UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

SANMAR CORPORATION

Employer

and

Case 9-RC-17505

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1099

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

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

Upon the entire record in this proceeding, [1]/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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[1]/ The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the wholesale distribution of clothing products from its Cincinnati, Ohio facility, the only facility involved in this proceeding [2]/ The Employer employs approximately ninety-three employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent essentially a unit comprised of all regular full-time and part-time distribution center employees employed by the Employer at its 4330 Winton Road, Cincinnati, Ohio facility, excluding all office clerical employees, customer service employees, and managerial employees, and all professional employees , guards and supervisors as defined in the Act. The Employer, contrary to the Petitioner, contends that the smallest appropriate unit is a wall-to-wall unit consisting of all employees employed at its Cincinnati, Ohio facility. Thus, in addition to those employees sought by the Petitioner the Employer would include in the unit approximately 19 Call Center employees and three maintenance employees. The Employer acknowledges that the receptionist may pose a separate issue as an office clerical employee.

Operations Manager Martin Rask, who is based out of the Employer's Preston, Washington corporate offices, has overall responsibility for the Cincinnati, Ohio facility. Reporting directly to Rask, from the Cincinnati facility, is Interim Distribution Manager Paul Rhodes and Call Center Manager Sue Taphorn. Taphorn immediately supervises the approximately 19 call center employees whose status vis a vis the proposed unit is in dispute. Rhodes has overall responsibility for the Distribution Center (warehouse) employees at the Cincinnati facility. Reporting directly to Rhodes is Assistant Distribution Manager Jon Taylor and Human Resources Administrator Karla Keys. Taylor's direct reports are Forest Kirk, distribution coordinator; Sherri Cole, production supervisor; Tammy Faulkner, inventory control/ returns/quality control; Paul Boelleke, second shift supervisor; and group leaders Dan Bailey (receiving), Tom McIntyre (invoicing), and David Gemmell (maintenance). Gemmell and the other two maintenance employees are the remaining employees whose unit placement is in dispute. There is no contention the group leaders are statutory supervisors.

The Call Center and the Distribution Center (warehouse) are located in a single structure of about 360,000 square feet. However, the Call Center area is separated from the remainder of the facility by walls and a corridor. Adjacent to the Call Center are restrooms, the lunchroom, and the will call area. The will call area services the Employer's walk in customers who pick up their merchandise at scheduled times. Immediately to the rear of the areas referenced above is an area where individual pieces of product are picked from bins arranged along a conveyor belt. As the orders are completed the boxes are sealed and they move further toward the rear of the facility to the UPS shipping area where they are invoiced, labeled, and then loaded on a UPS trailer that is staged there daily. To the left of the warehouse area, when viewed from the front of the Employer's facility, is a large storage area (nearly 200,000 square feet) designated as mid and high bay storage. Continuing to the left of the facility is the Employer's receiving area where shipments of product are unloaded from carriers and placed into storage. At the back of the facility over-the-road carriers are loaded with larger orders which are not typically handled via

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[2] In addition to its Cincinnati facility, the Employer's corporate headquarters and a distribution and call center facility is located in Preston, Washington, and a distribution center in the vicinity of Sparks, Nevada. The Preston Call Center primarily handles calls for orders filled out of Preston and Sparks.

UPS shipment. At the rear of the facility, there is approximately 100,000 square feet of additional high bay storage. The Employer's facility also contains five supervisory offices, a conference room, and a total of about eight rest rooms designated for women or men. Three of the supervisory offices are located in the vicinity of the production and shipping areas. The other two offices are located toward the front of the facility, with Taphorn having an office in the Call Center and Rhodes having an office nearby.

The Employer is a wholesale distributor of imprintable sportswear and accessory items. It manufactures, but not in Cincinnati, at least, one of the clothing and accessory lines that it distributes. With regard to distribution, the Employer sells "blank" product to businesses that add their own screenprinting or embroidery. Those businesses then sell the finished product to end-users. The Employer also sells its "blank" product to advertising specialty industry customers that sell corporate apparel to other businesses.

The Employer's primary marketing tool is its catalog, which it publishes and ships to thousands of customers on an annual basis. To place an order customers dial the Employer's 800 number. Calls are automatically routed to the appropriate Call Center. The call center employee then obtains a customer number from the customer and takes the customer's order. When the order is completed the representative will verify the terms and will then release the order for processing through the Employer's Credit Department, which is located in Preston. Once there is credit approval the order is released into the computer system and it is routed to the distribution center from where the product is shipped. The entire order process is a paperless transaction until the order, known as a pick ticket or pick list, is printed out at the appropriate distribution center.

When printed out in the Distribution Center each order is then picked, packed and checked, and sealed by Distribution Center (warehouse) employees with the appropriate documentation for the designated shipping arrangement. Large orders are picked by case pickers who utilize forklifts and "cherry pickers," vehicles with attachments that can reach high bay storage, to retrieve and stage product for shipping. Smaller orders are picked by pickers who retrieve such orders from bins stationed along a conveyor line. Other Distribution Center employees are responsible for receiving product to replenish depleted inventory and employees referred to as stockers are responsible for storing the incoming product. Packers, also referred to as checkers, are responsible for insuring that orders are properly picked and complete. Returns, inventory, and quality control are handled by employees under the supervision of Tammy Faulkner. Still other Distribution Center employees process and resolve order shortages, load and unload product, and invoice and label product according to carrier method prior to shipping.

The Employer processes an average of approximately 1,200 orders a day from the Cincinnati facility with some variance for seasonal fluctuations. Of that number, customers pick up approximately 100 orders a day. A pick up time is established and once the order is completed in the warehouse it is brought to a staging area near the Call Center referred to as the will-call area. A customer picking up product obtains an order form from the receptionist and then presents this documentation to Charles Adams, who is designated as a customer service employee. Adams then retains a copy of the form, noting that it has been picked up, and loads the product into the customer's vehicle.

The same employee handbook and personnel policies are applicable to all hourly employees, including disciplinary and work rules of conduct and annual performance evaluations. All employees are eligible to receive the same fringe benefits. There are several employee classifications within the distribution center and employees have different starting wage rates based on these classifications. Pickers start at $8 an hour and earn up to about $10 an hour. Packers, also referred to as checkers, have a starting rate of $10 an hour and they may earn up to about $12 an hour. Stockers and returns/quality control/shortage employees begin at $9 an hour and earn up to about $11 an hour. Maintenance employees earn between $9.50 and $11 an hour and invoicing/shipping/receiving employees start at $9.50 an hour and may earn up to about $12.50 an hour. Finally, the maintenance lead employee earns $20 an hour. In addition to their base wages the distribution center employees regularly work overtime and receive time and a half wages for overtime hours. Further, distribution center employees receive an annual bonus based on their length of service. After a year of service distribution center employees receive $50 and they receive an additional $50 for each six months up to a maximum annual bonus of $500. It appears from the record that overtime hours of work are regularly performed by both Call Center and Distribution Center (warehouse) employees.

There are three principal classifications of Call Center employees. Entry level Call Center employees receive the title of customer sales representative and earn a wage range of between $9.50 and $13 an hour. Customer service representatives are the next level up and they earn a wage range of $10.50 an hour to $14.50 an hour. The highest-level employee group classification in the Call Center is the account executives who earn a wage range of $12.50 to an hour to $17 plus an hour. The Call Center also includes the receptionist and the support employee, who have a starting wage of $9.50 an hour, and the trainer/lead customer service representative, who has a starting wage of $13 an hour. The record does not reflect the current rates of pay for the employees in the three trainer/lead customer service representative positions.

In addition to their base wages, the customer sales and the customer service representatives are eligible to receive bonuses under an incentive plan. The incentive plan for these classifications is based on employees' attendance, accuracy, and productivity. Attendance must be perfect and accuracy must be 99.5% and above to earn bonuses based on these criteria. Employees under this incentive plan earn about $50 for each of the three criteria with an additional layered bonus if all three criteria are achieved. The customer sales and customer service representatives are eligible to receive these bonuses twice a month. Account executives earn bonuses under a different incentive plan in which bonuses are earned quarterly based on their assigned customer growth and gross profit improvement from one year to the next. The record reflects that such bonuses can net an account executive at least an additional $600 a quarter. As can be seen, the bonuses that are received by Call Center employees may constitute a substantial increase in their earnings.

Call Center employees punch a time clock located in the Call Center and work one of three shifts. The Call Center shifts are from 8 a.m. to 5 p.m., 8 a.m. to 4:30 p.m., and 8:30 a.m. to 5 p.m. Employees in the Distribution Center punch a time clock located in the production area and work several staggered shifts, all of which are eight hours in length with a half an hour unpaid lunch. A "receiving" shift begins at 6 a.m., "production" shifts begins at 9 a.m., 9:30 a.m. and 10 a.m., and a second "receiving" shift begins at 1:30 p.m. All of the Employer's hourly employees at the Cincinnati facility share the same parking lot, lunchroom, and rest room facilities. They may also attend the same parties and cookouts hosted by the Employer. However, only the Distribution Center (warehouse) employees have lockers and must wear closed toe shoes.

The record discloses that within approximately the last five years there have only been three permanent transfers of employees from the Distribution Center to the Call Center and there have been no permanent transfers of employees from the Call Center to the Distribution Center. During that same time frame there have been no temporary assignments of Call Center employees to the Distribution Center or vice-versa. Work related interchange between Call Center and Distribution Center employees revolves around a variety of issues that arise with orders and is limited primarily to daily telephonic contact between Call Center employees and certain employees in the Distribution Center who perform specialized functions. Daily telephonic contact occurs between Call Center employees and primarily the Distribution Center employees who are responsible for handling returns, shortages, quality control issues, and invoicing. For example, the Employer has an employee in the Distribution Center called an order processor who deals with customers telephonically regarding shortages in orders. If there is a shortage on an order for a customer account that is assigned to an account executive, the order processor will call the account executive, inform him or her of the shortage, and ask the account executive how the shortage should be handled. Similarly, Call Center employees telephone the order processor to check on the status of orders. In addition to order processing duties, the order processor also picks orders on a daily basis as part of her duties.

The record discloses that the Call Center employees enter the Distribution Center on an infrequent basis in connection with their work. Thus, one customer service representative estimated that she went into the Distribution Center two to three times a week primarily to handle product returns and to verify the status of will call orders that customers had not picked up as scheduled. Another customer service representative testified that she only went into the Distribution Center "once in a while," and estimated the frequency of such ventures at "maybe" once a month. Likewise, Distribution Center employees generally have little reason to enter the Call Center and when they do so it is for brief periods of time. For example, Distribution Center employees who handle returns may enter the Call Center to retrieve return authorizations or credit memos which are sometimes necessary to complete the processing of a return so that the product may be restocked and the customer's account accorded the proper credit. These documents are retrieved from mailboxes in the Call Center and their retrieval generally does not require interaction between the returns department employees and the Call Center employees.

The record further discloses that, other than the order processor who processes a limited number of orders in comparison to the large volume processed by Call Center employees, Distribution Center employees do not perform the same or similar functions to those performed by Call Center employees. By the same token, Call Center employees do not perform the same duties as the Distribution Center (warehouse) employees. In fact, some of those duties require certification, e.g., to operate forklifts and "cherry pickers," that are not possessed by Call Center employees. On very rare occasions a Call Center employee might pull a small order for a pick up customer. However, Distribution Center employees complete pick up orders in the vast majority of instances.

Customer sales representatives and customer service representatives spend about 70% or more of their work time processing orders. Customer service representatives have the additional responsibility of resolving customer issues and complaints. Account executives also spend most of their work time processing orders. However, they are responsible for certain large customer accounts only and must devote their working hours to servicing these accounts. As much as 25% of the orders processed by the Call Center employees at the Cincinnati facility may actually be distributed by warehouse employees working in the Employer's Sparks, Nevada and Preston, Washington Distribution Centers.

Patty Blessing is the support employee. Unlike nearly all of the other Call Center employees, she spends a significant amount of her work time each day, approximately one to two hours, in the warehouse. Her principal duties consist of retrieving pick tickets from the warehouse four times a day, retrieving truck bills of lading, "green bar" reports from a printer in the back of the warehouse, and picking up and distributing the mail primarily to the mailboxes of Call Center employees and Distribution Center supervisors and lead employees. Other Distribution Center employees do not have mailboxes. Additionally, Blessing processes regular mail returns and files all of the completed pick tickets and bills of lading in filing cabinets located in the Distribution Center, but near the Call Center. The "green bar" reports provide detail inventory and order counts and are referred to as "tattletale" reports because they reflect problems with orders such as whether an order shipped timely or whether a return authorization needs to be issued to credit an account. Further, customer service representatives contact her to retrieve pick tickets from the filing cabinets when the tickets are need to resolve problems with an order. Finally, Blessing orders supplies for the Call Center and also periodically orders supplies for the Distribution Center.

Glen Ruter is the Employer's Trainer/Lead Customer Service Representative. His principal duties are to train new sales and service employees in the Call Center in the performance of their duties. He also trains Distribution Center employees in the use of the Employer's computer system. Training Distribution Center employees involves training on issues such as keying in a product shortage, how to ship an order from another warehouse, and modifying orders. Ruter also regularly assists Adams with the processing of will-call orders and he schedules employees in the Call Center on rare occasions when Taphorn is on vacation or otherwise not at work.

The remaining Call Center employee is Danette Siler, the receptionist. Her principal duties include greeting customers and other members of the public who come into the office. She processes paperwork and collects money from customers that are picking up product. Siler then directs the customer to the will-call area. Siler also takes local incoming calls and forwards them to the appropriate Call Center and Distribution Center personnel and interacts with Adams on a daily basis by calling him for the whereabouts of paperwork for will call orders. Siler may also contact the order processor in the warehouse to locate the paperwork for orders. Finally, if Blessing is busy Siler may retrieve and file pick tickets.

The Employer's three maintenance employees are led by David Gemmell, Sr., who works only four to six hours a week, but is apparently on-call on a daily basis. Gemmell's principal duties are to oversee the performance of the maintenance tasks and to ensure that they are being performed properly. His son, David Gemmell, Jr., puts up and takes down storage racks, maintains, repairs, and installs conveyors, installs fans, and "gravity lines." The Employer sometimes assigns a warehouse employee from the receiving department to assist Gemmell, Jr. in removing storage racks. Gemmell, Jr. also maintains the grounds of the facility, including cutting grass. Gemmell, Jr. does not have any formal training and does not perform complex mechanical repair work on the Employer's "cherry pickers" or other equipment. He may occasionally hang a picture, or move a desk or a printer in the Call Center. Gemmell Jr. does not pick orders.

The remaining maintenance employee, Johnny Merit, works a second shift from 1:30 p.m. to 10 p.m. His principal duties involve cleaning. Merit dumps trash, sweeps the floors and operates a floor scrubber in the low bay area. Merit often picks orders and works alongside other warehouse employees in the performance of these duties.

ANALYSIS:

In making my findings, I note that Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Company*, 91 NLRB 409, 418 (1950), enf'd 190 F.2d 576 (7th Cir. 1951). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit and, as previously noted, there is no history of collective bargaining which might affect my determination as to the composition of the unit.

In non-retail operations, the Board applies traditional community of interest standards in determining the appropriateness of warehouse or related units. *Esco Corporation*, 298 NLRB 837 (1990); see also, *A Russo & Sons, Inc.*, 329 NLRB No. 43 (1999)(traditional community of interest standards also apply to combination retail and wholesale operations). Applying traditional community-of-interest factors to the subject case, the Call Center employees do not share such a strong community of interest with the Distribution Center (warehouse) employees as to require their inclusion in the same unit. I particularly find noteworthy the fact that the Distribution Center and Call Center employees are separately supervised at the facility level and do not share common supervision below the corporate headquarters level in the person of Operations Manager Rask. Additionally, there is no temporary interchange between Call Center and Distribution Center employees, little permanent interchange, and, as noted, the Call Center employees perform separate and distinct functions from those performed by the Distribution

Center (warehouse) employees. Call Center employees venture infrequently into the warehouse area and have only daily telephonic contact with a limited number of Distribution Center employees. All of the employees in the Cincinnati facility share common benefits. However, the wage range for the Distribution Center employees are generally lower than those enjoyed by the Call Center employees and the Call Center employees have the ability to dramatically increase their earnings by receiving bonuses for meeting certain productivity, attendance, and accuracy goals.

Having carefully considered all the record evidence, I am of the opinion that the Call Center employees may constitute a separate appropriate unit [3]/ and that the warehouse employees, excluding the Call Center employees, constitute an appropriate unit. *Esco Corporation*, supra; *Overnite Transportation Company*, supra. In *Nuturn Corporation*, 235 NLRB 1139 (1978), which is very similar to the instant case, the Board excluded customer service clerks and other office clerical personnel from a warehouse unit relying on the difference in the working conditions between the two groups, their different responsibilities and terms of employment, and the limited interchange between the two groups. Id., at 1140. Similar factors are present here as the Call Center employees spend the vast majority of their work time in the office area utilizing computers and telephones to interface with customers and process orders while the Distribution Center employees work almost exclusively moving product into and out of the warehouse. Moreover, the Call Center employees have different immediate supervision.

J.C. Penney Company, Inc., 328 NLRB No. 105 (1999), the primary decision relied on by the Employer in its brief in support of its position that the Call Center employees must be included in the unit, is clearly distinguishable from the subject case in a number of critical aspects. In *J.C. Penney*, the union sought to represent a unit of warehouse, inventory control, job lots, packing, shipping, returns, customer relations (similar to the customer service representatives here), factory ship, accuracy control/supply, merchandise exam, engineering, maintenance, data processing, traffic, loss prevention controllers/accounting employees, and merchandise coordinators, sales assistants and control clerks in the employer's catalog operation, but sought to exclude the telemarketing department employees. The Board found that the unit sought by the union must also include the telemarketing department employees. In finding that the telemarketing employees must be included in the unit, the Board, in *J.C. Penney*, did not hold or imply that a unit limited to warehouse employees would not be appropriate. To the contrary, the Board has consistently held, as previously noted, that warehouse employees, particularly in a nonretail operation, may constitute an appropriate unit. *Esco Corporation*, supra. (overruling *Roskin Bros., Inc.*, 274 NLRB 413 (1985)). See also, *A. Russo & Sons, Inc.*, supra.

Here, unlike in *J.C. Penney*, the Petitioner seeks to represent essentially a unit of warehouse employees, excluding all other employees. Thus, the Board's standard community of interest test must be applied to determine whether the unit sought, limited to the Distribution Center (warehouse) employees, is appropriate. A *Russo & Sons, Inc.*, 329 NLRB at 3 slip op.; *Esco Corporation*, 298 NLRB at 841. Applying the Board's traditional community of interest

[3]/ As a result of this conclusion, I do not need to separately consider whether the receptionist might also be properly excluded from the unit as an office clerical employee. This position is properly excluded from the unit as part of the Call Center.

factors to the subject case, I find, as previously discussed, that a unit limited to the warehouse employees is appropriate.

The case *sub judice* also differs *from J.C. Penney* in several other respects. In *J.C. Penney*, the Board noted that some employees whom the union sought to include (e.g., the customer relations employees) performed similar work to that of the telemarketing employees and that the telemarketing employees had substantial work related contact with other employees in the proposed unit. Here, the employees whom the Petitioner seeks to represent perform true warehousing and related functions. The additional employees, whom the Employer would include in the unit, primarily perform other nonwarehousing activities, and the respective job responsibilities of the Distribution Center (warehouse) employees and Call Center employees tie them, for the majority of their worktime, to different parts of the facility. See, *Big Buck Lumber Company*, 241 NLRB 639 (1979). Moreover, in *J.C. Penney*, there was substantial permanent and temporary interchange between the telemarketing employees and the employees in the classifications the union would include in the unit. Indeed, in *J.C. Penney*, during the past 3 years prior to the hearing, there had been 150 telemarketing employees who had bid to transfer to other departments and approximately 20 had actually been transferred, and telemarketing employees could bump employees in other departments in case of a reduction-in-force. Here, the record discloses only a very few permanent transfers (three in the past 5 years) from the Distribution Center into the Call Center and there have been no transfers from Call Center into the warehouse.

Likewise, *Sears, Roebuck & Co.*, 191 NLRB 398 (1971), relied on by the Employer, is inapposite. In *Sears*, the Board found that a warehouse unit was not appropriate. However, *Sears* involve a retail operation. See, *A. Harris & Co.*, 116 NLRB 1628 (1957). Under *A. Harris*, for a warehouse unit, in the retail industry, to be appropriate, "the warehousing unit must be geographically separated from the retail facility; be under separate supervision; and not substantially integrated with other store functions." Id. The rationale applied in *Sears* is simply not applicable to the Employer's nonretail operation. *Esco Corporation*, supra; *A. Russo & Sons, Inc.*, supra. The Employer also cites *Sears, Roebuck and Co.,* 220 NLRB 1224 (1975), in its briefs. In this case, the Board merely found that four warehouse and three inventory control clericals must be included in the unit with the warehousemen and furniture finishers. Thus, the issue in this *Sears'* decision involved a unit placement question and not whether a Distribution Center (warehouse) unit, like here, may be appropriate for bargaining.

Similarly, *Scholastic Magazines*, 192 NLRB 461 (1971), does not advance the Employer's position. In *Scholastic*, the warehouse and maintenance employees, whom the union sought to represent, exercised similar skills and participated equally and fully with the processing department employees, whom the union would have excluded, in the single process of filing customer orders. Here, unlike in *Scholastic*, the Distribution Center employees perform true warehousing functions as their primary employment activity, while the Call Center employees receive and process orders and service customers.

Moreover, *Avon Products, Inc.,* 280 NLRB 1749 (1980), does not support the Employer's position that the inclusion of the Call Center employees in the same unit with the Distribution Center (warehouse) employees is mandatory. *Avon* did not involve the issue of the appropriateness of a warehouse unit, but involved unit placement issues in a production and maintenance unit. Here, the issue does not involve the unit placement of various classifications in a standard production and maintenance unit but whether a unit limited to the Distribution Center (warehouse) employees is appropriate.

S & S Parts Distributors Warehouse, Inc., 277 NLRB 1293 (1985), cited by the Employer in its brief, is also distinguishable from the subject case. In *S & S,* the union petitioned for a unit consisting of pullers, packers, truck loaders, shipping department employees, customer order takers, core department (return goods) employees, local truck drivers, will call employees and receiving employees employed by the employer in its warehouse facility, but sought to exclude, among others, two special order takers, the customer credit employees, and a bookkeeper/ substitute order taker. The union sought to exclude these employees on the ground that they did not share a community of interest with the included employees. The Board found that the disputed employees shared a strong community of interest with the included employees and that there was no basis to exclude them from the unit. Here, the Petitioner seeks to represent a unit limited to Distribution Center (warehouse) employees and does not, as in *S & S,* seek to exclude two or three ancillary employees from essentially an overall unit.

In its brief, the Employer cites numerous other cases in support of its position that an all inclusive unit, including Distribution Center (warehouse) employees, Call Center employees and maintenance employees, is presumptively appropriate. I agree with the Employer's contention that an all inclusive unit would be appropriate for collective bargaining. See, e.g., *Airco, Inc.,* 273 NLRB 348 (1984); *Livingstone College,* 290 NLRB 304 (1989); *Kalamazoo Paper Box Corporation,* 136 NLRB (1962) (cited in the Employer's brief). However, the fact that an all inclusive unit would be appropriate, or even the most appropriate unit, does not, as suggested by the Employer, render a unit limited to the Distribution Center (warehouse) employees inappropriate. *National Cash Register Co.,* 166 NLRB 173 (1966); *Morand Brothers Beverage Company,* supra.

The Employer also cites, in its brief, several cases which hold that similar wages, hours and working conditions among various groups of employees militate in favor of including them in the same unit. See, e.g., *Cheney Bigelow Mine Works,* 197 NLRB 1279 (1971); *Bank of America,* 196 NLRB 591 (1971); *Industrial Supplies Company,* 237 NLRB 189 (1978) (cited in the Employer's brief). I do not quarrel with this argument and generally agree that these cases stand for the proposition for which they are cited by the Employer. However, such common conditions of employment, to the extent they exist in the subject case, do not outweigh the factors, e.g., separate supervision, work location and job duties of the Distribution Center (warehouse) employees, which militate in favor of finding a separate petitioned for Distribution Center (warehouse) unit appropriate. *A Russo & Sons, Inc.,* supra; *Esco Corporation,* supra.

Finally, I do not agree with the Employer's characterization of the Call Center employees as "warehouse clericals" who must be included in the Distribution Center (warehouse) unit. Moreover, I am not in agreement with the Employer's position that the exclusion of the Call Center employees would create a residual unit. The Call Center employees work in a separate location under separate supervision and perform, for the most part, different job functions than the Distribution Center (warehouse) employees. Thus, the Call Center employees share a distinct community of interest which would enable them to be represented in a separate appropriate unit. See, *Overnite Transportation Company,* supra; *Overnite Transportation Company,* 331 NLRB No. 85 (2000) (cited by the Employer in its brief) (Board found dockworkers, jockeys, maintenance employees and janitors, excluding mechanics, constituted an appropriate unit). Under such circumstances, even assuming that the Call Center employees may be categorized as "warehouse clericals," I would nevertheless find that their inclusion in the same unit with the Distribution Center (warehouse) employees is not mandatory and that the Distribution Center (warehouse) employees, excluding the Call Center employees, constitute an appropriate unit.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that a unit limited to the Employer's Distribution Center (warehouse) employees excluding the Call Center employees constitute an appropriate unit. *Esco Corporation*, supra; *Overnite Transportation Company*, supra; *A. Russo & Sons*, supra. Accordingly, I shall direct an election in a unit of the Distribution Center (warehouse) employees.

There remains for consideration the unit placement of the three maintenance employees. Contrary to my finding above with respect to the Call Center employees, I find no basis for excluding the maintenance employees from the proposed unit. In this regard I note that the maintenance employees and the other Distribution Center (warehouse) employees share common supervision at the Cincinnati facility in the person of Assistant Distribution Manager Taylor. Additionally, with the exception of the maintenance lead, whose status is somewhat unique, the maintenance employees share a similar wage scale to that of the other Distribution Center (warehouse) employees. The maintenance employees also work side by side with other Distribution Center employees on a regular basis and one of the maintenance employees, John Merit, regularly performs the same type of order picking work. Moreover, the maintenance employees do not have any specialized training and perform unskilled or, at most, semi-skilled work. In sum, I conclude that they do not have a distinct community-of-interest apart from the other Distribution Center (warehouse) employees and could not constitute a separate appropriate unit.

In reaching the above conclusion, I recognize the high hourly wage rate enjoyed by David Gemmell, Sr., his limited hours of work, and his on-call status, reflect that he shares a lesser community of interest with the other Distribution Center (warehouse) employees than is shared by the other maintenance employees. However, Gemmell, Sr. works on a regular basis and performs the same type of work as the other maintenance employees. Thus, there is no basis to treat him differently than the other maintenance employees.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the maintenance employees must be included in the same unit with the Distribution Center (warehouse) employees. *Monsanto Co.*, 172 NLRB 1461 (1968). Accordingly, I shall include the maintenance employees in the Unit.

STIPULATED SUPERVISION:

In accord with the record evidence, and the stipulation of the parties, I shall exclude Martin Rask, operations manager; Paul Rhodes, interim distribution manager; Sue Taphorn, call center manager; Jon Taylor, assistant distribution manager; Sherri Cole, production supervisor; Tammy Faulkner, inventory control/returns/quality control supervisor; and Paul Boelleke, second shift supervisor, from the unit as supervisors within the meaning of Section 2(11) of the Act.

Additionally, in accord with the record evidence, and the stipulation of the parties, I shall exclude Karla Keys, human resources administrator, from the unit as a managerial employee.

Finally, there is insufficient evidence in the record to enable me to determine whether Forest Kirk, distribution coordinator, is a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I shall instruct my agent to challenge his ballot should he appear at the polls to cast a vote.

CONCLUSION AS TO THE UNIT:

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

> **All regular full-time and part-time Distribution Center (warehouse) employees, including maintenance employees, employed by the Employer at its 4330 Winton Road, Cincinnati, Ohio facility, excluding all office clerical employees, and Call Center employees, including the receptionist, customer sales and customer service representatives, account executives, the support employee and the trainer/lead customer service representative, and all professional and managerial employees, guards and supervisors as defined in the Act.**

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers International Union, Local 1099**.

LIST OF ELIGIBLE VOTERS

In order to insure 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 using full names, not initials, 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); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **March 30, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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. This request must be received by the Board in Washington by **April 6, 2001**.

Dated at Cincinnati, Ohio this 23rd day of March 2001.

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board

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