</sup> Tr, at 68-69 (Merrell).

and updates in employee housing. Merrell testified that Burgess also transports employees, some on a regular basis and some on a relief basis. Merrell testified that Burgess will occasionally get called to pick up parts or run various errands as needed, “which isn’t really any particular person’s responsibilities. It’s whoever is available.”<sup>381</sup> Merrell testified that Burgess also performed basic facilities maintenance in the houses.

Merrell testified that Antonio Juan De Los Santos performs varied tasks, such as helping with movement of calves one day of the week, taking out the garbage, and filling in “for miscellaneous tasks that need to get done that don’t fall under a specific department.”<sup>382</sup> Merrell testified that Moyses Lopez primarily loads manure into the spreader, chops straw, and will occasionally move pallets around with the skid steer.

Merrell testified that Nancy Ochoa Lopez primarily provides cleaning responsibilities in the parlors and associated facilities, the offices, the break rooms, and the bathrooms at Merrell Dairy’s two dairy locations. Merrell testified that Lopez clears the actual stanchions where the cows are. Merrell testified that Cheryl Rasbeck primarily provides transport to employees to and from work, the grocery store, and doctor’s appointments. Merrell testified that Rasbeck will also sometimes pick up supplies for the farm or parts.

As of March 26, 2023, there are seven general farm workers at Merrell Dairy. Five of these employees earn between \$14.45 and \$16.50 per hour, while two employees earn \$20 per hour.<sup>383</sup>

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<sup>381</sup> Tr, at 70 (Merrell).

<sup>382</sup> Tr, at 71 (Merrell).

<sup>383</sup> Employer Exs 3 and 15.

The job description for “Herdsperson” includes the following duties:

1. Caring for all cattle.
  - Observation of cattle daily for heats, sickness, lameness, mastitis, or any abnormality and treating according to established programs.
  - Vaccinating and dry-off of cattle.
  - Routine sorting and moving of cattle from barn to barn and/or group to group.
  - Fresh cow maternity care, which includes helping deliver calves and helping with newborn calves if needed.
  - Feed, water, and milk down animals.
  - Cattle breeding.
  - Sick cow examination which includes temperatures, observation, analysis, palpating, checking for DA's.
  - Maintain cow identification - tagging.
  - Maintain up to date, accurate Dairy Comp, and herd production records.
  - Read mastitis culture plates.
2. Relief milking.
  - Milking for absent milkers. Help with milking of fresh cow group and treated groups.
3. Operation of small equipment.
  - Skid steer - for down cow movement and pushing up feed.
4. Other duties as assigned.<sup>384</sup>

Merrell testified that herds staff will fill in for when the primary feeder is off and will adjust the feed amounts for the animals for the relief feeder.

As of March 26, 2023, there are nine herdspersons at Merrell Dairy. Four herdspersons earn between \$15.20 and \$17.00 per hour, while five herdspersons earn between \$20.00 and \$23.00 per hour.<sup>385</sup>

The job description for “Office” includes the following duties:

- Recruit, interview, and background check potential employees.
- File paperwork and maintain compliance with H2A program.

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<sup>384</sup> Employer Ex 2, at 15.

<sup>385</sup> Employer Exs 3 and 15.

- Training and orientation of new and existing staff on farm protocols, farm safety, animal handling and OSHA compliance.
- Assist with safety administration and compliance training.
- Monitor farm provided housing for cleanliness and needed repairs.
- Benefits administration. (health insurance, simple IRA, etc.).
- Workman's compensation claims documentation, reporting, etc.
- Reconcile timecards for payroll.
- Transport employees.<sup>386</sup>

Merrell testified that the office employee is responsible for completing new employee paperwork and administering all the training that is required. Merrell testified that all employees are required to have animal handling training as well as safety training in various areas depending on their job description. Merrell testified that the office employee will bring employees to the farm, to grocery store, or to the doctor if Merrell Dairy is “short staffed or we need some additional transport.”<sup>387</sup> Merrell testified that the office employee will do backup for the accounting clerk for pharmaceutical distribution.

Merrell testified that the office employee is “out in the barn for a period of time most days.”<sup>388</sup> Merrell testified that the office employee interacts with employees “from the housing end as well.”<sup>389</sup>

As of March 26, 2023, there is one office employee at Merrell Dairy, who earns \$1000.00 per week.<sup>390</sup>

The job description for “Manure Barn” includes the following duties:

- Moving cows from group to group or to the parlor.

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<sup>386</sup> Employer Ex 2, at 15.

<sup>387</sup> Tr, at 46 (Merrell).

<sup>388</sup> Tr, at 47 (Merrell).

<sup>389</sup> Tr, at 47 (Merrell).

<sup>390</sup> Employer Exs 3 and 15.



- Using a skid steer to scrape manure.
- Running, monitoring, and maintaining manure pumps and sand and manure separation equipment.
- Clean up spilled sand, solids, and liquid manure.<sup>391</sup>

As of March 26, 2023, there are four manure barn employees at Merrell Dairy, who earn between \$14.50 and \$20.00 per hour.<sup>392</sup>

The job description for “Maternity” includes the following duties:

1. Caring for cows before, during, and after calving.
  - Observation of pre-fresh cattle for signs of calving and calving related problems.
  - Routine sorting and moving of cattle from group to group or barn to barn.
  - Examining and providing assistance to cows during calving, if needed.
  - Administering medications.
  - Maintaining the calving pens with clean bedding and fresh feed and water.
  - Processing and bottling colostrum from fresh cows.
  - Maintaining accurate records for fresh cows and calves.
2. Caring for newborn calves.
  - Feeding colostrum and administering medications, if needed, to newborn calves.
  - Drying newborn calves and dipping navels.
  - Transporting calves and bedding hutches of newborn calves.
3. Assisting the herds person in caring for all cattle including the following areas:
  - Observation of cattle daily for sickness, lameness, mastitis or any abnormality and reporting to herd staff members.
  - Feeding, watering, and milking down animals
  - Vaccinating and dry-off of cattle.
  - Locking and marking cattle.
  - Filling and administering footbaths.
  - Pumping milk.
4. Maintenance of sanitary equipment
  - Washing the bulk tank.

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<sup>391</sup> Employer Ex 2, at 15-16.

<sup>392</sup> Employer Exs 3 and 15.

- Washing and disinfecting colostrum pails and milk collection and other maternity equipment.
- 5. Operation of small equipment
- Skid loader - for barn cleaning and pushing up feed.
- 6. Other duties as assigned.<sup>393</sup>

As of March 26, 2023, there is one maternity employee at Merrell Dairy, who earns \$15.90 per hour.<sup>394</sup>

The job description for “Milker” includes the following duties:

Duties as a milker may include but are not limited to:

- Prep, milk, and dip cows as trained and instructed.
- Identify cows with mastitis and sick cows when possible.
- Move cows to the parlor and return cows to the correct group after milking.
- Clean, level, and lime freestall beds.
- Report cows that have been mixed into the wrong groups and help separate and return them to the proper groups.
- Operate footbaths as instructed.
- Operation of small equipment - skid loader for barn cleaning and pushing up feed.
- Keep the parlor clean - scrub the milking parlor and equipment between milkings.
- Other duties as assigned.<sup>395</sup>

As of March 26, 2023, there are twenty milkers at Merrell Dairy. Nineteen of these workers earn between \$14.20 and \$15.05 per hour, while one employee earns \$20.00 per hour.<sup>396</sup>

The job description for “Mechanic/Field Crops” includes the following duties:

1. Equipment monitoring

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<sup>393</sup> Employer Ex 2, at 16.

<sup>394</sup> Employer Exs 3 and 15.

<sup>395</sup> Employer Ex 2, at 16-17.

<sup>396</sup> Employer Exs 3 and 15.

- Repair and maintenance of mobile equipment including tractors, trucks, tractor trailers, skid steer loaders, payloaders, and other vehicles Repair and maintenance of all other farm, excavation, and stationary barn equipment.
  - Responsible for ensuring that all mechanical failures on mobile equipment are properly assigned for repair.
  - Provide instruction and training to less experienced staff in the safe operation and maintenance of all farm equipment.
2. Field crops operations  
Maintenance, cleaning, and operation of all equipment for:
- Planting and harvest
  - Manure handling
  - Silo and forage maintenance
3. Building and property maintenance
- Train property maintenance staff and assist in the maintenance of buildings and barn equipment
  - Work with manual and power tools and welding equipment
  - Snow removal
4. Work together with the mechanic/field crops team leader in parts inventory control.
5. Manual tire placement and removal on bunks
6. Other duties as assigned.<sup>397</sup>

Merrell testified that Merrell Dairy grows alfalfa, grass and corn, which “all comes back to the farm to feed the cows.”<sup>398</sup> Merrell testified that nothing is sold off the farm. Merrell testified that employees in this job classification are responsible for making sure that manure gets out on the appropriate field for fertilization, that fields get fitted and planted for the crop, and that the crop gets harvested at the correct moisture and maturity content to be ideal feed for the cows.

Regarding mechanic duties, Merrell testified that these employees handle all the machinery repairs on the farm, including skid steers, payloaders, and manure barn

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<sup>397</sup> Employer Ex 2, at 17.

<sup>398</sup> Tr, at 48 (Merrell).

equipment and that they provide support and backup if the facilities maintenance staff is not there. Merrell testified that mechanics interact with feeders, milking staff, general farm employees, and truck drivers. Moreover, when “covering bunks” (covering bunkers filled with feed with tires), it is an “all hands on deck” situation involving employees from multiple job classifications.<sup>399</sup> Covering bunks happens one to two times a month between May and September and, in the fall, bunks are covered as they are filled.

Merrell testified that mechanic/field crops employees have covered for feeder positions “at times” and for general farm workers “depending on the skills of the individual employees in that department.”<sup>400</sup>

As of March 26, 2023, there are three mechanics/field crops employees at Merrell Dairy, who earn between \$19.00 and \$21.00 per hour.<sup>401</sup>

The job description for “Mechanic/Field Crops Leader” includes the following duties:

1. Equipment monitoring
  - Repair and maintenance of mobile equipment including tractors, trucks, tractor trailers, skid steer loaders, payloaders, and other vehicles.
  - Repair and maintenance of all other farm, excavation, and stationary barn equipment.
  - Responsible for ensuring that all mechanical failures on mobile equipment are properly assigned for repair.
  - Provide instruction and training to less experienced staff in the safe operation and maintenance of all farm equipment.
  - Train other mechanics to ensure proper protocols are established for each work area associated with the mechanic's responsibilities.
2. Field crops operations

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<sup>399</sup> Tr, at 52 (Merrell).

<sup>400</sup> Tr, at 53-54 (Merrell).

<sup>401</sup> Employer Exs 3 and 15.

- Train other field crew employees to ensure proper protocols are established for each work area associated with field crew responsibilities.
- Maintenance, cleaning, and operation of all equipment for:
- Planting and harvest
- Manure handling
- Silo and forage maintenance
- 3. Building and property maintenance
  - Train property maintenance staff and assist in the maintenance of buildings and barn equipment
  - Work with manual and power tools and welding equipment
  - Snow removal
- 4. Ordering lubricants and fluids for machinery.
- 5. Price shopping for parts and supplies.
- 6. Monitoring fuel levels and repairing all equipment pertaining to fuel tanks.
- 7. Manual tire placement and removal on bunks.
- 8. Other duties as assigned.<sup>402</sup>

Merrell testified that this employee is not a supervisor but is instead a “working foreman.”<sup>403</sup> As of March 26, 2023, there is one mechanics/field crop team leader at Merrell Dairy, who earns \$30.00 per hour.<sup>404</sup>

The job description for “Truck Driver” includes the following duties:

1. Equipment operation
  - Vehicles operated may include trucks, trailers, tankers, payloaders and skid loaders.
  - Equipment operated may include pumps, frack tanks, and other manure equipment.
  - Operation of assigned equipment involved in harvest, manure handling, and crop planting.
2. Movement of manure injection equipment, pipes, and fittings from field to field.
3. Manual tire placement and removal on bunks.

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<sup>402</sup> Employer Ex 2, at 17-18.

<sup>403</sup> Tr, at 50 (Merrell).

<sup>404</sup> Employer Exs 3 and 15.

4. Repair and maintenance of buildings, equipment, and grounds during non-cropping periods.
5. Other duties as assigned.<sup>405</sup>

Merrell testified that truck drivers use skid loaders and payloaders, the same type of equipment that other employees use, and that truck drivers work with manure barn employees to collect and process manure.

As of March 26, 2023, there are three truck drivers at Merrell Dairy, who earn between \$16.95 and \$17.00 per hour.<sup>406</sup>

Merrell testified that Merrell Dairy cross trains employees and that there's a lot of overlap. Merrell testified that whether a position has contact with livestock has no bearing on terms and conditions of employment and that pay decisions are not based on whether employees have contact with livestock.

Merrell testified all employees receive one hour of vacation time for every 50 hours worked, one hour of sick time for every 30 hours worked until 40 hours are accrued, double time pay on seven holidays, matching contributions to a SIMPLE IRA retirement plan after one year of employment, Merrell Dairy-sponsored life insurance, and the option to purchase health insurance through Merrell Dairy.<sup>407</sup> Merrell testified that there are three employees (the accounting clerk, the office employee, and the mechanic/field crops team leader) who have slightly different vacation and holiday pay packages, based on how their employment was negotiated.

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<sup>405</sup> Employer Ex 2, at 18.

<sup>406</sup> Employer Exs 3 and 15.

<sup>407</sup> Employer Ex 6.

Merrell Dairy entered a document entitled “Merrell Dairy Vacation Time/Sick Time/Day Off Policy and Procedure.”<sup>408</sup> With the exception of the three employees discussed above, Merrell testified that this policy and procedure applied to all employees at Merrell Dairy.

Merrell Dairy introduced numerous photographs of equipment into the record.<sup>409</sup> Merrell testified that the skid steer was operated by the mechanics/field crops employees, by facilities maintenance, general farm workers, milkers, feeders, herds people, and calf staff.<sup>410</sup> Merrell testified that milkers, feeders, herds people, and maternity staff all push up feed.<sup>411</sup> Merrell testified that payloaders are used by feeders, facilities maintenance staff, mechanic/field crop staff, general farm workers, bedding staff, and the manure barn staff.<sup>412</sup>

On cross-examination, Merrell testified that some of the employee names provided in Employer Exhibit 2 were printed names and not signatures.

Merrell testified that several employees hired in the past few months were recruited by Ramiro Puac. Merrell testified about employees that had recently been hired, discharged, or disciplined. With respect to three disciplined employees, either Israel Garcia or Ramiro Puac translated for Merrell when she communicated the discipline.<sup>413</sup>

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<sup>408</sup> Employer Ex 7.

<sup>409</sup> Employer Exs 9-11, 13 and 14.

<sup>410</sup> See Employer Ex 9.

<sup>411</sup> See Employer Ex 10 and 14.

<sup>412</sup> See Employer Ex 11 and 13.

<sup>413</sup> Tr, at 98-99 (Merrell).

Merrell testified that, although she authorizes and decides when discipline is imposed, other employees, such as the office employee, may communicate the decision to workers.

Regarding job qualifications or requirements, Merrell testified that the accounting clerk needed to be able to work in accounting software, enter accounts payable, and have basic Microsoft skills. Merrell testified that there were no specific job qualifications for the office employee, except English proficiency and a driver's license. Merrell testified that the office employee will often draft up written warnings to employees at Merrell's instructions and may issue written warnings to employees. Merrell testified that the office worker takes requests for vacation and time off and handles the day-to-day end of health insurance and retirement benefits.

Merrell testified that herds persons need to have experience checking heats and inseminating cows, and "[t]hey need to know or be able to train in order to operate the computer the enter basic information into our database."<sup>414</sup> Merrell testified that some, but not all, herds persons need to have a driver's license to handle some of Merrell Dairy's transportation needs.

Merrell testified that there were no specific job qualifications or requirements for calf employees; that a bedding employee or a feeder needs to be able to operate a skid steer, a payload, and a tractor and wagon. Merrell testified that a manure barn employee needs to be able to operate a skid steer and have to know or be trained on how to run a

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<sup>414</sup> Tr, at 111 (Merrell).



loader and one of the trucks. Merrell testified that mechanics need to have some mechanical skills, be able to operate skid steers, payloaders, tractors, and that they are typically required to have a driver's license and a CDL Class A or comparable license.

Merrell testified that there were no specific job qualifications or requirements for maternity workers or milkers.

Merrell testified regarding which employees lived in Merrell Dairy-provided housing and the specific rates of pay for certain employees. She testified that a total of 41 employees lived in employer-provided housing,<sup>415</sup> while 19 employees did not.<sup>416</sup> Regarding wage rates, Merrell testified that Benning makes \$30/hour; Ramiro Puac makes \$20/hour; Rudy Puac makes \$20/hour; Chavez Vasquez makes \$20/hour; Olmos Garcia makes \$20/hour; and Richard Egnor makes \$22.50/hour. Merrell could not recall the specific wage rates of other employees.

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<sup>415</sup> These employees included Ramiro Puac (milker), Rudy Puac (herdsperson), E. Puac (herdsperson), Barrios Aguilar (milker), Chavez Vasquez (herdsperson), Richards (herdsperson), Hernandez Pelico (bedding), G. Martinez (calf team leader), Aguilar Cruz (calves), Alva (maternity), Argueta Trujillo (calves), Batin Puac (milker), Burgess (general farm worker), Cruz Hernandez (milker), De Los Santos (general farm worker), Diaz (milker), Dominguez (milker), Duenas Coj (milker), H. Gabriel (milker), Gabriel Tomas (milker), Giron Garcia (milker), Hernandez (herdsperson), Herrera Gomez (milker), Meija Us (milker), Lopez Perez (milker), Jimenez (manure barn), M. Lopez (general farm worker), Lopez Salucio (milker), Madred Ixcoy (milker), L. Martinez (calves), Martinez Morales (facilities maintenance), Martinez-Aguilar (milker), Ochoa-Lopez (general farm worker), Ortiz Perez (manure barn), Perez-Gomez (manure barn), HG Rivera Lopez (calves), Soto Valle (herdsperson), A. Vasquez (milker), M. Vasquez (milker), Vasquez Mendez (milker), Velasquez (milker). See Tr, at 125-139; Employer Exhibit 4. Daniel and David Merrell live with their parents. Tr, at 134.

<sup>416</sup> These employees included Benning (mechanic/field crops team leader), Kurtz (mechanic/field crops), E. Rasbeck (mechanic/field crops), Sinko (mechanic/field crops), Shinsing (truck driver), Horst (truck driver), Younglove (truck driver), Malchoff (accounting clerk), Neal (office), Chaloux (herdsperson), G. Gabriel (herdsperson), Mitchell (facilities maintenance), Olmos Garcia (manure barn), C. Rasbeck (general farm worker), Trejo (herdsperson), Egnor (feeder), Green (feeder), Hernandez Castellanos (feeder), and Woods (feeder). See Tr, at 125-139; Employer Exhibit 4.

On redirect, Merrell testified that housing decisions were based on people's need for housing and the availability of housing.

Maria Angelica Uribe Hernandez testified on behalf of Local One. Hernandez testified that she has been a union organizer for Local One since October, 2020. She testified that workers at Merrell Dairy reached out to her regarding "job security, maltreatment, and lack of communication."<sup>417</sup> Hernandez testified that workers told her that the maltreatment was coming from three individuals, who workers described as supervisors – Rudy Puac, Alex Puac, and Elsa Puac.

Hernandez testified that workers in the job classifications of milkers, maternity, herdsmen, facility maintenance, and manure barn, general farm worker, and bedding reached out to her. Hernandez testified that the general farm workers who reached out to her use machinery and "have more interaction with animals or even with manure sand."<sup>418</sup> Hernandez testified that no office clerical workers, family members of the Merrells, truck drivers, mechanics, or any individuals who provided transportation or whose duties consisted of cleaning reached out to her about joining the union.

Hernandez testified that workers concerns regarding job security were afraid of being evicted within 24 hours and that there was a lot of confusion of "why, how" two workers were discharged.<sup>419</sup> Hernandez testified that workers told her that the

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<sup>417</sup> Tr, at 156 (Hernandez).

<sup>418</sup> Tr, at 158 (Hernandez).

<sup>419</sup> Tr, at 160 (Hernandez).

“supervisors” (the three Puacs)<sup>420</sup> “did something” with respect to the workers being fired, and that these “supervisors” were calling workers names and verbally mistreating them.<sup>421</sup>

Hernandez testified that workers told her that there was fear of getting fired without “good excuse,” not having direct conversations with their employer, and “always using the same interpreters. The same people that are threatening them are getting them fired.”<sup>422</sup>

Hernandez testified that workers that got in contact with her didn’t think they had common issues at work with truck drivers or mechanics. Hernandez testified that workers thought truck drivers had better wages, better benefits, and direct communication with Merrell. Hernandez testified that workers said they don’t share common interests with feeders, in that feeders are directly supervised by Merrell. Hernandez also testified that workers viewed the office employee as “more of an authority at work and not a coworker.”<sup>423</sup>

Hernandez testified that Alex Puac, Rudy Puac, and Elsa Puac never reached out to her regarding joining the union, and that she never reached out to them. Hernandez testified that workers told her they did not feel safe with these employees “because of their position at work of being supervisors and their fear of them.”<sup>424</sup> Hernandez testified that workers feel that the Puacs have better communication with Merrell and better benefits and that Rudy and Alex Puac will also be used as translators when there is an issue.

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<sup>420</sup> The possible supervisory status of the Puacs is at issue in this proceeding.

<sup>421</sup> Tr, at 160-161 (Hernandez).

<sup>422</sup> Tr, at 161 (Hernandez).

<sup>423</sup> Tr, at 164 (Hernandez).

<sup>424</sup> Tr, at 165 (Hernandez).

Hernandez testified that Elsa Puac is the only authority at night workers will see and that there is no other management working on the night shift.

On cross-examination, Hernandez testified that she has never observed the farm in operation and that all of her information is based on what workers told her.

### **DISCUSSION**

Under the SERA, the filing of a representation petition will trigger an agency investigation to determine various issues including whether there is a question or controversy concerning the representation of the at-issue employees, what is the appropriate unit for purposes of collective bargaining, and what procedure should be utilized to determine employee choice.<sup>425</sup>

In considering the composition of the bargaining unit, the SERA provides, in relevant part, that:

The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, multiple employer unit, craft unit, plant unit, or any other unit....

In determining the appropriate bargaining unit, the primary consideration is to group employees who have a mutual interest in wages, hours, working conditions, and other

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<sup>425</sup> *Warner Nursery*, 55 PERB ¶ 4403, 4413 (2022), quoting *Monsignor Farrell High Sch*, 45 PERB ¶ 3405, 3404-3405 (2012).

subjects of collective bargaining. Several factors, no one of which is controlling, enter into each particular finding of the appropriate bargaining unit, among which are the following: similarity of duties or functions, of wages, of working conditions, of qualifications or skills; interchange of employees, the desires of the employees and the extent of self-organization; the collective bargaining history in the establishment and in the industry; the size and organization of the employer's business; and the Board's prior decisions affecting the same establishment or the same industry.”<sup>426</sup>

As explained above, Local One petitions for a unit of “[a]ll full time and regular part time agricultural workers employed by the Employer, but excluding supervisors, family members of the Employer, office clerical employees, mechanics, truck drivers, lead milkers, lead herdspersons, general farm workers whose principal duties consist of providing transportation to workers and/or cleaning break rooms, bathrooms, offices or worker housing, and temporary workers.”<sup>427</sup> Merrell Dairy contends that only a wall-to-wall unit, including mechanics, truck drivers, office workers, and all general farm workers, is appropriate because Merrell Dairy’s operations are a “functionally integrated operation.”<sup>428</sup>

David and Daniel Merrell are the sons of Karen Merrell. Section 701.3 (c) of the SERA provides that “[m]embers of an agricultural employer's immediate family who are related to the third degree of consanguinity or affinity shall not be considered to be employed on a farm if they work on a farm out of familial obligations and are not paid

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<sup>426</sup> *Id.*, 55 PERB ¶ 4403, at 4416, citing *Woodward Mental Health Center, Inc.*, 37 SLRB 673, 676-677 (1974).

<sup>427</sup> HO Ex 19. There is no dispute that temporary workers should be excluded from the unit.

<sup>428</sup> HO Ex 18, at 4.

wages, or other compensation based on their hours or days of work.” David and Daniel Merrell are paid wages for their work at Merrell Dairy, and thus are not statutorily excluded from the proposed bargaining unit. However, I find that their inclusion in the unit is nevertheless not appropriate. The State Employment Relations Board, PERB’s predecessor in administering the SERA, had a long-standing policy of excluding corporate officers, and their close family relatives, from bargaining units. In *Ward Shaving Corp*, the Board stated that it has “consistently held over the years” that:

the inherently different interests of close relatives require that they be excluded from units of ordinary, non-related employees. Such exclusion does not deprive them of their rights as employees covered by the Act. It merely constitutes recognition that, because of their unique and divergent interests, they belong, if they so desire, in a separate unit limited to similarly situated employees.<sup>429</sup>

As found in *Warner Nursery*, including close relatives, such as sons, in a bargaining unit with rank-and-file employees “could serve as a chilling influence upon discourse within the unit concerning their desires concerning their working conditions and plans for negotiations.”<sup>430</sup> I find that the sons of the owners and managers of Merrell Dairy do not share a community of interest with other agricultural workers and are properly excluded from the unit.<sup>431</sup>

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<sup>429</sup> 27 SLRB 467, 468 (1964). See also 552-56 *Academy Inwood Realty, Inc*, 43 SLRB 509 (1980); *Al's Tire Shop, Inc*, 25 SLRB 475 (1962); *Post Pharmacy, Inc*, 17 SLRB 138 (1954).

<sup>430</sup> 55 PERB ¶ 4403, at 4416.

<sup>431</sup> See also *Guttman et al*, 34 SLRB 1, 18 fn 8 (1971) (“As the Board has consistently held, the inherently different interests of close relatives require that they be excluded from units of ordinary, non-related employees”).

With regard to the three purported supervisors, Ramiro (aka Alex), Rudy, and Elsa Puac, I find that the evidence submitted does not demonstrate that these three workers are supervisors. Under the SERA, it has been “consistently held that the criteria indicative of supervisory status are the authority to hire and discharge, to reprimand or discipline or otherwise to affect earnings, working conditions either directly or through effective recommendation.”<sup>432</sup>

Karen Merrell testified that she was the person to make decisions on hiring, disciplining, or discharging employees. She testified that each of the Puacs could bring her “facts” about employees, but that she would conduct an independent investigation and make a determination regarding discipline or discharge. Similarly, any employee could refer or recommend a potential hire to Karen Merrell, but she was the final decisionmaker. There is no showing of effective recommendation to hire, fire, or discipline employees, and I find that the three Puacs should not be excluded from the unit as supervisors.<sup>433</sup>

Even if they are not found to be supervisors, Local One contends that Ramiro, Rudy, and Elsa Puac have divergent interests from other proposed bargaining unit members and should be excluded from the unit as not sharing a community of interest with other bargaining-unit members. I find merit to this position. Ramiro, Rudy, and Elsa Puac all communicate directions to workers on behalf of Karen Merrell, and at least Ramiro and

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<sup>432</sup> *Warner Nursery*, 55 PERB ¶ 4403, at 4416-4417, quoting *W & M Manufacturing Corp*, 28 SLRB 403 (1965); *Auburn Memorial Hosp*, 37 SLRB 5, 14 (1974); *Rockhill Golf and Country Club, Inc*, 42 SLRB 41 (1979); *Dick Tucker d/b/a Valentine Music*, 43 SLRB 310, 311 (1980); *The Cricket Shop of Cedarhurst, Inc*, 46 SLRB 1 (1983).

<sup>433</sup> As asserted by Merrell Dairy, the only statutory supervisors at the farm are Karen Merrell and her husband.

Rudy Puac serve as a translator and link between Karen Merrell and rank-and-file workers. There was also testimony from Hernandez that employees consider the Puacs to be “supervisors” and felt that the Puacs have better terms and conditions of employment. While I have found that they are not supervisors as contemplated by the SERA, this testimony supports the idea that these “working foreman”<sup>434</sup> do not have the same interests as other workers. In sum, I find that the lead milkers (Ramiro Puac) and lead herdspersons (Rudy Puac and Elsa Puac) do not share a community of interest with other workers and are properly excluded from the unit.

I next address the status of office clerical employees, mechanics/field crop workers, and truck drivers. I find that office clerical employees are properly excluded from the unit. The Board has “consistently excluded employees who devote the greater part of their time performing clerical duties from units of non-clerical employees.”<sup>435</sup> Further, the office clerical employees here are not paid hourly, as all other petitioned-for employees are, and receive different time-off benefits. Although office clerical employees interact with other employees, interaction alone is insufficient to give office employees a shared community of interest with non-clerical employees.

With respect to truck drivers and mechanics/field crop workers, I find that these employees are properly excluded from the petitioned-for unit. Although the truck drivers and mechanics share some terms and conditions of employment with petitioned-for

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<sup>434</sup> See Tr, at 50 (Merrell).

<sup>435</sup> *Ben John Trading Co, Inc*, 39 SLRB 195, 196 (1976).



employees, they have distinct duties and qualifications for employment. These employees do not regularly interchange with other employees in the petitioned-for unit, and the fact that there are interactions between diverse employees is insufficient to support a finding of a shared community of interest. Moreover, no employees in these job classifications have expressed any interest in being represented or in collective bargaining. Thus, the desires of employees and extent of self-organization favors excluding these employees from the petitioned-for unit.<sup>436</sup>

Finally, I find that the requested exclusion of general farm workers whose principal duties consist of providing transportation to workers and/or cleaning break rooms, bathrooms, offices or worker housing is appropriate. As Karen Merrell testified, the “general farm worker” category is a “catchall category for various people that don’t fit in another such category.”<sup>437</sup> There is no showing of cohesion within the job description, and there appear to be two main subgroups included in the general farm worker category – workers who perform cleaning and transportation work (with some interchange between those two) and workers who perform more traditional agricultural work. Based on the distinct duties and functions of these two groups, I find it appropriate to exclude general farms workers who primarily clean and transport workers.

A review of the materials submitted in this matter establishes that Merrell Dairy has 44 employees in the unit found to be appropriate. The number of dues deduction

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<sup>436</sup> *A. Jacoby & Sons, Inc*, 3 SLRB 440, 450 (1939).

<sup>437</sup> Tr, at 67 (Merrell).

authorization cards submitted by Local One from members of the proposed unit exceeds 50 percent plus one of these members. Because Local One has submitted signed dues deduction authorization cards from a majority of employees in the unit found to be appropriate, it is eligible for certification without an election.<sup>438</sup>

**Certification of Representative and Order to Negotiate**<sup>439</sup>

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the SERA and the SERA Rules of Procedure, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested by the SERA;

IT IS HEREBY CERTIFIED that the UFCW District Union Local One has been designated and selected by a majority of the employees of Merrell Dairy, LLC, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and for all purposes authorized by § 705 of the SERA.

**Included:** All full time and regular part time agricultural workers employed by the Employer.

**Excluded:** Supervisors, family members of the Employer, office clerical employees, mechanics/field crops workers, truck drivers, lead milkers, lead herdspersons, general farm workers whose

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<sup>438</sup> In its statement of position, Merrell Dairy stated that “[u]pon information and belief, the purported signatures on the Union Cards obtained by the Union may not be valid” and requested that an independent review of the signatures be conducted. Statement of Position, at 2. I decline to compare the signatures to the list of signatures submitted by Merrell Dairy. There is no evidence that signatures are fraudulent, and thus no reason to conduct a signature comparison. Bare allegations made upon information and belief, without stating the source of the information or the basis of the belief, are insufficient to raise legitimate concerns regarding the signatures.

<sup>439</sup> Section 263.29 (a) of PERB’s Rules authorizes me to issue the certification in appropriate circumstances.

principal duties consist of providing transportation to workers and/or cleaning break rooms, bathrooms, offices or worker housing, and temporary workers.

FURTHER, IT IS ORDERED that Merrell Dairy, LLC shall negotiate collectively with the UFCW District Union Local One.

Dated at Albany, New York  
this 18th day of May, 2023

A handwritten signature in black ink, appearing to read "Sarah G. Coleman", followed by a long horizontal flourish.

Sarah G. Coleman, Acting Director  
Private Employment Practices  
and Representation