UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AIRWAY CLEANERS, LLC
Employer

and

UNITED CONSTRUCTION TRADES
AND INDUSTRIAL EMPLOYEES UNION (UCTIE),
LOCAL 621
Petitioner

Case No. 29-RC-099871

and

LOCAL 660, UNITED WORKERS OF AMERICA
Intervenor¹

and

LOCAL 32BJ, SERVICE EMPLOYEES
INTERNATIONAL UNION
Intervenor²

DECISION AND DIRECTION OF ELECTION

Airway Cleaners, LLC (“Airway” or “the Employer”) is engaged in providing cleaning and maintenance services at various airports, including John F. Kennedy International Airport (“JFK”) in Jamaica, Queens, New York. On March 8, 2013, the United Construction Trades and Industrial Employees Union, Local 621 (“Local 621” or “the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act

¹ Local 660’s motion to intervene was granted based on its current collective bargaining agreement covering certain Airway Cleaners’ employees “employed at JFK Airport.”

² Local 32BJ’s motion to intervene was granted based on a showing of interest among employees in the petitioned-for unit.
("the Act"), seeking to represent cleaners, maintenance employees and lead employees\(^3\) employed at Terminal 8 at JFK Airport. The employees at Terminal 8 include two subgroups: (1) approximately 130 employees who were hired in the fall of 2012 when the Employer successfully bid for a contract to clean American Airlines' airplanes, and (2) approximately 140 employees who were hired in March 2013, when the Employer obtained another contract with American Airlines, for cleaning the terminal building itself.

Before it won the two recent American Airlines contracts through the bidding process, the Employer already employed about 300 cleaning employees at various terminals in JFK Airport. Specifically, the Employer employed employees at Terminals 1, 4, 7 and 8, as well as some cargo buildings. As described in more detail below, the Employer and Local 660, United Workers of America ("Local 660") have a collective bargaining agreement in effect from 9/1/2012 to 8/31/2015, purportedly covering all of the Employer's employees at JFK Airport.

In response to the instant petition, the Employer and Local 660 contend that their current, airport-wide collective bargaining agreement has been applied to the petitioned-for new employees at Terminal 8, and that the agreement bars an election at this time under the Board's contractbar doctrine. The Employer and Local 660 further argue that the only appropriate bargaining unit is the airport-wide unit covered by their collective bargaining agreement. Although the Employer's attorneys resisted using the word "accretion" throughout the hearing, their characterization of the new employees in Terminal 8 as being automatically included in the contractual unit is, in essence, an

\(^3\) There is no contention that lead employees are supervisors as defined in the Act.
accretion argument. By contrast, the Petitioner contends that the petitioned-for unit limited to Terminal 8 is appropriate as a separate bargaining unit, and that Local 660’s contract has not been applied to Airway’s new employees hired at Terminal 8 pursuant to the new American Airlines contracts. Nevertheless, the Petitioner expressed willingness to proceed to an election in any unit(s) found appropriate by the Region. Local 32BJ, Service Employees International Union (“Local 32BJ,” another intervenor in the case), agrees with the Petitioner that an election should go forward at this time, although it did not take a position on the unit scope issue.

A hearing on these issues was held before Erin Schaefer, a Hearing Officer of the National Labor Relations Board (“the Board”). In support of its positions regarding the contract bar and unit scope issues, the Employer called seven witnesses to testify, including: Alfred DePhillips (chief operating officer), Merit Rizzuto (general manager of terminal cleaners, Terminal 8), Elizabeth Valentine (manager of aircraft cleaning, Terminal 1), Maurice Guercio (general manager of aircraft cleaning, Terminal 8), and Donald Matera (vice president of operations). The Petitioner, in support of its positions on those issues, called four witnesses to testify: three aircraft cleaners at Terminal 8 and the Petitioner’s secretary-treasurer, Dean DeLucia. Neither the incumbent (Local 660) nor Local 32BJ called any witnesses to testify.

Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the two groups of employees hired under the Employer’s new contracts with American Airlines at Terminal 8 are each separate, appropriate bargaining units. These two new groups of employees, more than
250 in number, almost doubled the Employer’s workforce at JFK Airport in the past several months, to more than 500 employees. Furthermore, each group of employees has its own supervisors and limited interchange with other employees. I conclude that these employees are not an accretion to the existing multi-terminal unit represented by Local 660 but, rather, distinct groups, each with their own identity. Thus, under well-settled Board law, Local 660’s collective bargaining agreement with the Employer bar cannot bar those employees from making their own choice as to union representation. I will therefore direct an election, in those two units.

FACTS

General description of Airway’s operations at JFK Airport

As noted above, the Employer provides cleaning and maintenance services at various airports, including JFK Airport. Services include cleaning the terminal buildings themselves (janitorial work) and cleaning inside the airplanes between flights. Employer-witnesses DePhillips and Matera generally explained the bidding process. Whenever airlines, terminal operators and other entities issue requests for proposals (RFPs) for cleaning contracts, Airway Cleaners and other companies submit competing bids. If the Employer succeeds in winning the bid, it will be notified in advance (e.g., 90 days in advance) of actually commencing the services. During a start-up interval, the Employer hires managers and employees in preparation for performing the contractual work. The record does not indicate how long the cleaning contracts typically last, but Matera testified that customers may cancel the contract with 30 days notice. Thus, as the following description of the Employer’s JFK operations indicates, a cleaning contractor’s
workforce may shrink and expand, depending on what contracts it has won or lost at various times.

Employer-witnesses Matera and DePhillips described the Employer’s current work at JFK pursuant to various cleaning contracts, as follows:

Terminal 1: Airway provides both janitorial and aircraft cleaning services under a contract with an (unnamed) intermediary “terminal operator” who, in turn, charges the respective airlines for the services. DePhillips stated that Airway has worked in Terminal 1 for several years. He did not know the current number of employees there, but estimated “maybe 200.” Elizabeth Valentine is manager of aircraft-cleaning at Terminal 1.

Terminal 4: Matera said that Airway also has relatively small contracts for some aircraft and terminal cleaning at Terminal 4. Another witness identified Maria Fernandez as the manager there.

Terminal 7: Airway provides aircraft cleaning only (not janitorial services) for United Airlines and other related airlines in Terminal 7. DePhillips estimated that Airway has worked in Terminal 7 for several years, and employs “less than 200” employees there. Rod (last name unknown) is the general manager for aircraft cleaning services in Terminal 7.

Terminal 8: Before Airway’s new contracts in Terminal 8 (which will be detailed separately below), Airway had a small contract with American Airlines, employing about four or five employees to clean the terminal carpets overnight. DePhillips stated that

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4 Aircraft cleaning crew leader Bibi Kamalodeen testified that Terminal 1 airlines include Lufthansa, Korean Air and Aero Mexico.
Airway had the carpet-cleaning contract for about two or three years, whereas Matera estimated the time as four years.

Airway also cleans airplanes for other airlines at Terminal 8, including Qatar, Air Berlin, Finn Air and Royal Jordanian. Matera described this contract as a third-party agreement with a ground-handling company. As described in more detail below, a crew of approximately 16 – 18 aircraft-cleaning employees based in Terminal 1 comes to Terminal 8 every day to clean aircraft for those four airlines. This is separate from the American Airlines aircraft-cleaning contract.

Finally, Matera testified that Airway employs a small number of employees in various cargo buildings known as Buildings 15, 21, 22 and 79.

There is no evidence that Airway has employees in Terminal 2, 3, 5 or 6 at the present time. However, Matera stated that Airway used to perform janitorial services in Terminals 2 and 3 until it lost the contract more than 10 years ago.

**Bargaining history**

A predecessor union, Local 116, Retail, Wholesale & Department Store Employees Union, UFCW ("Local116") was certified to represent some employees employed by Airway at JFK Airport in 2003. Specifically, in Case No. 29-RC-9947, Local 116 was certified to represent employees employed in Terminals 2 and 3, but expressly excluding employees in Terminal 1. (See Employer Exhibit 4.)\(^5\) Later that year, Local 116 and Airway signed a three-year collective bargaining agreement, effective from 9/1/2003 to 8/31/2006 (Er. Ex. 8). For some reason, even though Local 116 was

\(^5\) References to the record hereinafter will be abbreviated as follows: “Er. Ex. #” refers to Employer Exhibit numbers, and “Tr.#” refers to transcript page numbers.
certified for only Terminals 2 and 3 at JFK Airport, the parties expanded the contractual unit to include all employees at JFK Airport and LaGuardia Airport in Flushing, Queens, New York.

A year later, another union (Region 9A, United Automobile Workers) filed a petition to represent Airway’s employees at LaGuardia Airport, in Case No. 29-RC-10185. In that case, the Employer and Local 116 contended that their 2003-2006 contract described above (covering employees at both JFK and LaGuardia) served as a bar to processing Region 9A’s petition in 2004. However, despite the testimony of Local 116 then-president Vincent Sombrotto, the Agency found that the contract had not been applied to Airway’s employees at LaGuardia, and directed an election. Region 9A was later certified to represent Airway employees at LaGuardia Airport. (Er. Ex. 5).

Then in 2006, apparently a few days after Local 116 and the Employer signed a 2006 – 2009 contract covering all employees at JFK Airport (Er. Ex. 7), an Airway employee at JFK filed a decertification petition in Case No. 29-RD-1073. Once again, the parties’ contract was urged as a bar. According to the Decision and Order in that case (Er. Ex. 3), the employee-petitioner testified that he was on the union’s negotiating committee; that the Employer and Local 116 claimed to “finalize” their agreement behind

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7 The Employer introduced various NLRB documents, including the certification in Case No. 29-RC-10185 (Er. Ex. 5) in support of its claim that the Petitioner’s predecessor union, Local 116, historically represented airport-wide units. (Tr. 439: “[T]he bargaining unit set forth in [the contract] has been certified by the Region numerous times.”) However, as the above description indicates, Local 116 was initially certified to represent employees only in JFK Terminals 2 and 3, expressly excluding Terminal 1. Local 116 and the Employer’s subsequent attempt to extend a “contract bar” to employees at LaGuardia Airport, without giving those employees a chance to choose their own representative, was rejected.
his back when he went to the bathroom during a negotiation session; but that, to his knowledge, no contract had been executed when he filed the decertification petition on 11/2/2006. However, Sombrotto testified that he had met Al DePhillips in a parking lot at an unidentified location a few days before the petition was filed. The contract (Er. Ex. 7) shows the date “10/31/2006” hand-written next to each signature. The Regional Director, unable to conclude that the contract was not signed before the petition was filed based on the record in that case, found the contract to bar an election at that time and dismissed the petition.

The 2006 – 2009 contract between the Employer and Local 116 (Er. Ex. 7) was then followed by a 2009 – 2012 contract (Er. Ex. 6), again covering all employees at JFK Airport. However, during the latter contract, there was a three-way agreement signed by the Employer (Matera), Local 116 (Sombrotto) and Local 660 (Gilberto Mendoza) in November 2010, admitted into evidence in the instant case as part of Er. Ex. 11. Specifically, the Employer agreed to recognize Locals 116 and 660 as joint representatives of the existing unit. Then, in March 2012, Sombrotto sent a letter to the Employer, disclaiming Local 116’s interest in further representing the unit, leaving Local 660 as the “surviving union entity” representing Airway’s JFK employees. (Er. Ex. 11). Thus, by the time that the subsequent 2012 – 2015 collective bargaining agreement was signed, Local 116 was no longer a party to this relationship. The parties’ current agreement, proffered as a bar in the instant case (Er. Ex. 1), was signed only by Local 660 (Mendoza) and the Employer (Matera). The unit description includes all employees employed by Airway at JFK Airport.
In short, the bargaining history shows that, although Local 116 was initially certified in 2003 to represent Airway employees only in JFK Terminals 2 and 3, the Employer and Local 116 (and then Local 660) have used airport-wide unit descriptions in their contracts since then. The Employer and Local 660 claim that their current contract has been applied to all of Airway's employees employed at JFK Airport, which specifically included Terminals 1, 4, 7 and 8 at the time of the hearing.

**Airway Cleaners' successful bid for aircraft cleaning work at Terminal 8**

As noted above, Airway has employed a small group at Terminal 8 for the past few years, specifically four or five employees cleaning carpets there overnight. In addition, a crew of 16 to 18 employees based in Terminal 1 comes every day to clean aircraft for four specific airlines at Terminal 8. However, in addition to those small groups, the Employer's workforce has increased substantially in recent months under its two new American Airlines contracts at Terminal 8.

Late last summer (2012), Airway Cleaners was notified about winning the bid to clean American Airlines' aircraft at Terminal 8, according to Matera. The general manager in charge of the aircraft-cleaning operation in Terminal 8, Maurice Guercio, testified that he was hired in September 2012, during this operation's "start-up" period. Guercio stated that he first focused on hiring his "leadership staff," i.e., the managers and supervisors who work under him. Neither he nor his leadership staff had worked for Airway before. They have offices in Terminal 8.

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8 For example, the Employer's payroll records (Er. Ex. 9) indicate that manager Mike Frucchione started his employment on 10/15/2012. Guercio also mentioned hiring team leaders, but there is no dispute that leaders are non-supervisory employees.
Guercio further stated that Airway's hiring office hired the rank-and-file cleaners, although he himself participated in some interviews. Approximately 120 cleaners and 12 crew leaders were hired pursuant to the aircraft-cleaning contract. The record indicates that the Employer hired most employees in late October or early November 2012.9

Matera testified generally that whenever the Employer successfully bids for new work, it can either hire brand-new employees “off the street” or transfer existing Airway employees to the new job. According to the Employer’s payroll records (Er. Ex. 9) for the American Airlines aircraft-cleaning contract, fewer than 10 of the approximately 130 non-supervisory employees had a “hire date” earlier than October 2012, presumably indicating that they worked for Airway Cleaners elsewhere before joining the Terminal 8 aircraft-cleaning job. In other words, the record seems to indicate that virtually all of the aircraft cleaners working under the American Airlines contract at Terminal 8 were new to Airway.

The record indicates that aircraft-cleaning employees work in crews or teams. For example, the three witnesses called by the Petitioner -- Alice Cotten, Divontae Lee and Odessa Cannon -- work together on a crew, along with Agne, Julie, a driver named Victor and a crew leader also named Victor (last names unknown). Cotton testified that her crew usually cleans seven planes per day, including the seats, kitchen areas and

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9 Three aircraft cleaners (Alice Cotton, Divontae Lee and Odessa Cannon) testified that they were hired in late October or early November 2012, around the time of Hurricane Sandy. For some reason, the Terminal 8 aircraft cleaners do not appear on the Employer’s payroll records (Er. Ex. 9) until January 2013. Specifically, the records for the pay period ending on 1/20/2013 show a new category of employees with their “home dept.” labeled as “AAJFK9,” which Matera said stands for American Airlines JFK 9. There is no Terminal 9 at JFK Airport, but Matera said that the Employer uses that particular department code to distinguish those employees from “AAJFK8,” which refers to the American Airlines Terminal 8 janitorial contract. There are 141 people listed in the AAJFK9 category, including managers (Guercio, Frucchione, etc.) and cleaners.
bathrooms. They also restock supplies in each plane. Their work also includes some security-related tasks. For example, Cannon stated that they have been trained to keep an eye out for weapons while they clean.

All new employees receive general training from the Employer. There is security training known as SIDA (for “Secure Identification Display Area”), which is required to get a SIDA badge allowing access to certain secure areas of the airport.¹⁰ There are also video tapes showing how to clean airplanes properly. New employees watch the SIDA training and the cleaning video tapes in a building known as Building 14 at JFK Airport.

In addition, employees who clean American Airlines planes also receive special training via an American Airlines video presentation. Cannon testified that she and other cleaners watched the American Airlines training tape in a room in Terminal 8, near the management offices of American Airlines and Airway Cleaners. General Manager Guercio explained that American Airlines has its own requirements for security on its international flights. Airway employees cannot clean American Airlines’ planes unless they have undergone this special training.

As stated above, Guercio was hired in September 2012, during the start-up period of the American Airlines aircraft-cleaning contract. He testified that his “leadership staff” included managers Rob Milano and Mike Frucchione, and supervisors Isabel Colon, Rafael Gutierrez, Carlos Marte, Sevelli Uribe, Donna Wellington and Nick Williams. Aircraft-cleaning employees Lee and Cannon testified that they get their day-

¹⁰ DePhillips testified that most (but not all) employees also have a Customs seal on their badge, allowing them to clean in the U.S. Customs areas of the airport and in international airplanes. As explained below, janitorial employees who work in the non-secure areas of the airport do not necessarily have to pass such rigorous background checks.
to-day instructions from their crew leader or one of the dispatchers. Although they did not know the names of all the supervisors and managers, they identified “Donna” and “Sevelli” as supervisors (presumably Wellington and Uribe), and Cannon identified “Rob” (Milano) and “Maurice” (Guercio) as “the big bosses.”

**Airway Cleaners’ successful bid for janitorial work at Terminal 8**

In March 2013, the Employer started providing services under another contract with American Airlines, specifically providing janitorial cleaning services inside the Terminal 8 building itself.

Witness Dean DeLucia, who is the secretary-treasurer of Local 621 (the Petitioner) testified that another company, Kimco, used to have a contract to clean JFK Terminal 8. Local 621 had a collective bargaining agreement covering more than 100 cleaning employees employed by Kimco in Terminal 8. However, Kimco’s cleaning contract expired on February 28, 2013, and Airway Cleaners started its contract on March 1, 2013. Matera testified that Airway Cleaners hired some of Kimco’s former employees at Terminal 8, although he did not know how many.11

Employer-witness Merit Rizzuto, who used to work for Airway at various terminals, became general manager of the Airway’s janitorial services at Terminal 8 on March 1, 2013.12 Similarly, one Airway manager who works under Rizzuto now, Sandra

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11 DeLucia noted that American Airlines’ contracts at Terminal 8 are “staggered” in time. As the record indicates, the aircraft-cleaning contract started in the fall of 2012, whereas the terminal-cleaning contract started in March 2013. Although Airway currently has both contracts with American Airlines, there have been times when two different cleaning contractors/employers (e.g., Kimco and Airway) have had separate contracts with American Airlines. Thus, DeLucia noted, janitorial cleaners and aircraft cleaners in Terminal 8 have some bargaining history of representation by different unions in separate bargaining units.

12 Rizzuto now supervises both sets of janitorial employees at Terminal 8, that is, the small group of carpet-cleaners and the new, larger group of terminal cleaners.
Lugo, transferred from Terminal 1 to 8. Rizzuto testified that there are other (unnamed) managers and supervisors who work under her at Terminal 8.

Rizzuto’s office is located on the second floor of Terminal 8. She testified that she has an Airway vehicle, which she parks at Terminal 8 when she reports there in the morning. She can use the vehicle to drive between terminals, at least theoretically, but she also stated that she has not had time to leave Terminal 8 since becoming the manager there on 3/1/2013.

Rizzuto testified that she was personally involved in hiring the approximately 140 employees who were hired in March 2013 under the new Terminal 8 janitorial contract. At the time of the hearing, she was planning to hire about 10 more employees, for a total of 150. Rizzuto testified that all the cleaning employees were new hires. Other than manager Lugo, she did not recall any incumbent Airway employees being transferred from other terminals. Matera further described the hiring process under the new Terminal 8 cleaning contract, specifically that applicants were recruited and screened by a non-profit group called the Council for Airport Opportunity. Matera testified that the Council held a job fair, Rizzuto and her team conducted group interviews of applicants there. Rizzuto made the final decision regarding hiring.

Rizzuto testified that she also has authority to discipline and discharge the employees that she manages, although she notifies Matera of her decision. According to Rizzuto, Matera works at the Employer’s office in Rockville Center, New York, and comes to JFK only “if needed.”
Finally, Rizzuto testified that all employees hired under the American Airlines Terminal 8 cleaning contract received SIDA training. However, they did not receive the additional training from American Airlines that the aircraft-cleaning employees receive.

**Additional information about the hiring process**

As the description immediately above indicates, the Employer sometimes hires new employees to work under a specific contract, such as Rizzuto’s hiring employees under the American Airlines janitorial contract at Terminal 8. The record also indicates that, on other occasions, the Employer engages in general hiring and training of new employees before it decides where to assign them. In part, this is because the background check may take a while, and the Employer may not know where it will need to assign a cleaner at the time when the process is completed. Matera also testified that Airway’s hiring office assigns new employees based on their experience (janitorial versus aircraft cleaning) and “where the need is.”

For example, Divontae Lee testified that when he applied for a job with Airway and was fingerprinted, he was told it would be a long process. After a waiting period (unspecified), he passed the background check and was sent to the SIDA training in Building 14, along other new Airway hires. It was not until after the SIDA training that he was assigned to clean American Airlines planes in Terminal 8. Similarly, Cannon testified that she applied for a job at the office Airway at Terminal 1 in the summer of 2012; that she had to wait for a few months; that Airway finally contacted her to take the SIDA training; that she took the SIDA training with about 15 other new hires, some of whom were later assigned to work in Terminal 7; and that she was assigned to the job in
Terminal 8 after the SIDA training. She then received the additional training specific to American Airlines in Terminal 8.

**Supervision**

As described above, the Employer has separate managers and supervisors at the various JFK terminals. The Employer’s chief operating officer, Alfred DePhillips, who was the first witness to testify, testified generally that employees have different supervisors at the different locations. Subsequent testimony identified the general managers as follows:

- **Terminal 1** – Elizabeth Valentine
- **Terminal 4** – Maria Fernandez
- **Terminal 7** – Rod (last name unknown)
- **Terminal 8, aircraft cleaning** – Maurice Guercio
- **Terminal 8, janitorial** – Merit Rizzuto

Vice president Matera, who was the last Employer-witness to testify, gave two reasons why Airway has separate managers and supervisors at each terminal. First, the “real estate” at the airport is too limited to allow Airway to have one big, centralized suite of offices. Instead, Airway has relatively small offices at each terminal where it has contracts. Second, Matera testified that each customer requires Airway to devote a certain level of supervision or “resources” to its account presumably to ensure quality.

Matera’s office is located in Rockville Center, New York. The record indicates that he comes to JFK Airport only “as needed.” (Witnesses did not estimate how often.)
Extent of interchange among different groups of employees

DePhillips stated initially that Airway employees at JFK Airport go between the various terminals, such as when they must cover “call outs.” However, he did not give any specific examples to support this testimony.

The three employee-witnesses called by the Petitioner Local 621 -- who were hired in late October or early November 2012 -- all testified that they had worked on cleaning airplanes only in Terminal 8. In their approximately five months of employment before the hearing, Airway had never assigned them to work in other JFK terminals. Cotton further stated that she never performed other work, such as janitorial work, even within Terminal 8.

On the second day of hearing, the Employer brought more witnesses to testify about employee interchange.

One aircraft-cleaning crew working at Terminals 1 and 8 on a daily basis

As mentioned above, a crew of 16 to 18 employees based in Terminal 1 comes every day to clean aircraft for four specific airlines at Terminal 8, including Qatar, Air Berlin, Finn Air and Royal Jordanian. Crew leader Bibi Kamalodeen specifically described her typical work day between the two terminals as follows. First, she checks in at Terminal 1 and punches a time card there. She keeps some belongings in a locker in Terminal 1, and generally eats lunch there. She goes through a security scan before heading to the aircraft areas in Terminal 1. She and her crew clean 4 or 5 airplanes consecutively in Terminal 1, then an Airway driver drives them in a van to Terminal 8. It

13 Matera described this contract as a “third-party agreement” with a ground-handling company, separate from the American Airlines aircraft-cleaning contract at Terminal 8.
is a five minute ride between those two terminals. Because crew members have already passed through security at Terminal 1, they do not need to go through security again at Terminal 8. Rather, the driver drives them directly to the relevant aircraft areas in Terminal 8. The same SIDA badge allows them to enter the secure areas there. The crew then cleans 4 planes at Terminal 8, for a total of 8 or 9 planes per day. Kamalodeen testified that she ends her day back at Terminal 1. Kamalodeen’s crew members clean planes only for the four airlines mentioned above (Qatar, etc.). They do not clean American Airlines planes at Terminal 8, and they do not perform janitorial cleaning in the building there. Kamalodeen identified her supervisors as Corinne Ward and Kimberly Angel.

Employer witness Elizabeth Valentine is the manager who oversees the aircraft cleaning work at Terminal 1. She testified that she and her local supervisors oversee five crews at Terminal 1, including the crew that spends half its time at Terminal 8 (i.e., Kamalodeen’s crew). Valentine confirmed that there are different supervisors for the different terminals. The supervisors who work under her in Terminal 1 (presumably Ward and Angel) supervise the aircraft cleaners when they go to Terminal 8. By contrast, the Terminal 8 aircraft-cleaning supervisors (who work under Guercio and his managers on the American Airlines planes) do not supervise the crew from Terminal 1. 14 Furthermore, Valentine testified that the crew members who travel from Terminal 1 to Terminal 8 do not clean American Airlines planes. Although new aircraft-cleaning

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14 When the Employer’s attorney started to ask whether the managers at Terminal 8 supervise Kamalodeen’s crew, Valentine interjected: “No, no. Terminal 8 supervisors are Terminal 8. My supervisors [at Terminal 1] are my supervisors. They’ll take care of those four aircraft. They have nothing to do with American and Terminal 8.” (Tr. 341)
employees at Terminals 1 and 8 initially receive some of the same general training, the
Terminal 8 employees who clean American Airlines planes receive further training
specific to that job, and only those who have had the specific training may clean
American Airlines planes.

Terminal 8 aircraft cleaners helping at Terminal 4

As noted above, Maurice Guercio is the aircraft-cleaning manager at Terminal 8.
Guercio gave one specific example of assigning his Terminal 8 aircraft-cleaning
employees to help at other locations. Specifically, the week before the hearing, six
Terminal 8 aircraft cleaners were sent to help aircraft cleaners at Terminal 4 because two
airplanes arrived there at the same time. The Airway manager at Terminal 4, Maria
Fernandez, asked if Guercio could send some cleaners to help because she was “backed
up.”

General or hypothetical testimony re: interchange between terminals

Guercio also testified that “if” he borrowed an employee from Valentine at
Terminal 1 to help clean American Airlines aircraft, the person would be required to have
the additional security training for American’s international flights. However, Guercio
did not actually state that he had done so, and Valentine stated that her aircraft-cleaning
employees from Terminal 1 have nothing to do with American Airlines. Thus, it appears
that Guercio may have been speaking hypothetically on that particular point.

Guercio further stated that, since his employment began in September 2012, he
has not interacted with managers from other terminals every day, but only “as needed.”
Nevertheless, he testified that because of weather-related backups and air-traffic control

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issues shortly before the hearing ("lately"), his employees had helped out other groups more frequently than before, about three or four times per week.

Both Rizzuto and Valentine testified generally that they do not talk to managers at other terminals on a typical day, but rather, only as needed. They did not estimate how often this happens, or give any other specific examples.

**Different groups of employees helping each other within Terminal 8**

John Venuto works as a driver at Terminal 8. In addition to SIDA training and some driver-training, he also received training in how to clean American Airlines planes and other planes. Venuto testified that he has cleaned American Airlines planes and other planes at Terminal 8 (i.e., helping Kamalodeen's crew clean the Royal Jordanian and Qatar planes). Venuto did not state how often this occurs. 15

Three Employer-witnesses (Rizzuto, Guercio, and Venuto) testified that driver Venuto and some aircraft-cleaning employees at Terminal 8 helped the janitorial employees at Terminal 8 the week before the hearing. Specifically, because of a special event involving a Congressional Medal of Honor winner, Rizzuto asked Guercio if he could spare some employees, and Guercio said yes. The extra employees helped to move chairs and to clean the floor under the chairs. Venuto testified that he helped clean Terminal 8 about three times.

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15 Venuto also testified initially that "we" had worked in Terminal 1 and 7 several times during his employment (Tr. 295-6). However, he later clarified that he had never cleaned inside Terminals 1 or 7: "Not me personally, but I know people that have."
Wages and benefits; other community of interest factors

The Employer's witnesses testified generally that the 2012 – 2015 collective bargaining agreement between the Employer and Local 660 (ER. Ex. 1) has been applied to all Airway's employees at JFK Airport, including the new employees at Terminal 8.\(^{16}\)

The record indicates that the aircraft cleaners at Terminal 8 earn $7.65 per hour, which is the minimum rate under the agreement. Venuto earns $9.65 per hour, which is the contractual rate for drivers. Kamalodeen earns $9.27 as an aircraft cleaning crew leader, which is higher than the contractual minimum.

The record also generally confirms that Terminal 8 employees received time-and-a-half for working on certain holidays as specified in the contract, including Thanksgiving and Christmas in 2012. For some reason, employees who worked on Presidents’ Day in 2013 did not receive holiday pay. (Local 660 filed a grievance over this departure from the contract.) Finally, the record indicates that the parties’ contract provides paid vacation time after a year of employment. The three Terminal 8 aircraft cleaners who testified were hired in the fall of 2012, and were not yet eligible for paid vacation leave at the time of the hearing. Kamalodeen, who has worked at Terminal 1 for more than three years, testified that she gets paid vacation time.

The Employer distributes paychecks to employees at their respective terminals.

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\(^{16}\) This section of the Decision describes Local 660’s contract only for the purpose of showing whether employees at different terminals have the same wages, benefits and other terms and conditions of employment. Given my ultimate conclusion that the employees hired at Terminal 8 under Airway’s new cleaning contracts with American Airlines cannot be considered a mere “accretion” to the existing multi-location unit, I need not determine the extent to which the contract has been applied to those employees for contract-bar purposes. Thus, the testimony regarding whether dues were deducted from employees’ paychecks, whether Terminal 8 employees even knew they were in a unit represented by Local 660, whether any shop stewards were elected, and whether Local 660 pursued any grievances, will not be described in detail herein.
Witnesses testified that the Employer has a lunch room or break room at each terminal. Specifically, Cotton testified that the room at Terminal 8 is also where employees punch in, and wait for their assignment from the dispatcher. Venuto also testified that there is a time clock in the break room at Terminal 8. Sometimes Venuto eats in the break room; other times he goes to fast-food places in the nearby food court. There is no evidence that different groups of employees interact with each other in the lunch room. For example, Cotton and Cannon (both airplane cleaners in Terminal 8) stated that they do not each lunch with Airway’s terminal-cleaners in Terminal 8. Kamalodeen (whose crew is based in Terminal 1 but also cleans planes at Terminal 8) testified that she does not eat in the Terminal 8 lunch room but, rather, returns to Terminal 1 for lunch. Manager Valentine confirmed that employees have their own break room and locker room at Terminal 1.

There seems to be no dispute that Airway’s employees wear the same uniform, consisting of tan or khaki pants plus blue shirts with the Airway’ logo.

The parties’ positions

As noted above, the Employer and Local 660 contend that their current, airport-wide collective bargaining agreement has been applied to the petitioned-for new employees at Terminal 8, and that the agreement bars an election at this time. The Employer and Local 660 further argue that the only appropriate bargaining unit is the airport-wide unit covered by their collective bargaining agreement. Although the Employer’s attorneys resisted using the word “accretion” throughout the hearing, their

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17 The parties did not file post-hearing briefs in the instant case. Thus, this section of the Decision summarizes the positions they took verbally at the hearing.
characterization of the new employees in Terminal 8 as being automatically included in the contractual unit is essentially an accretion argument.

By contrast, the Petitioner contends that the petitioned-for unit limited to Terminal 8 is appropriate as a separate bargaining unit, and that Local 660’s contract has not been applied to Airway’s new employees hired at Terminal 8 pursuant to the new American Airlines contracts. Nevertheless, the Petitioner expressed willingness to proceed to an election in any unit(s) found appropriate by the Region.

Intervenor Local 32BJ agrees with the Petitioner that an election should go forward at this time, although it did not take a position on the unit scope issue.

DISCUSSION

The Board has defined an accretion as “the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit employees and have no separate identity.” Safety Carrier, Inc., 306 NLRB 960 (1992). In assessing a claim of accretion, the Board weighs such factors as interchange of employees, common supervision and working conditions, functional integration of operations, centralization of management and administrative control, similarity of duties and skills, and bargaining history. The Board has identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. Towne Ford Sales, 270 NLRB 311, 311–312 (1984), enf’d. 759 F.2d 1477 (9th Cir. 1985). The Board also considers the relative size of the groups in question. A relatively large number of employees cannot be accreted to an existing, smaller unit. Special Machine & Engineering, Inc., 282 NLRB 1410 (1987); Nott Co., 345 NLRB 396, 400 (2005).
Where employees are found to be an accretion to an existing unit, they are automatically considered to be part of the unit covered by the contract, and therefore a contract covering them may bar the processing of a representation petition. *Firestone Synthetic Fibers Co.*, 171 NLRB 1121 (1968); *Public Service Co.*, 190 NLRB 350 (1971). Conversely, where a new group of employees has a separate identity sufficient to constitute a separate, appropriate bargaining unit, the Board finds no accretion and directs an election in the separate unit. *Staten Island University Hospital*, 308 NLRB 58 (1992).

The Board follows a particularly restrictive policy in accreting employees to an existing bargaining unit, since it precludes those employees from exercising their right to free choice regarding union representation. *Towne Ford Sales*, *supra*. Thus, accretion is not warranted unless the additional employees in question have an “overwhelming” community of interest with the existing unit, such that they have “little or no separate group identity,” and could not constitute a separate appropriate bargaining unit. *Safeway Stores, Inc.*, 256 NLRB 918 (1981); *Local 144, Hotel, Hospital, Nursing Home & Allied Services Union v. NLRB*, 9 F.3d 218, 223, 144 LRRM 2617, 2620 (2nd Cir. 1993). In practical effect, a party seeking to prove accretion faces a heavy burden. *Bay Shipbuilding Corp.*, 263 NLRB 1133, 1140 (1982), *enfd.* 721 F.2d 187 (7th Cir. 1983).

In the instant case, I find that the two groups of employees hired under the Employer’s new contracts with American Airlines at Terminal 8 are not a mere accretion to the existing multi-terminal unit represented by Local 660 but, rather, distinct groups with their own identity.
The record clearly indicates that Airway's two new groups at Terminal 8 have separate local supervision, with very little centralized control by Airway's upper management. For the aircraft-cleaning group, there is general manager Maurice Guercio, then two managers working under him, and six supervisors working under the managers. For the janitorial group, there is general manager Merit Rizzuto, and the various managers and supervisors working under her. Rizzuto testified that she herself hired all the janitorial employees in March 2013, and that she has authority to discipline and discharge them, although she notifies Donald Matera of her decisions. Likewise, Airway employees at other locations have their own supervisors, such as Elizabeth Valentine at Terminal 1. In fact, when Valentine was asked whether Terminal 8 supervisors oversee the aircraft-cleaning crew that travels from Terminal 1 to Terminal 8 each day, she responded: "No, no. Terminal 8 supervisors are Terminal 8. My supervisors are my supervisors.... They have nothing to do with American and Terminal 8." All three managers who testified (Guercio, Rizzuto and Valentine) said they do not talk to other managers on a day-to-day basis, but only as needed. Furthermore, neither DePhillips nor Matera disputed the existence of separate supervision. In fact, Matera explained that Airway's customers require a certain level or supervision or "resources" devoted to their accounts.

Furthermore, the Employer submitted little to no evidence of centralized management. Witnesses testified that Matera, who works at Airway's office in Rockville Center, comes to JFK Airport only "as needed." There was no evidence of upper management's involvement in any inter-terminal matters, such as employee transfers.
Although Matera testified that the Employer may transfer existing Airway employees when the company successfully bids for new work, the record shows few such permanent transfers. For the American Airlines aircraft-cleaning contract, Guercio and his “leadership” staff were all new to the company. The payroll records show that fewer than 10 of the aircraft-cleaning employees had a “hire date” earlier than October 2012. On the janitorial contract, Rizzuto and one manager were transferred from other Airway locations. Otherwise, all the employees hired under the American Airlines the terminal-cleaning contract in March 2013 were new to Airway. Rizzuto did not recall a single Airway employee being transferred to Terminal 8 for that new job.

Moreover, the record demonstrates only limited temporary interchange among the various groups of employees. As noted above, the Petitioner’s three employee-witnesses testified that they cleaned airplanes only in Terminal 8. There was no evidence that the Employer assigned them to clean airplanes in other terminals. Admittedly, the record contained a few specific examples of employees working at different terminals, such as (1) when Guercio sent Terminal 8 aircraft cleaners to helped clean planes at Terminal 4 due to a “backup” there, and (2) when Guercio allowed Terminal 8 aircraft cleaners to help clean part of the Terminal 8 building before the Medal of Honor event. However, considering the total number of Airway employees at JFK Airport (more than 500), those few examples do not show a sufficient level of interchange to negate the separate identity of each group. Even the aircraft-cleaning crew that travels between Terminals 1 and 8 every day (to clean planes of Qatar and other airlines) maintains its own identity, with its own supervisors from Terminal 1. Notably, that crew does not clean American Airlines planes at Terminal 8. Only employees who have received specific training may clean
American Airlines planes. This fact further underscores the separate identity of that group.

As for bargaining history, the record shows that the Employer had a bargaining relationship with Local 116 since 2003, then recognized Locals 116 and 660 as “joint representatives” for over a year (late 2010 to early 2012), and then bargained only with Local 660 for the current contract (2012-2015). However, the record does not support the Employer’s assertion that the parties’ airport-wide bargaining unit has been “certified by the Region numerous times.” Rather, as described in detail above, Local 116 was originally certified to represent employees only in Terminals 2 and 3, expressly excluding employees in Terminal 1. When the parties later attempted to expand the unit to all Airway employees at JFK and LaGuardia airports, the Region rejected their efforts and directed an election in a separate, petitioned-for unit of LaGuardia employees in 2005. Thus, although it is true that the parties have had contracts with airport-wide unit descriptions since 2003, and that Local 660 currently represents Airway employees at multiple terminals in JFK, the bargaining history is not a model of consistency upon which the Board can rely in making a unit determination. Furthermore, as the Petitioner has noted, there is no bargaining history of aircraft cleaners and terminal cleaners being represented in the same unit at Terminal 8, since Kimco’s janitorial employees were previously represented in a separate unit by the Petitioner. Finally, the history of Local 660’s representation of the new groups at Terminal 8 (at the earliest, since fall 2012 for aircraft cleaners, and March 2013 for terminal cleaners) is too brief to negate the separate identity of those groups. Los Angeles Bonaventure Hotel, 235 NLRB 96 (1978) (Board attaches little weight to “negligible” bargaining history).
As noted above, the Board also compares the number of new employees sought to be “accreted” to the size of the existing represented unit. Safety Carrier, Inc., 306 NLRB 960 (1992)(must be “relatively small”). A large number of employees cannot be accreted to an existing, smaller unit because of concern over the incumbent union’s continued majority status. Special Machine & Engineering, Inc., 282 NLRB 1410 (1987); Nott Co., 345 NLRB 396, 400 (2005). The record in the instant case shows that, before the Employer won the two recent American Airlines contracts at Terminal 8, the Employer employed about 300 cleaning employees at various terminals in JFK Airport. The Employer then hired about 130 non-supervisory employees pursuant to the aircraft-cleaning contract, and then another 140 to 150 pursuant to the terminal-cleaning contract. Thus, these two new groups of employees, at least 270 in number, almost doubled the Employer’s workforce at JFK Airport in the past several months. Although the number of new employees in Terminal 8 does not exceed the number of employees in the pre-existing unit represented by Local 660 (which might cause a loss of majority status), I find that the large number is nevertheless a factor weighing against finding an accretion.

In this case, the Employer did not simply increase the number of employees working under its prior contracts, as part of ordinary fluctuations in its work at JFK Airport. Instead, the Employer’s new contracts with American Airlines entailed a dramatic increase in its workforce there. The large number of these new hires serves to underscore their identity as separate, out-of-the-ordinary additions to the workforce. To accrete such a large number of employees to an existing unit would undermine the spirit of the Board’s rigid accretion policy.
Finally, the fact that new employees in Terminal 8 may have the same working conditions as Airway employees in other terminals -- caused by the Employer's application of the Local 660 contract -- carries little weight in this case. At best, it would be tautological to say that the Employer should be allowed to treat those groups as an accretion because it has already chosen to treat them as an accretion. This bootstrapping approach would allow the Employer free rein to deny a separate identifiable unit of employees their Section 7 right "to bargain collectively through representatives of their own choosing." The Employer's self-help could be seen as a conscious attempt to "create" an accretion in order to avoid bargaining with another union in a separate unit, and therefore cannot be given weight in assessing whether there was a "normal" accretion. See Safeway Stores, supra, 256 NLRB at 919 (Board gives little weight to factors "consciously manipulated" by employer to create an accretion, in effort to avoid higher rates of another union).

In sum, based on all the foregoing, especially each group's separate supervision and the limited interchange among employees, I find that the petitioned-for employees at Terminal 8 do not constitute a mere accretion to the existing, multi-terminal unit represented by Local 660. Rather, I find that each group constitutes its own separate, appropriate unit for collective bargaining purposes. Thus, under well-settled Board law, Local 660's collective bargaining agreement with the Employer bar cannot bar those employees from making their own choice as to union representation. Inasmuch as the Petitioner has indicated its willingness to proceed in any unit(s) found appropriate, I will direct an election below, in those two separate units.

CONCLUSIONS AND FINDINGS
Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. All of the Hearing Officer’s other rulings are free from prejudicial error and hereby are affirmed.

2. The record indicates that Airway Cleaners, LLC, a domestic limited liability company, with its principal office and place of business located at 15 Clinton Avenue, Rockville Center, New York, is engaged in providing cleaning and maintenance services to entities in the airline industry. The parties stipulated that during the past year, which period represents its annual operations generally, the Employer purchased and received at its Rockville Center, New York facility, goods and supplies valued in excess of $50,000 directly from points located outside the State of New York.

   Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that the following three organizations are all labor organizations as defined in Section 2(5) of the Act: United Construction Trades and Industrial Employees Union, Local 621; and Local 660, United Workers of America; and Local 32BJ, Service Employees International Union. They each claim to represent certain employees of the Employer.

4. As discussed above, I have found that the 2012-2015 collective bargaining agreement between the Employer and Local 660 does not bar an election at this time. A question concerning commerce exists concerning the representation of
those employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As discussed above, I find that the following units of Airway Cleaners’ employees constitute appropriate units for purposes of collective bargaining:

**Aircraft cleaning unit**

All full-time and regular part-time cleaning and maintenance employees, including aircraft cleaners, drivers and lead persons, employed pursuant to the Employer’s aircraft-cleaning contract with American Airlines at Terminal 8, John F. Kennedy International Airport, Jamaica, Queens, New York, but excluding guards, office clerical employees, sales employees, executives, managers and supervisors as defined in Section 2(11) of the Act.

**Building cleaning (janitorial) unit**

All full-time and regular part-time cleaning and maintenance employees, including building cleaners, drivers and lead persons, employed pursuant to the Employer’s building-cleaning contract with American Airlines at Terminal 8, John F. Kennedy International Airport, Jamaica, Queens, New York, but excluding guards, office clerical employees, sales employees, executives, managers and supervisors as defined in Section 2(11) of the Act.

**DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by United Construction Trades and Industrial Employees Union, Local 621, or by Local 660, United Workers of America, or by Local 32BJ, Service Employees International Union, or by no labor organization. The date, time, and place of the election will be specified in the Notice of Election that the Board’s Regional Office will issue subsequent to this Decision.
A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).
Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **June 28, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nrlb.gov](http://www.nrlb.gov), by mail, or by facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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18 To file the eligibility list electronically, go to [www.nrlb.gov](http://www.nrlb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.
C. Notice of Posting Obligations

According to Section 103.20 of the Board’s Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.
20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on July 5, 2013. The request may be filed electronically through the Agency's website, www.nlrb.gov, but may not be filed by facsimile.

Dated: June 21, 2013.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

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To file the request for review electronically, go to www.nlrb.gov, select File Case Documents, click on the NLRB Case Number, and follow the detailed instructions.