

Capri Sun, Inc., a wholly owned subsidiary of Kraft Foods, Inc. and Unification Organizing Committee, United Autoworkers (UAW), International Association of Machinists (IAM) & United Steelworkers of America (USWA), Petitioner.
Case 14-RC-11831

March 31, 2000

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On October 17, 1997, the Acting Regional Director for Region 14 issued a Decision and Direction of Election (pertinent portions are attached as an appendix), in which he found that maintenance leads are neither supervisors as defined in Section 2(11) of the Act nor managerial employees, and that the petitioned-for unit of maintenance employees is *not* an appropriate unit for bargaining.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review of the Acting Regional Director's decision. The Petitioner contended that the lead maintenance employees are statutory supervisors because of their role in hiring maintenance employees, and that the maintenance leads are managerial employees because of their participation on the maintenance council. The Petitioner also claimed that the petitioned-for maintenance unit is an appropriate unit for bargaining. On January 16, 1998, the Board granted the Petitioner's request for review.

The Board has delegated its authority in this proceeding to a three-member panel.

We have carefully considered the entire record in this case with respect to the issues on review and have decided to affirm the Acting Regional Director's findings that the maintenance leads are neither statutory supervisors nor managerial employees, for the reasons set forth by the Acting Regional Director. However, contrary to the Acting Regional Director and for the following reasons, we find that the petitioned-for maintenance unit is an appropriate unit for bargaining.

The Employer manufactures Capri Sun and Kool-Aid Burst ready-to-drink beverages and Mr. Freeze freezer pops. The production operations are divided into four departments: Capri Sun, Kool-Aid Burst, Mr. Freeze, and pouch manufacturing. The production process is highly automated, and many of the production employees are machine operators. The vast majority of the maintenance employees are assigned to one of three production departments, Capri Sun, Kool-Aid Burst, or pouch manufacturing. No maintenance employees are assigned to Mr. Freeze, a seasonal department which is in operation generally from January to June. Rather, maintenance employees are sent to Mr. Freeze from other departments as problems arise. The Employer also employs four

building maintenance employees and three or four maintenance employees who work in the central maintenance shop area, which includes the maintenance shop, the rebuild room, and the parts room.

It is the Board's longstanding policy, as set forth in *American Cyanamid Co.*, 131 NLRB 909 (1961), to find separate maintenance department units appropriate when petitioned for where the facts of the case demonstrate the absence of a more comprehensive bargaining history and that the petitioned-for maintenance employees have the requisite community of interest. In determining whether a sufficient separate community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994); *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981).

Contrary to the Acting Regional Director, we find that the petitioned-for maintenance unit at the Employer's manufacturing plant constitutes a distinct and cohesive grouping of employees appropriate for collective-bargaining purposes. Maintenance employees are much more skilled than the production employees, and they generally receive a higher wage.¹ Maintenance employees perform skilled functions, such as electrical repair, that production employees do not perform. The majority (24 out of 40) of the Employer's maintenance employees are classified as mechanic "B."² Under the Employer's new system, the mechanic "B" must demonstrate the ability to perform basic electrical wiring up to 480 volts and read and explain wiring diagrams. The mechanic "B" must possess, inter alia, the ability to hook up a laptop and use a troubleshooting aid, have an understanding of ladder logic, and be familiar with equipment and operations.³ The eight mechanic "A" employees are even more highly skilled, as they are required to complete additional extensive coursework and demonstrate additional skills.⁴ When filling the entry level production

¹ The maintenance employees are paid from 7 to 20 percent more than the production employees are paid.

² The Employer maintains three maintenance classifications: mechanics A, B, and C. The Employer is in the process of implementing certain course requirements and ability to demonstrate specific skills for the "B" and "A" classifications. The qualifications are set forth in the revised handbook, which, at the time of the hearing, was expected to issue imminently. The current maintenance employees will be grandfathered into their current classifications; however, one "B" mechanic testified that he has already met the course requirements.

³ The course qualifications for the "B" mechanic are industrial electricity I and II, and electrical control systems I.

⁴ To qualify as a mechanic "A," the maintenance employee must complete additional courses in industrial motors, industrial electronics I, industrial electrical power distribution, electrical control systems II, introduction to microprocessors, industrial instrumentation system, industrial analog electronics, microprocessor interfacing, and programmable controllers I. They must have the ability to read ladder logic; troubleshoot with the laptop computer, including hooking it up

line mechanic “C” positions, the Employer advertises for applicants with excellent mechanical aptitude and troubleshooting abilities, and the ability to read wiring diagrams and perform basic wiring up to 480 volts.⁵ Similarly, for building maintenance positions, the Employer seeks, *inter alia*, excellent mechanical, plumbing, and electrical troubleshooting abilities, as well as at least 2 years of experience. By contrast, all of the production positions, except for the blow mold operator,⁶ require no mechanical aptitude.

Unlike the production employees, maintenance employees are required to provide their own tools. The higher skill level of the maintenance employees is reflected in the cost of these tools. One maintenance employee testified that his tools cost \$10,000; a second testified that his tools cost between \$9000 and \$10,000.

Our dissenting colleague concedes that the maintenance employees generally have a level of skill that is somewhat higher than the production employees. He argues that the difference is not uniform, as the skill level of the entry level “mechanic C” employee does not exceed that of many production employees. The fact is, however, that 32 of the 40 maintenance employees are mechanics “A” or “B,” requiring a high level of skill. Further, as noted, the Employer seeks to hire entry level “mechanic C” production line mechanics who have demonstrated mechanical aptitude, an aptitude not required of most production employees. Although blow mold operators, who are production employees, must have and utilize mechanical skills, there are only 6 employees in this classification out of 243 production employees. Even these employees, the most technical of all the operators, rely on the maintenance employees when electrical problems arise. Thus, while there may be some variation in skill level among the maintenance employees, the vast majority of the maintenance employees are significantly more skilled than the production employees, and all of the maintenance employees possess skills and perform functions that are unique to their classification.

In addition, unlike the production employees, the maintenance employees’ lunch and breaks are not scheduled, and they are “on-call” at all times. Further, according to the Employer’s revised handbook, the maintenance

employees, unlike production employees, are not subject to the layoff procedures.

There is no evidence that maintenance employees are temporarily assigned to production jobs. Contrary to our dissenting colleague, we find that although a few of the approximately 243 production employees have been temporarily assigned to maintenance positions, the level of interchange is not significant. One production employee is currently working in the shop on a 2- to 3-week project building guards for the 10-pack machine. Another production employee has also worked with the lathes and mills in the shop for a 4- to 6-month period on more than one occasion, and a third production employee has been assigned to the shop on at least two different occasions. Two production employees regularly assist in building maintenance when needed because they have mechanical ability, and one of these employees has been working in building maintenance for 2 to 3 months.

Our dissenting colleague points out that over the last couple of years, at least 72 of the 243 production employees have performed preventive maintenance work on the weekends. The production employees are permitted to do this because, in the Kool-Aid Burst and Capri Sun departments, there are generally not enough maintenance employees available to do the preventive maintenance work. However, this work is performed purely on a voluntary basis, and the tasks involved are repetitive and routine, and do not involve the skilled work performed by the maintenance employees. In performing this work, the production employees work independently of the maintenance employees.⁷ Thus, we find that this voluntary performance of routine and unskilled preventive maintenance functions by production employees does not constitute significant interchange. See *Red Lobster*, 300 NLRB 908 (1990) (the Board found the significance of temporary interchange to be diminished because it was voluntary); cf. *Macy’s West, Inc.*, 327 NLRB 1222 (1999) (separate unit of maintenance engineers found appropriate, notwithstanding that maintenance employees spent one-third of their time performing the lamping function, which was also performed to some degree by virtually all other employees, particularly receiving/dock/stock employees).

Similarly, the evidence of permanent interchange is not significant. Our dissenting colleague argues that there have been 18 permanent transfers between production and maintenance positions. The vast majority of these transfers have gone from production to maintenance. When compared to the relatively large number of production and maintenance employees (283), these 18 transfers, occurring over some undefined period, are le-

and getting on line; understand the basic operation of the quality control lab and process module (10-pack maintenance only); set up servo drive systems completely; train/develop other maintenance mechanics; and perform machinery design modifications.

⁵ Knowledge of ladder logic and programmable logic controller (PLC) is a plus, and the Employer requests that the applicants be versed in all aspects of mechanical and electrical maintenance on high-speed filling and packaging equipment. The Employer does not require that the applicant have an apprenticeship or journeyman experience in the traditional crafts, and most of the maintenance employee’s training is on-the-job.

⁶ For the most technical of the operator positions, the blow mold operator, the applicant is required to demonstrate basic mechanical aptitude by passing a PMMI test, and the operator is thereafter trained to maintain the blowmolding equipment.

⁷ Similarly, during the Christmas shutdown, some production employees performed minor repairs and maintenance, while the rest are laid off.

gally insignificant.⁸ Further, in the past 2 years, new hires have filled six out of seven maintenance positions, and a production employee has filled only one position.

Moreover, although production and maintenance employees perform some overlapping preventive and light maintenance functions during their regular work hours, the functions performed by the production employees are generally lesser skilled and routine.⁹ The Board has found that some overlap of lesser skilled duties does not negate the separate identity of the petitioned-for maintenance unit. See *Burns & Roe Services Corp.*, 313 NLRB 1307, 1309 fn. 11 (1994). Production employees may also provide assistance to maintenance employees such as holding a machine while a maintenance employee troubleshoots or repairs the machine.¹⁰ However, such assistance does not require the inclusion of production employees in the unit, since this work is unskilled and peripheral to the regular repair work performed by the maintenance employees. See *Ore-Ida Foods*, supra at 1020. Nor does the level of interaction between the production and the maintenance employees when working together on these functions or discussing problems about the machines mandate a combined unit. *Id.* Furthermore, the production line maintenance employees spend at least 50 percent of their time in the central shop area, away from production employees.

There is some common supervision of production and maintenance employees under Engineering Manager Allen Friedman in the pouch manufacturing department and in building maintenance.¹¹ However, as conceded by

⁸ Our dissenting colleague assigns the Petitioner the burden of proving that the permanent transfers occurred over a prolonged period. It is the Employer, however, that tenders the evidence of these transfers in support of its argument that the petitioned-for unit is not appropriate, and it is the Employer that possesses and maintains the records which would support its assertions. In these circumstances, the burden to establish the time frame of the transfers is on the Employer.

⁹ Wisnasky testified that the Kool-Aid Burst, Mr. Freeze, and Capri Sun departments have moved towards team approaches. However, the maintenance functions that production employees are trained to perform consist of lesser skilled functions such as greasing and adjusting machines, cleaning pipes and pumps, cleaning and rebuilding valves, and other light maintenance of machines. There is no evidence that the production employees perform or have the expertise to perform the skilled work that the maintenance employees perform. Thus, Wisnasky testified that even though the production employees in Kool-Aid Burst have been trained to perform maintenance on the machinery in that department, maintenance employees are nonetheless still assigned to the department to perform work above the abilities of the production employees, such as electrical work. Their functions may include installing new equipment, performing wiring work, or redesigning and maintaining equipment. The blow molders are the most technical operator position. They maintain the blow molder equipment, and only call in a maintenance employee to perform electrical work.

¹⁰ We further note that both of the pouch maintenance employees who testified stated that production employees have never assisted them with repairs, troubleshooting, or overhaul of machines.

¹¹ Friedman supervises five maintenance employees as well as production and quality control employees in the pouch manufacturing department. Friedman also supervises the four building maintenance

our dissenting colleague, the vast majority of maintenance employees—those assigned to the Capri Sun, Kool-Aid Burst, Mr. Freeze, or the central maintenance shop area—function in a separate maintenance department under the supervision of Plant Maintenance Supervisor Steve Wisnasky.¹²

It is true, as noted by our dissenting colleague, that the plant maintenance supervisor is only present on the daylight shift. On this shift, the production line maintenance employees report to the maintenance lead assigned to their department. There is only one lead maintenance employee working on each of the second and third shifts, and they are both assigned to Capri Sun. The Employer's witnesses testified that the production leads, stipulated *not* to be supervisors, oversee the maintenance employees in Kool-Aid Burst and pouch manufacturing on the second and third shifts. However, as noted, a third shift maintenance employee in pouch manufacturing testified that his direct supervisor is the day-shift maintenance lead for his department, and another maintenance employee assigned to pouch manufacturing on a 12-hour shift also identified the dayshift maintenance lead as his supervisor. Further, the record does not elaborate about the role of production leads when maintenance employees report to them. Under these circumstances, we find that the evidence regarding the supervision of maintenance employees in the Kool-Aid Burst and pouch manufacturing departments on the second and third shifts is inconclusive.

In sum, the maintenance employees have a significantly higher skill level than the production employees and higher wages. The maintenance employees have some unique terms and conditions of employment, such as unscheduled lunch and breaks and "on-call" requirements. According to the revised handbook, the maintenance employees, unlike the production employees, are not subject to the layoff procedures. The level of interchange between the maintenance and production employees is not significant. Further, the maintenance duties performed by production employees are minor and routine, and require lesser skills. Notably, the vast majority of maintenance employees function in a separate maintenance department under the supervision of the plant maintenance supervisor. Based on the foregoing, we find that the petitioned-for maintenance employees

employees. As noted, two of these building maintenance employees are production employees assigned to this job.

¹² Two pouch manufacturing maintenance employees testified that they are temporarily assigned to other departments. The record is silent regarding their supervision when these temporary assignments occur. Moreover, these two employees identified the day-shift maintenance lead as their direct supervisor; and one of them identified Wisnasky as the maintenance lead's supervisor, albeit the maintenance lead actually reports to Friedman.

are a readily identifiable group with a distinct community of interest and are *an* appropriate unit for bargaining.¹³

Accordingly, the Acting Regional Director's Decision and Direction of Election is reversed solely with respect to the unit finding.

ORDER

The Acting Regional Director's Decision and Direction of Election is affirmed with respect to his finding that the maintenance leads are neither statutory supervisors nor managerial employees, and reversed with respect to his finding that the petitioned-for maintenance unit is not appropriate. The case is remanded to the Regional Director for further appropriate action.

MEMBER HURTGEN, dissenting.

Contrary to my colleagues, I would affirm the Acting Regional Director's decision. In my view, the Petitioner has not shown that the Employer's maintenance employees constitute a separate appropriate unit. These maintenance employees do not comprise a distinct, separate, and cohesive group of employees appropriate for purposes of collective bargaining.¹

The positions involved do not require any traditional craft skills or specific technical, educational, or work background. While maintenance employees generally have a level of skills somewhat higher than the production employees, the difference is not uniform. For example, the skill level of the entry level "mechanic C" employees does not exceed that of many production employees. Similarly, blow mold operators, who are production employees, must have and utilize mechanical skills, and still other production employees have and utilize maintenance skills.

In addition, I do not agree with my colleagues that the interchange (temporary and permanent) between production and maintenance employees is insignificant. During the past couple of years, at least 72 of the current production employees have performed preventative maintenance work on the weekends, and approximately 30 of these employees regularly perform preventive maintenance on a weekly basis.² In addition, at least three pro-

duction employees have worked recently on a temporary basis in maintenance positions. Further, two of the four building maintenance employees are production employees on loan to building maintenance. Finally, there have been 18 permanent transfers between production and maintenance positions.³

Further, I find significant common supervision. Five mechanics in pouch manufacturing and the four building maintenance employees report directly to Engineering Manager Allen Friedman. The same individual supervises production and quality control employees working in the pouch manufacturing department. Concededly, most other mechanics report to Plant Maintenance Supervisor Steve Wisnasky. However, he is generally present only on the day-light shift. Thus, the second- and third-shift mechanics report to at least some of the time, to production personnel.⁴ In view of the fact that the Employer has only 34 maintenance employees, I view as substantial the number of maintenance employees who report to a supervisor who also supervises production employees.⁵ Thus, like the Acting Regional Director, I find significant common supervision.

Moreover, as set forth by the Acting Regional Director, the maintenance and production employees have significant mutuality of interest in terms and conditions of employment. All are hourly paid. They receive the same benefits, including health benefits and bonuses. As to base pay, I recognize that the mechanics receive higher pay of 7 to 20 percent. In light of the fact that the mechanics must pay for their own tools, the effective wage differential is smaller than it appears to be. In any event, the modest differential is outweighed by the other factors (discussed above) showing commonality.

The production and maintenance employees interact regularly with each other and are functionally integrated into the Employer's operation. As recounted by the Acting Regional Director, the vast majority of maintenance employees are assigned to one of three production departments—Capri Sun, Kool-Aid Burst, or pouch manufacturing. They spend 50–85 percent of their time in their respective production areas. Thus, maintenance employees work more closely with their fellow production department employees than with maintenance employees in other departments. Finally, the Employer pre-

noted above, that some maintenance employees have only such lesser skills.

³ Although there is no time reference for this figure of 18, the Petitioner, who bears the burden of proof, has not shown that the period is a prolonged one. Contrary to the position of my colleagues, I believe that the Petitioner, as the moving party, has the burden of proving an appropriate unit. There are some units that are presumptively appropriate (thus shifting the burden) but the instant unit is not one of them.

⁴ Although the production personnel are not statutory supervisors, they oversee the work of the maintenance employees.

⁵ My colleagues point to only two second- and third-shift employees who claim that they have a maintenance supervisor.

¹³ We find this case to be distinguishable from *Willamette Industries v. NLRB*, 144 F.3d 877 (D.C. Cir. 1998), rehearing denied (1998). In that case, the court found that the Board's certification of a bargaining unit of maintenance employees at a facility that manufactures particle board from wood by-products was not appropriate. The court found that the Board effectively reversed, without explanation, its past practice and precedent in the lumber industry of certifying only "wall-to-wall" units of both production and maintenance employees. The instant case, by contrast, does not involve the lumber industry.

¹ *U.S. Plywood*, 174 NLRB 292 (1969); *American Cyanamid*, 131 NLRB 909, 911–912 (1961).

² Contrary to my colleagues, it is not critical that production employees *volunteer* to perform preventive maintenance work. Rather, the critical fact is that production employees perform a significant amount of maintenance work and thus share a community of interest with maintenance employees. Further, although this work involves lesser skills than that possessed by most maintenance employees, it is clear, as

sented evidence that it has moved increasingly to a team approach in these departments.

Based on the above, I conclude that the Employer's maintenance employees do not constitute a separate identifiable group of employees. I would affirm the Acting Regional Director's finding that only a unit including both production and maintenance employees is appropriate.

APPENDIX

DECISION AND DIRECTION OF ELECTION

2. The Employer, Capri Sun, Inc., a wholly owned subsidiary of Kraft Foods, Inc., is engaged in the manufacture and nonretail sale and distribution of ready-to-drink beverages at its Granite City, Illinois plant, the only facility involved.

3. The Petitioner seeks a unit of all maintenance employees employed by the Employer at its Granite City, Illinois plant, excluding the production employees, office clerical, and professional employees, guards, and supervisors. Contrary to the Petitioner, the Employer contends that the only appropriate unit must also include production employees and the maintenance leads. The Petitioner contends that the maintenance leads are supervisors within the meaning of the Act and therefore should be excluded from the unit found appropriate here. The employees at issue have not previously been represented by a labor organization. There are approximately 34 employees in the unit sought by Petitioner, 287 employees in the unit sought by the Employer, and 287 employees in the unit found appropriate here.

The Employer's Granite City plant manufactures Capri Sun and Kool-Aid Burst ready-to-drink beverages, and Mr. Freeze freezer pops. The operations include mixture of the drinks, manufacture of the drink containers, which are either foil pouches, molded plastic bottles, or plastic tubes, as well as the filling of the containers and final packaging. The production operations are ongoing 24 hours per day, generally 5 days per week with the exception of the bulk pack area which runs 7 days per week. The production operations are divided into four departments: Capri Sun, Kool-Aid Burst, Mr. Freeze, and pouch manufacturing. The current employee handbook indicates that the other plant departments are quality control, warehouse, and maintenance, although Mr. Freeze and Kool-Aid Burst each has its own maintenance budget.

The plant manager has overall responsibility for the plant operations. The business unit manager is responsible for the production operations and reports directly to the plant manager. The operations supervisor is responsible for the overall production and maintenance operations on the second shift and the operations and sanitation supervisor is responsible for the overall production and maintenance operations on the third shift. Both supervisors report directly to the business unit manager. The engineering manager also reports directly to the plant manager and is responsible for utilities and building maintenance, special projects, as well as supervising a significant number of employees engaged in production, quality control, and maintenance in pouch manufacturing. The plant maintenance supervisor reports directly to the engineering manager and is responsible for maintenance throughout the plant except for pouch manufacturing. The Employer employs approximately 243 production employees including 10 lead employees. The production process is highly automated so many of the production

employees are machine operators. The production employees work on one of three 8-hour shifts or on one of two 12-hour shifts. A production lead is assigned to each department on each of the three 8-hour shifts, except for the second and third shifts in Mr. Freeze, which is a seasonal department in operation generally from January to June. The vast majority of the maintenance employees are assigned to one of three production departments, Capri Sun, Kool-Aid Burst, or pouch manufacturing. No maintenance employees are assigned to Mr. Freeze, rather they are sent from other departments as problems arise. On the first shift, the production line maintenance employees report to the maintenance lead assigned to their department. There is only one lead maintenance employee working on each of the second and third shifts, and they are both assigned to Capri Sun. The Employer's witnesses testified that the maintenance employees in Kool-Aid Burst and pouch manufacturing on the second and third shifts are overseen by the production lead, however, a third shift maintenance employee in pouch manufacturing testified that his direct supervisor is the day-shift maintenance lead for his department and another maintenance employee assigned to pouch manufacturing on a 12-hour shift testified that his direct supervisor was the plant maintenance supervisor. The Employer also employs four building maintenance employees and three or four maintenance employees who are employed in the central maintenance shop area, which includes the maintenance shop, the rebuild room, and parts room. There are also small maintenance shop areas in Kool-Aid Burst and Mr. Freeze.

The four building maintenance employees are responsible for maintaining the interior of the plant, including heating and ventilation, the boiler room, minor air conditioning work, electrical work ranging from wiring and troubleshooting to changing light bulbs, light plumbing work, painting, and concrete patch work. The three to four maintenance employees assigned to the central shop area rebuild and manufacture parts and oversee the parts room. The remaining maintenance employees are responsible for maintaining the production machinery, they troubleshoot problems, rebuild and repair, and perform preventive maintenance. These maintenance employees spend between 50 to 85 percent of their time in the production areas depending on the area and shift that they are assigned to and therefore have frequent contact with the production employees who inform them of machine problems and breakdowns. The maintenance employees also spend time in the central shop, as well as assisting other production areas on an occasional basis, varying from once per week to once per month. The production and maintenance employees for each production area also meet at the beginning of each shift for QCDSM (quality cost delivery safety morale) meetings. These meetings are usually conducted by the production leads and employees discuss the prior days' production, plans for the current day, and suggestions made by production or maintenance employees on machine modifications or other subjects pertinent to the department.

Although the maintenance employees perform no production work, the production employees perform maintenance work on a daily basis. One production employee is currently working in the shop building guards for the 10-pack machine, which will be a 2- to 3-week project. Another production employee has also worked with the lathes and mills in the shop for a 4- to 6-month period on more than one occasion and a third production employee has been assigned to the shop on at least two different occasions. Two production employees regularly assist in

building maintenance when needed because they have mechanical ability and one of these employees has been working in building maintenance for 2 to 3 months. The blow mold machine operators in Kool-Aid Burst repair their own machines and can generally handle any mechanical breakdowns except electrical. This includes replacing a drive or gearbox, rebuilding mold covers, tearing down and cleaning die heads. The operators in Mr. Freeze are responsible for greasing their machines and making film adjustments for quality control and they determine when they need help and when to call for assistance from maintenance. The production employees in the classification of processing technicians also perform maintenance on their machines. These employees operate the equipment that blends and pasteurizes the various drink components prior to the fill process. On a daily basis, these employees must disassemble and clean the pumps, valves, and pipes of this equipment. Prior to January 1996, this work was performed by maintenance employees.

All operators are trained to oil and grease their machines, and a relief operator oils and greases machines on a daily basis. The operators may also assist the maintenance employees in their repair work at times by holding items or even assisting in the reassembly process. Preventive maintenance is performed every weekend as the machines are generally not in operation at that time. In Kool-Aid Burst and Capri Sun, there are generally not enough maintenance employees available to perform the preventive maintenance work, so production employees perform this work along with the maintenance employees. During the past couple of years, at least 72 of the current production employees have performed preventive maintenance work on the weekends, approximately 30 of these employees regularly perform preventive maintenance work on a weekly basis. The preventive maintenance tasks include greasing, oiling, and cleaning machines as well as changing parts such as dosing valves on the fillers and conveyor chains. Generally, the production employees are working independently of the maintenance employees and are working within their assigned production area on machines that they are familiar with. For at least the past 2 years, the Employer has shut down most of the production operations over the Christmas holidays. During this time, the maintenance employees perform various projects and maintenance work. Most of the production employees are required to take vacation or layoff, however, some production employees are given the opportunity to work and perform minor repairs and maintenance along with the maintenance employees. The maintenance and production employees attend joint training sessions on new equipment both in and out of the facility, although maintenance employees do receive additional training not offered production employees.

The Employer does not require any traditional craft skills or specific technical, educational, or work background for the maintenance positions. The current maintenance employees have a variety of backgrounds including auto mechanic, coal miner, and copy repairman. For building maintenance positions, the Employer advertises for applicants who have a high school education or equivalent with a minimum of 3 years' building maintenance experience with excellent mechanical, plumbing, and electrical troubleshooting abilities. An associate degree or equivalent technical training is preferred. For the production line maintenance positions, the Employer advertises for applicants who have excellent mechanical aptitude and troubleshooting abilities, are capable of reading wiring dia-

grams, and performing basic wiring up to 480 volts; knowledge of ladder logic and PLC experience is a plus and the Employer requests that the applicants be versed in all aspects of mechanical and electrical maintenance on high-speed filling and packaging equipment. In contrast, for the most technical of the operator positions, the blow mold operator, the applicant is required to demonstrate basic mechanical aptitude by passing a PMMI test and the operator is thereafter trained to maintain the blowmolding equipment, including setup and tear down of jig and fixtures and other associated equipment. None of the other production positions require demonstration of any mechanical aptitude. All applicants for maintenance positions must take a multiple choice test assessing knowledge in the areas of hydraulics, electrical, and mechanical. One witness testified that there was no failing score on this test, however, another witness testified that applicants who answer more than 19 questions incorrectly were not interviewed. Applicants for production positions are required to take a situational judgment inventory dealing with various teamwork concepts. Over the years, there have been at least 18 permanent transfers between production and maintenance positions, the vast majority going from production to maintenance. In the past 2 years, seven maintenance positions have been filled, one by a production employee, the rest by new hires. Production employees are eligible to bid on maintenance positions, if qualified, but maintenance employees cannot bid on production positions unless they have previously held a production position because of the different screening processes.

The maintenance employees have three classifications: mechanics A, B, and C. Maintenance employees are usually hired in at the "C" level. The Employer is in the process of implementing certain course requirements and ability to demonstrate specific skills for the "B" and "A" classifications. The qualifications are set forth in the revised handbook, which is expected to issue imminently. The course qualifications for the "B" mechanic are industrial electricity I and II and electrical controls systems I. The required demonstrated skills are ability to perform basic electrical wiring up to 480 V; read and explain wiring diagrams; hook up laptop and use as a troubleshooting aid; an understanding of ladder logic; understanding of equipment and operations; demonstrated troubleshooting skills on the production floor; timely completion of tasks and safe work habits. Qualifications for the "A" classification include the following additional courses: industrial motors, industrial electronics I; industrial electrical power distribution, electrical control systems II, introduction to microprocessors, industrial instrumentation system, industrial analog electronics, microprocessor interfacing, and programmable controllers I. The additional skills to be demonstrated are: ability to read ladder logic; trouble shoot with the laptop computer, includes hooking it up and getting on line; an understanding of the basic operation of the Q.C. Lab and process module (10-pack maintenance only); capability of setting up servo drive systems completely; capability of training/developing other maintenance mechanics; and ability to perform machinery design modifications. Current maintenance employees will be grandfathered into their current classifications, however one "B" mechanic who testified stated that he already met the course qualifications. The current complement of maintenance employees include 8 "A" mechanics 24 "B" mechanics, and 8 "C" mechanics.

The maintenance employees are required to provide their own tool belt, toolbox, and handtools such as channel locks,

screwdrivers, pliers, side cutters combination wrenches, punches, hammers, various socket sets, rulers, and scales. The Employer provides more specialized equipment and instruments which are kept in the shops, the maintenance tool lockers or in large roll around toolboxes, and include such items as belt sanders, disc grinders, bench grinders, welders, plasma cutters, torch cutters, various saws, hydraulic press, sand blaster, hand grinder, hydraulic bearing remover, volt-ohm meter, amp meter, drill press, calipers, dial indicator, metal shear, metal brake, soldering iron, metal lathe, milling machines, belt lacing machine, chain brake tool, pipe threading and pipe cutting machines, tap and die set, center punches, alignment tools, welders, bearing and bushing extractors, lathes, micrometers, instrumentation calibration equipment, electrical meters, and electrical schematics. The maintenance employees also use a laptop computer to diagnose problems with the PLC, or the programmable logic controller, which is the computer operated “brain” of the machines. The blow mold operators also utilize large roll around tool cabinets containing many of the same basic hand tools utilized by the maintenance employees, such as wrenches, ratchets, hammers, calipers, and screwdrivers. Some of these tools were supplied by the Employer and some were purchased by the operators. The other operators are issued small tool pouches containing a small screwdriver, scissors, needle nosed pliers, a pencil, and razor.

The production and maintenance employees are hourly paid but the maintenance employees are paid from 7 to 20 percent more per hour than the production employees. The production and maintenance employees receive the same fringe benefits including health benefits and bonuses. They work the same hours; are entitled to overtime after 40 hours; are entitled to two work breaks and one lunchbreak per day; and use the same clock-in/clock-out electronic timekeepers, locker room, lunchroom, and rest rooms. The production and maintenance employees are carried on the same seniority list and they receive the same options for the Employer—provided uniforms, although the maintenance employees, as well as the blow mold operators, tend to choose the dark blue shirts because they hide grease stains. Unlike the production employees, the maintenance employees’ breaks and lunches are not scheduled; they have tool lockers within the central maintenance area; they are issued keys to the facility, and cards are issued with their home phone numbers listed because they are “on-call” at all times, although maintenance employees are rarely called in when not scheduled. The Employer’s revised employee handbook continues to provide for different hiring procedures for production and maintenance employees, and states that maintenance, selected jobs and lead person positions may not be subject to the layoff procedures.

Contrary to the Petitioner’s contentions, the maintenance employees are not a functionally distinct and homogeneous group of skilled craftsmen whose work requires the use of substantial craft skills. Rather, the maintenance employees exercise a conglomeration of skills which are adapted to the particular needs of the Employer’s operations and therefore the maintenance employees clearly do not constitute a traditional craft unit. *Proctor & Gamble Paper Products Co.*, 251 NLRB 492 (1980); *Monsanto Co.*, 172 NLRB 1461 (1968); *Timber Products Co.*, 164 NLRB 1060 (1967). Nonetheless, where, as here, no bargaining history on a broader basis exists, a separate maintenance department unit may be appropriate where the record establishes that maintenance employees are a separately identi-

fiable group performing similar functions which are separate from production and having a community of interest such as would warrant separate representation. *U.S. Plywood-Champion Papers*, 174 NLRB 292 (1969); *American Cyanamid Co.*, 131 NLRB 909, 911–912 (1961). In determining whether a sufficient separate community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Ore-Ida Foods*, 313 NLRB 1016 (1994). The record establishes that most of the maintenance employees are significantly more skilled than the vast majority of production employees and generally receive a higher wage. Otherwise, the production and maintenance employees share the same hours and benefits. Most importantly, however, the production and maintenance employees also share common supervision and functions; are assigned to the same areas and have frequent contact and interchange. Accordingly, I find that the separate community of interests which the maintenance employees might enjoy by reason of their higher wages and skills has been largely submerged in the broader community of interests which maintenance employees share with the production employees and therefore a unit limited to maintenance employees is not appropriate. *F & M Schaefer Brewing Co.*, 198 NLRB 323 (1972); *U.S. Plywood*, supra; *Monsanto Co.*, 172 NLRB 1461 (1968).

4. At hearing, the parties stipulated that the production leads are employees lacking any indicia of supervisory authority and may appropriately be included in a unit of production and maintenance employees. In its brief, the Petitioner states that due to the length of the hearing and in order to facilitate the closing of the hearing, it reluctantly entered into this stipulation and that after review of the exhibits, the Petitioner has even stronger reservations. As the stipulation is facially not inconsistent with any statutory provision or Board policy and as it is not in conflict with the record evidence, I will abide by the stipulation and I shall include the production leads in the unit found appropriate here. *Viacom Cablevision*, 268 NLRB 633 (1984).

5. Like the other maintenance employees, the maintenance leads are hourly paid; receive overtime after 40 hours, and they receive the same health benefits. The leads are paid approximately 5 to 8 percent more per hour than the highest paid maintenance employees and they have their own desks and phones in offices shared with production leads. The maintenance leads spend at least 50 percent of their time on the production floor doing hands-on maintenance work. The leads are also responsible for coordinating the work of the maintenance employees, including the scheduled preventive maintenance, however the record does not reflect how maintenance work is actually assigned to particular maintenance employees within the department. The maintenance leads can recommend to their supervisors that overtime work is necessary. Approximately 80 percent of the time, the requests for overtime are approved. On one occasion, the maintenance lead’s request for weekend overtime was approved and the lead was simply told to keep the number of employees “reasonable.” The lead interpreted that to mean approximately four employees, however the lead only had two employees volunteer and, as the lead has no authority to require employees to work overtime, his interpretation was not tested. Maintenance employees are required to contact their lead if they are to be absent from work and the leads can seek

for a replacement, however, the lead cannot require another employee to come in to work. The maintenance lead must also receive prior approval to temporarily transfer employees from one department to another and employees are only transferred on a voluntary basis. A lead can request an employee to cancel scheduled vacation if additional help is needed without prior authorization, however, the lead cannot require an employee to cancel vacation. Requests for vacation time are approved by human resources in accordance with seniority at the beginning of each year. Requests submitted thereafter are approved on a first-come first-serve basis. The leads must also obtain approval from human resources before granting timeoff for illness or other personal reasons.

The leads can authorize minor or subtle modifications to one piece of equipment, however, if the changes are major or affect more than one piece of equipment, the leads must have prior authorization from the immediate supervisor. The leads also ensure that the parts supply is adequate for the department and requisition necessary parts. However, the requisitions must be approved by the lead's immediate supervisor. The maintenance leads issue minor discipline, such as the first warning, but the discipline must be approved by the immediate supervisor and the human resources. The leads can verbally admonish employees without prior approval. The only record evidence of any discipline issued by a lead involved absences and tardiness, which were recorded by the lead and then turned over to the supervisor and human resources for further action in accordance with the Employer's progressive disciplinary policy. The actual discipline issued by the lead was prepared by human resources. More serious discipline is issued by the lead and the immediate supervisor together. The leads prepare yearly evaluations of maintenance employees, however, the evaluations have no impact on wages, promotions, or any other term or condition of employment.

The maintenance leads also participate in the hiring of maintenance employees. The leads have been named in advertisements as the person to whom resumes are to be sent; the leads have administered the prehire tests, reviewed those tests, and have attended interviews of applicants. Maintenance applicants are usually interviewed by a panel of three or more, including leads, the engineering manager, the business unit manager, and/or the plant maintenance supervisor. Applicants are also separately interviewed by the human resources manager. The engineering manager testified that the decision to hire is a joint decision among the interviewers and that any of the interviewers, including a lead, can reject an applicant, however, that rejection can apparently be overruled by others, although historically it is not. The only lead who testified stated that he had participated in approximately 10 interviews, that what he assessed in the interviews was the applicant's skills and abilities, and that his participation in the hiring decision was limited to expressing his thoughts of the applicant. On one occasion, he told the other interviewers that he would not hire the applicant and the applicant was hired nonetheless. The record contains no specific examples of an applicant being rejected based solely on a lead's recommendation.

The leads also participate in the maintenance council along with the engineering manager, the business unit manager, and the maintenance scheduler. Other maintenance employees also attended some of the maintenance council meetings. The maintenance council was formed in order to standardize maintenance procedures throughout the plant. The members of the

council met once per week for about 3 months. The maintenance council has not met recently because the leads are too busy, however, the council may resume meetings some time in the future. The maintenance council developed a master preventive maintenance list for the plant. The maintenance council also discussed adopting a policy of posting jobs throughout the plant rather than in limited departments and of restricting the departmental transfer rights of maintenance employees with current discipline in their file. These proposed policies were then submitted to the human resources manager for implementation, however the record does not reflect whether or not the policies were formally implemented, and, if so, how the decision to implement was reached. The maintenance council also discussed implementing an apprentice program, but the council did not have sufficient time to develop the program.

The Employer's revised handbook, which is expected to issue imminently, provides that employees with questions or problems related to working conditions, policies, rules, safety, health, or any other matters are encouraged to discuss them as quickly as possible and that generally an employee's lead or supervisor is in the best position to handle problems within a specific area quickly and easily and consequently, a frank discussion with that individual may provide an immediate solution. The handbook also provides that an employee may exchange shifts with another employee only with the prior authorization of his or her "supervisor/Lead" and the other employee's "supervisor/Lead." The revised handbook further provides that approval to exchange shifts cannot be granted unless the exchange can be accomplished without interfering with the Employer's operations and without requiring overtime and that a rest period of 7-1/2 hours between shifts is required. The handbook further provides that if it becomes necessary for an employee to leave the department or the Employer's premises during work hours, permission must be obtained from that employee's supervisor/Lead. The revised handbook also provides that when being late or absent is unavoidable, employees must give notice to their "Lead person/Supervisor" by telephone at least 1 hour prior to the start of the scheduled shift. The handbook further provides that each probationary employee will receive a performance evaluation prior to receiving a wage progression and that it is the supervisor and lead person's responsibility to ensure that each new employee receives a written performance review at 90 days, 180 days, and 270 days. The record contains no testimony further explaining these provisions of the handbook.

It is the burden of the party asserting supervisory status to establish it by competent evidence. *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). The Union relies heavily on the testimony regarding the leads' involvement in the hiring process, discipline, overtime, and the provisions of the revised handbook. The evidence does not establish, however, that the leads make the decision to hire or effectively recommend hiring. Thus, although the resumes are sent to the lead's attention, the record does not reflect what the leads do with those resumes and therefore, contrary to the Petitioner's contention, the record does not establish that the leads perform any screening of applicants. Similarly, the administering and grading of the multiple-choice mechanical assessment is simply a clerical function, not requiring independent judgment. The record does not establish that the cutoff figure of 19 was independently arrived at by the leads. Furthermore, the applicants are also interviewed by at least two, many times three, other admitted supervi-

sors/managers, who retain ultimate decisional authority and it appears that the leads' presence and recommendations are sought in deference to their maintenance expertise rather than their supervisory authority. *Hogan Mfg.*, 305 NLRB 806 (1961). The record also fails to establish that the leads have any authority to issue discipline or effectively recommend the issuance of discipline. The leads relay information to the supervisor and human resources and then simply issue the discipline prepared by human resources. The verbal admonishments issued by leads are not placed in personnel files nor do they result in adverse actions. Thus the lead's role in the process is simply reportorial and does not constitute authority to discipline or recommend discipline. *Ten Broeck Commons*, 320 NLRB 806 (1996). With respect to the assignment of overtime, the record establishes that the lead must get prior authorization for overtime, that this authorization is not always granted, and that the leads thereafter seek volunteers for overtime and that overtime is awarded on the basis of seniority. On one occasion, the lead was instructed to keep the number of overtime volunteers "reasonable." However, this incident was unusual and the necessity for the overtime was occasioned by the hearing in this case, and therefore this one incident, without more, does not establish the authority to grant and assign overtime. The provisions of the handbook relied on by Petitioner also fail to establish statutory supervisory authority. The handbook provisions do not facially establish independent authority, especially where the record testimony establishes that the authority is severely circumscribed. The mere inference of independent judgment without specific support in the record is not sufficient to prove supervisory status. *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Moreover, the resolution of minor employee com-

plaints or problems is insufficient to establish supervisory status. *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991); *Ohio Masonic Home*, 295 NLRB 390, 394 (1989). Furthermore, the conditions for approval of shift exchanges are clearly spelled out in the handbook and therefore granting such approval would not require independent judgment, even assuming the lead would not have to first seek approval from his supervisor. The record establishes that the leads cannot independently grant employees permission to leave the Employer's premises or that the evaluations independently prepared by the leads have impacted terms and conditions of employment, and therefore seemingly contrary handbook provisions cannot be relied on to establish independent judgment. *Wilson Tree Co.*, 312 NLRB 883, 885 (1993). In these circumstances, I find that the Petitioner has failed to establish by competent evidence that the maintenance leads are supervisors within the meaning of Section 2(11) of the Act. *J. C. Brock Corp.*, 314 NLRB 157 (1994).

Petitioner also contends that by virtue of their participation in the maintenance council the maintenance leads are managerial employees. The record does not reflect the extent of the participation of the leads in the formulation of the policies and therefore fails to establish that the leads had any authority to formulate or effectuate management policy. Mere attendance at the meetings, which were also attended by rank-and-file employees, is insufficient to establish managerial status. *Bakersfield Californian*, 316 NLRB 1211 (1995). Accordingly, I find that the maintenance leads are not supervisors or managers, and I will therefore include them in the unit found appropriate here.