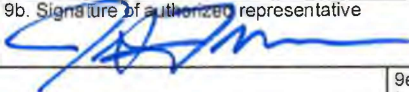


UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 13-RC-335172	Date Filed 2/6/2024

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position: Tempus AI, Inc.		1c. Business Phone: 312-638-8826	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code): 600 W Chicago Ave., #510 Chicago, IL 60654		1d. Cell No.: 608-438-5726	1f. e-Mail Address: Erik.Phelps@tempus.com
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) See attached.			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: See attached.		Excluded: See attached.	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility. None.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing. See attached.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at http://www.nlr.gov/what-we-do/conduct-elections/representation-case- (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s): March 6 & 7, 2024	8c. Time(s): 7-10 am and 2-5 pm	8d. Location(s): Training Room	
8e. Eligibility Period (e.g. special eligibility formula): Payroll period prior to election	8f. Last Payroll Period Ending Date: February 23, 2024	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input checked="" type="checkbox"/> Other (specify length) semi-monthly	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative Joseph Turner		9b. Signature of authorized representative 	9c. Date 02/13/24
9d. Address (Street and number, city, state, and ZIP code) Seyfarth Shaw LLP, 233 S. Wacker Drive, #8000 Chicago, IL 60606		9e. e-Mail Address jturner@seyfarth.com	
9f. Business Phone No.: 312-460-5972	9g. Fax No.: 312-460-7972	9h. Cell No.: 312-543-9424	

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**Attachment 1 to Statement of Position
Tempus AI; NLRB Case No. 13-RC-335172**

Section 3 – Employer’s Basis for Contending that the Proposed Unit Is Not Appropriate:

A. Overview of Employer’s Position

Tempus AI (“Tempus” or the “Employer”) contends that the unit petitioned for by the District Lodge 8, International Association of Machinists and Aerospace Workers, AFL-CIO (the “Union”) is inappropriate, as explained further in Section 4 below. The Union’s Petition seeks to include:

All full-time and regular part-time lab employees, including Clinical Lab Associates, Lead Clinical Lab Associates, Molecular Technologists, Lead Molecular Technologists, Histotechnologists, Lead Histotechnologists, Histology Assistants, Histology Associates, Pathology Lab Coordinators, Lab Operations Associates, Lead Lab Operations Associates, Inventory and Receiving Coordinators, Lead Inventory and Receiving Coordinators, Quality Control Technologists, Lab Automation Staff Scientists, Lab Automation Engineers, Lead Lab Systems Engineers, Extraction Coordinators, Facilities Associates, and Lab Operations and Quality Associates.

The Employer believes that the Petition properly seeks to include certain job classifications that actually have slightly differing names on the Employer’s payroll roster, including the following:

“Lab Operations Associates” = Lab Operations Associates, Lab Operations Asset Archivists, Lab Operations Associate - Asset Archivist, Lab Ops - Asset Archivist

“Lab Operations and Quality Associates” = Lead Lab Operations Associate, Lead Lab Ops - Asset Archivist, Quality Control Associate

However, the Union’s Petition appears to improperly exclude a number of employees who share an overwhelming community of interest with employees included in the petitioned-for unit, including the following:

Lab Automation Team

Application Scientists, Assay Implementation Scientists, Associate Engineer - Lab Automation, Associate Scientist - Lab Automation, Project Engineer - Lab Automation, Lab Documentation Specialists, and Process Documentation Specialists

PLC Team

Lead Pathology Lab Coordinators

Lab Support Team

Lead Quality Control Technologists

In addition, the Union’s Petition appears to improperly list the “Lead Lab Systems Engineer.” That job classification is a supervisory/managerial role within the Technology team.

Finally, as explained further in Section 6 below, the Employer will raise the following additional matters at hearing: (1) the Petition involves a mixed unit of professional and

nonprofessional employees, therefore, the professional employees must vote in a self-determination election; and (2) a manual election is appropriate.

B. The Bargaining Unit Must Include All Lab Automation, PLC, and Lab Support Employees, and Must Exclude the Lead Lab Systems Engineers

The employer contends that the petitioned-for unit is not appropriate because it must include all Lab Automation, PLC, and Lab Support employees. The excluded employees in each of those teams share an overwhelming community of interest with the employees in their respective teams, which are included in the proposed bargaining unit.

An appropriate unit under Section 9(b) of the National Labor Relations Act fundamentally must be (1) homogeneous, (2) identifiable, and (3) separate or sufficiently distinct. Under current Board precedent, the NLRB will approve a petitioned-for unit if it "(1) shares an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct." *American Steel Construction, Inc.* (372 NLRB No. 23). A party that contests whether a petitioned-for unit is appropriate bears the burden to demonstrate that there is an "overwhelming community of interest" between employees included in the unit and those employees who are excluded from the unit. *Id.* If the contesting party meets this burden, then excluded employees will be added to the petitioned-for unit.

Here, the employees who are excluded from the unit share an overwhelming community of interest with the employees who are included. The Union is not seeking the entire Chicago facility, or all professional employees in the facility, or all nonprofessional employees in the facility. Instead, it has arbitrarily excluded certain job classifications within certain teams. The employees in each team share common and interrelated work duties and locations, common supervision, and similar terms and conditions. They have frequent interaction and contact with each other, there are transfers and promotional opportunities from one position to another, and their work is part of the same process path.

Moreover, in fashioning overall or larger units, the Board is reluctant to leave a residual unit where the employees could be included in the larger group. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998); *International Bedding Co.*, 356 NLRB 1336, 1337 (2011); see also *United Rentals, Inc.*, 341 NLRB 540, 542 fn. 11 (2004) (only unrepresented employees at facility included in unit despite sparse record of community of interest). Here, the proposed unit would exclude a limited number of employees in each team, leaving a sparse record of community of interest among those who are excluded.

On the other hand, the Union's Petition must exclude the "Lead Lab Systems Engineer," based upon the above reasoning. That job classification sits within the Technology team. As such, the job classification does not share common and interrelated work duties and locations, common supervision, or similar terms and conditions with the other employees in the petitioned-for unit. In addition, it is a supervisory/managerial role pursuant to section 2(11) of the Act.

In summary, the petitioned-for unit is not an appropriate unit. The employees listed in Attachment C must be included, and the employee listed in Attachment D must be excluded.

Section 6 – Other Matters To Be Raised At the Pre-Election Hearing:

A. Professional Employees Must Vote in a Self-Determination Election

Section 9(b)(1) prohibits the Board from deciding that a unit including both professional and nonprofessional employees is appropriate, unless a majority of the professional employees vote for inclusion in such a mixed unit. *Leedom v. Kyne*, 358 U.S. 184 (1958). The procedural method for determining whether professional employees wish to be included in a unit with nonprofessional employees is a *Sonotone* self-determination election. See *Sonotone Corp.*, 90 NLRB 1236, 1241–1242 (1950); *Barnes-Hind Pharmaceuticals, Inc.*, 183 NLRB 301, 303 (1970); *Firestone Tire & Rubber Co.*, 181 NLRB 830, 833 (1970); *New England Telephone & Telegraph Co.*, 179 NLRB 527, 529–530 (1969).

The Employer contends that the following employees are professional employees:

- Lab Automation Team (including Application Scientists, Assay Implementation Scientists, Lab Automation Engineers, Lab Documentation Specialists, Process Documentation Specialists, Associate Scientists, and Staff Scientists)
- Histotechnologist II, III, and IV, including Leads,
- Pathology Lab Coordinator I, II, and III, including Leads, and
- Quality Control Technologist I, II, and III, including Leads.

As is true of other bargaining units, the professional unit cannot be an arbitrary segment of the professional employees. *Pratt & Whitney*, 327 NLRB 1213, 1215–1217 (1999); *General Electric Co.*, 120 NLRB 199, 203 (1958). For the reasons explained above, additional professional employees, including those in the Lab Automation Team (i.e., Application Scientists, Assay Implementation Scientists, Lab Documentation Specialists, and Process Documentation Specialists), the Pathology Lab Coordinator Leads, and the Quality Control Technologist Leads, must be added to the unit because they share an overwhelming community of interest with the professional employees in the petitioned-for unit.

B. A Manual Election is Appropriate

Tempus proposes an in-person election at its Chicago facility. The Board's long-standing policy is that representation elections should be conducted manually. None of the situations that normally suggest the propriety of using mail ballots are present here: (a) eligible voters are not "scattered" because of their job duties over a wide geographical area; (b) eligible voters are not "scattered" in the sense that their work schedules vary significantly, and they are present at a common locations at common times; and (c) there is no strike, lockout or picketing in progress. (See Section 11301.2 of the *Casehandling Manual Part Two, Representation Proceedings*). Varied work schedules, or duties away from the facility are best accommodated by extended voting hours, and scheduling the election when employees are at work or reside in the area. (See Section 11335.2 of the *Casehandling Manual Part Two, Representation Proceedings*). In this case, the vast majority of employees work out of or near Tempus's Chicago facility and would all be able to vote by simply extending the voting hours.

Tempus is able to provide for the safe conduct of a manual election. The Regional Director should order an election that follows the Board's strong and longstanding preference for in-person elections at the employees' workplace, where they can exercise their rights through the venerable and traditional mechanisms of manual balloting, while avoiding the detrimental effects of a mail-in election.