

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
(Vallejo, California)

PARK MANAGEMENT CORPORATION d/b/a  
SIX FLAGS MARINE WORLD 1/

Employer

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, STATIONARY ENGINEERS  
LOCAL 39, AFL-CIO 2/

Petitioner

**20-RC-17842**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as 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, 3/ 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 herein. 4/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 5/
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. 6/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 7/

All full-time and regular part-time maintenance department employees including electricians, plumbers, welders, ride mechanics, vehicle maintenance, carpenters, maintenance workers, preventative maintenance workers, plant maintenance technicians, artists and painters employed by the Employer at its Vallejo, California, facility; excluding all other employees, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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(s) 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are

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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 **INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY ENGINEERS LOCAL 39, AFL-CIO**

#### **LIST OF 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 and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 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. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before April 11, 2003. 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, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by April 18, 2003.

Dated April 4, 2003.

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

- 1/ The name of the Employer appears in accord with the amended petition.
- 2/ The name of the Petitioner appears in accord with the amended petition.
- 3/ As noted below, I have taken administrative notice of the petition, certification and notice of election in Case 20-UD-415, and have included copies of those documents in the record as Board Exhibits 2(a), 2(b) and 2(c).

On March 11, 2003, the parties were notified telephonically and by letter that the due date for filing post-hearing briefs in this matter was extended to the close of business Wednesday, March 19, 2003. The Petitioner's post hearing brief is date-stamped as having been received in the Regional office on March 20, 2003 at 1:14 p.m. By letter dated March 21, 2003, the Employer filed a motion with the undersigned requesting that the Petitioner's post-hearing brief be rejected on the basis that it was untimely filed in the Regional office and because the Petitioner had not served a copy of its brief on the Employer. By letter dated March 24, 2003, the Petitioner opposed the Employer's motion.

In its opposition, the Petitioner asserts that its messenger service was prevented from timely filing its brief on March 19, 2003, because of massive protests that were underway throughout San Francisco. The Petitioner also asserts that an assistant to the undersigned, "on Friday at 5:05 p.m.," assured the Petitioner that the Regional office "would accept the late-filed brief in the morning." With regard to the Petitioner's reference to massive protests in San Francisco, I take administrative notice that such protests actually commenced on Thursday, March 20, 2003. In its opposition, the Petitioner asserts that it served the Employer with a copy of its post-hearing brief by facsimile transmission and by first-class mail and that it cannot account for their failure to receive it. I note, however, that the affidavit of service attached to Petitioner's post-hearing brief reflects that the document was served on the Employer on March 19, 2003.

Notwithstanding any assurance the Petitioner may have been given by Regional office personnel regarding its ability to file its post-hearing brief after the due date, Section 102.67(a) and 102.114(a) and (c) of the Board's rules make it clear that the failure to comply with the rules of service can be grounds for rejecting the document or withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had a reasonable opportunity to respond. In the instant case, the Petitioner's post-hearing brief was due to be filed in the Regional office and served on the Employer on March 19. As the Petitioner did not timely file its post hearing brief in the Regional Office, I have not considered the Petitioner's brief for purposes of this decision.

- 4/ Six Flags, Inc., is a worldwide regional theme park company that owns and operates 39 parks throughout North America, Latin America and Europe. Its subsidiary, Park

Management Corp., Six Flags, Inc., manages and operates Six Flags Marine World in Vallejo, California. The Employer has corporate offices in New York City and Oklahoma City and maintains administrative offices in Vallejo. The parties stipulated, and I find, that during the calendar year ending December 31, 2002, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Vallejo, California facility, equipment and food service materials valued in excess of \$5,000 directly from points outside the State of California. Based on the record evidence and the parties' stipulation to the foregoing facts, I find that the Employer is engaged in commerce and that it would effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

- 5/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 6/ As noted above, the Petitioner seeks to represent a unit comprised of approximately 26 maintenance employees including electricians, plumbers, welders, ride mechanics, vehicle maintenance employees, carpenters, maintenance employees, preventative maintenance employees, plant maintenance technicians, artists and painters. As indicated above, the Employer's position is that the only appropriate unit is one that includes all of the employees employed its Vallejo facility.

Stipulations. The parties have stipulated, and I find, that the following individuals should be excluded from the unit on the basis that they are statutory supervisors: Director of Maintenance and Construction Michael King, Maintenance Managers Paul Mikeska and Pat Chancy and Supervisors Oscar Lara and Mark Cholowinski.

Background. As indicated above, Six Flags, Inc. operates theme parks both internationally as well as in the United States. The Employer's Vallejo, California facility, herein called the Park, evolved from a theme park called Marine World that opened in 1968, in Redwood City, California, about forty miles from its present location in Vallejo. Marine World was owned by the American Broadcasting Company (ABC). It was devoted solely to marine animals and consisted of a 3000-seat ski stadium, a 2000-seat whale and sea lion theater, a seven-tank sea-life and touch tank display and a 450-seat restaurant.

Some time prior to 1971, Marine World was purchased by Resorts International, Inc., which in 1971, also purchased Africa USA, a large collection of animals that had been trained for movie and television work. In 1972, ABC and Resorts International, Inc., combined to form Marine World USA. By 1978, Marine World USA consisted of approximately 25 acres, including 16 acres of water. Its operation was seasonal and the average number of employees employed in the summer months was approximately 300. *Marine World USA*, 236 NLRB 89 (1978).

In September 1985, Marine World USA closed its Redwood City facility and moved to Vallejo. On June 16, 1986, it opened a new 160-acre park in Vallejo, called Marine World Africa USA, which included both marine and African wild animal attractions. Between 1986 and 1996, Marine World Africa USA added numerous other animal attractions including a Shark Experience, an Elephant Encounter, and the Walrus Exhibit.

In 1996, the City of Vallejo assumed ownership of Marine World Africa USA. In April 1997, Premier Parks, Inc., took over the management of Marine World Africa USA and began introducing amusement rides into the facility. The name of the facility was changed to “The New Marine World Theme Park.”

In October 1998, Six Flags, Inc., took over the facility and its subsidiary, Park Management, Inc., took over the operation of the facility. The facility was then renamed “Six Flags Marine World.” After the takeover by the current Employer, in 1998-99, many new attractions were added to the Park, including numerous additional rides, roller coasters and food facilities and many new improvements were made. The Park map shows that it currently has approximately five roller coasters; at least twenty other amusement rides; a train; a tram; approximately four theater areas; games areas; a dozen or more restaurants/eating facilities; and approximately fifteen shops. It also continued operation of several animal areas, which included stadiums for ski shows, sea lion shows and dolphin/whale shows. As discussed below, the Employer’s operation is seasonal in nature. The facility is closed to the public from November to March and open from mid-March to early November. Currently, its workforce ranges from approximately 110 year-round employees in the winter months to between 1800 and 2000 employees during its peak summer months.

Collective Bargaining History. From approximately 1968 to 1976, all employees at Marine World/Marine World USA in Redwood City were represented by Teamsters Local 856, IBT, under a series of two-year collective-bargaining agreements. *Marine World USA*, 236 NLRB 89, 93(1978). I take administrative notice of the fact that on May 6, 1981, Teamsters Local 856 was certified in Case 20-RC-13430, as the exclusive collective-bargaining representative of the following unit of employees of Marine World USA:

All employees employed by the Employer at its facility in Redwood City, California; excluding confidential employees, professional employees, outside salesmen, guards and supervisors as defined in the Act.

As indicated above, at the time of the certification, the Park’s operation was seasonal in nature with the peak number of employees being about 300 in the summertime.

The record does not disclose how representation of the employer-wide unit at the Park passed from Teamsters Local 856 to Office and Professional Employees

International Union Local 3, AFL-CIO (herein called Local 3). However, Employer Human Resources Manager Lorraine Brooke testified that Local 3 represented the employees in an employer-wide unit at Marine World Africa USA from approximately 1986 until 1999. As noted above, the Park had been relocated to Vallejo in 1986. The record contains an unsigned copy of a collective-bargaining agreement between Marine World Africa USA and Local 3, which shows effective dates from April 1, 1997, until January 15, 2000. The recognition clause of this Agreement states that the Employer recognized Local 3 as the exclusive representative for collective bargaining purposes of employees within the unit certified by the National Labor Relations Board, excluding all other employees, provided that the said unit is enlarged to include non-supervisory employees engaged in gardening and landscape work, when employed directly by the Employer.

Although there is no evidence of the Board having certified Local 3 to represent employees at the facility, I take administrative notice of the Certification of Results of Election in Case 20-UD-415, Premier Parks d/b/a Marine World Africa-USA, dated March 9, 1998, wherein a majority of unit employees voted to withdraw the authority of Local 3 to require, under its security agreement with the Employer, that employees make certain lawful payments to the Union in order to retain their jobs. The unit described in that certification is as follows:

All full-time and regular part-time receptionists, art department apprentices, artists, craftpersons, designers, painters, cash auditors, carpenters, carpenters-lead, carpenters-foreman, draftpersons, electricians, electricians-lead, electricians-foreman, maintenance electricians, maintenance workers, plant maintenance technicians, preventative maintenance foreman, plumbers, plumbers lead, plumbers-foreman, utility helpers, welders, rides mechanics I, ride mechanics II, host/esses, lead host/esses, games attendants, games cash auditors, games inventory workers, games lead persons, gardener's assistants, gardeners, turf care specialists, surveyors, sales clerks, lead sales clerks, cashiers, cashiers-admissions, cashiers-lead, operations host/esses, operations host/esses-lead, day maintenance employees, day maintenance employees-lead, parking attendants, parking attendants-lead, attraction-attendants, attraction attendants-lead, announcers, engineers, sound systems technicians, warehouse attendants-merchandise & foods, warehouse lead-merchandise & foods, aides, interpreters I, handlers and keepers, apprentice trainers, trainers and lead keepers, senior trainers, animal care seasonal employees, aquarists, senior aquarists, divers, senior divers, filter operators, senior filter operators, Oceanarium maintenance workers, Oceanarium senior maintenance workers, water chemists II, senior water chemists, unlicensed veterinary technicians and licensed

veterinary technicians; excluding all other employees, guards and supervisors as defined in the Act.

The election in Case 20-UD-415 was conducted in February 1998. The unit consisted of approximately 98 employees. A copy of the petition, certification and Notice of Election in that case are hereby made a part of the record in the instant case as Board Exhibits 2(a), 2(b) and 2(c).

I also take administrative notice of the fact that on January 31, 2000, Teamsters Local 490, filed a petition in Case 20-RC-17579 seeking to represent a unit comprised of all of the Employer's full-time and part-time employees. That petition was withdrawn on March 24, 2000. There is no evidence that any petitions to represent employees at the Park have been filed between the filing of the Teamsters' petition in January 2000, and the one filed in the instant case on February 20, 2003.

The record reflects that at the time of the hearing in the instant case, the Employer employed employees in the following job classifications listed hereafter by department: Maintenance Department: electrician, plumber, welder, ride mechanic, vehicle maintenance employee, carpenter, maintenance worker, preventative maintenance worker, plant maintenance technician, artist and painter; Food Services Department: bartender, cashier, counter host and hostess, lead, cook, preparatory cook, server, and picnic attendant; Games Department: attendant, lead, inventory and cash auditor; Marketing Department: surveyor; merchandise: sales clerks, lead, stocker; Administration: receptionist; Operations: character escort, cashier, lead cashier, host and hostess, camp counselor, first aid and loss prevention, park services, park services lead, parking attendant, parking lead, ride operator, lead ride operator, tram driver and cashier; Show Productions: announcer, engineer, performer, light and sound technician, and costume character; Warehouse Department: attendant and lead; Education Department: education guide; animal care: handler/keeper, apprentice trainer, lead keeper, senior trainer and animal care seasonal; and Oceanarium Department: aquarist, senior aquarist, diver, senior diver, life support operator, senior life support operator, water quality technician, senior water quality technician and veterinary technician.

The Park's Seasonal Operation and Employees. As noted above, the Park's operations are seasonal in nature. Thus, the record reflects that the Park is open to the public from mid-March to early November. At the time of the hearing in the instant case, March 5, 2003, the Park was closed and there were only about 110 full-time hourly employees employed, representing the Park's year-round employees. Included among these 110 employees are approximately 26 maintenance employees who comprise the unit petitioned for herein. All of the maintenance employees at issue work year-round and are not seasonal employees. In addition to the year-round maintenance employees, it appears from the record that there are also certain animal care, Oceanarium, administration and operations department personnel employed at

the Park year-round. The Employer's peak season is in July, and at that time it will employ between 1800 and 2000 employees. At the time of the hearing, only about ten percent of the peak workforce was employed and only about a third of its job classifications were filled; these included all of the maintenance classifications. About 55 to 60% of the Employer's seasonal employees are high school students. The remaining 40 to 45% are college students and people seeking second incomes such as senior citizens. Many of the seasonal employees are under 18 years of age.

Conditions of Employment. The record reflects that all employees are recruited in the same manner and receive the same general orientation. While all employees receive the same employee handbook, the seasonal employees also receive a seasonal handbook as a supplement to the regular handbook. The employee handbook states that certain jobs may not lawfully be performed by employees under the age of 18. These jobs include driving a motor vehicle or being an outside helper on a motor vehicle; using power-driven or wood-working machines; or power driven circular saws, band saws, and shears; wrecking and demolition work; and roofing or excavation work. In addition, the handbook lists certain legal restrictions on hours of work for employees under 18 years of age. Otherwise, all employees must abide by the same Employer rules and policies which include policies governing discrimination, discipline, lunch and break periods, overtime, leave, holiday, vacation, jury duty, etc. The personnel files for all employees are maintained in the human resources office. All hourly employees punch the same type of timecard and use one of two time clocks at the Park. All employees wear the same badges except that the badges are color-coded as described below. All employees may use the same employee break areas; the same employee tracking forms; and receive the same type of disciplinary report for rule infractions. All employees are invited to Employer social events, including an annual summer party; a baseball outing to an Oakland A's game; and all participate in putting together for the public a Fright Fest event for Halloween held throughout October.

Administrative Divisions, Managerial Hierarchy and Supervision of Park Employees. The Park is headed by General Manager and Vice President Joe Meck. Human Resources Manager Lorraine Brooke oversees all personnel matters at the Park, including labor relations and the administration of employee benefits and activities.

As indicated above, the Employer's work force consists of employees who work in several different departments. These departments include the following: maintenance, food services, games, marketing, merchandise, administration, operations, show productions, warehouse, education, animal care and Oceanarium. Each department has its own separate management and supervision. Human Resources Manager Brooke testified that managers and supervisors from one department do not hire or fire employees from other departments although they may make recommendations in such matters. The record contains no specific evidence of any manager or supervisor from the maintenance department ever taking or

recommending any personnel actions involving employees in any other department. Nor is there any evidence of any instances when a manager or supervisor from any other department recommended a personnel action involving an employee in the maintenance department.

The maintenance department is managed and supervised by Maintenance Director King, Maintenance Managers Paul Mikeska and Pat Clancy and Maintenance Supervisors Mark Cholowinski and Oscar Lara. The parties stipulated that each of these persons is a supervisor within the meaning of the Act and should be excluded from the unit. The record reflects that Maintenance Director King and Maintenance Managers Mikeska and Clancy have ultimate responsibility to maintain the rides, facilities, games and attractions and other equipment in the Park. They are also responsible for directing and assigning work to the maintenance employees, approving days off, and disciplining maintenance employees.

Maintenance Director King testified that there are times when the maintenance managers and/or supervisors direct the work of employees in other departments. He testified, for example, that at the time of the hearing, Maintenance Manager Clancy was in charge of a project to remove netting and canvas in the Walrus area and is directing the animal care employees regarding how to assist in the work.

Human Resources Manager Brooke testified that with regard to hiring maintenance department employees, she screens the applicants and rejects those who lack the basic qualifications such as those who are under 18 years of age; do not have a driver's license; or who have no mechanical skills. If an applicant passes her screening procedure, Brooke passes the resume on to Maintenance Director King, who in turn passes it on to the maintenance department managers to review for hire.

The managers of the maintenance department as well as those of other departments regularly serve as manager of the day (MOD) during the Park's open season. The duties of the MOD include (in addition to his or her regular duties): opening the Park and monitoring rides, animal areas, restaurants and restrooms to ensure that everything is operating smoothly.

The Maintenance Department. As indicated above, approximately 26 maintenance employees work in the Employer's maintenance department. All are hourly-paid full-time employees who work year-round. The maintenance department is comprised of welders who fabricate, fix and maintain various metal objects in the Park; plumbers, who maintain the fresh water, waste water, storm drain, irrigation, and air systems throughout the Park; the ride maintenance employees, who maintain the amusement rides and trains for the Park; vehicle maintenance employees, who maintain and repair the trams and other motorized equipment in the Park; carpenters, who maintain park fixtures and buildings, including the wooden roller coaster, fencing, and other Park structures; electricians, who maintain the Park's electrical distribution, sound

and lighting systems, restaurant equipment, ice machines, games areas; and artists and painters, who are responsible for most of the painting work performed at the facility.

Skills and Qualifications of Maintenance Department Employees. The record reflects that the maintenance employees must be at least 18 years of age and have a valid drivers license. The Employer does not require them to have any special certifications. However, Maintenance Director King testified that the welder possesses certain certifications and that two of the electrical employees possess certifications for refrigeration work. As indicated above, there is no evidence that any other employees are required to possess maintenance skills in order to be hired. Although there are certain other employees in the Park who must have a driver's license in order to qualify for their jobs such as warehousemen who drive forklifts, many if not most of the Park's seasonal employees are high school students, between the ages of 15 and 18, who do not have driver's licenses.

The Maintenance Shop. All maintenance department employees use the same parking lot and punch the same time clock next to the guard shack. They report to the maintenance shop each day, which is located next to the warehouse area. Only the maintenance department employees have lockers in the maintenance shop. The maintenance shop houses the maintenance tools and parts and some repair and welding work is performed there. The vehicle maintenance employees use the maintenance shop and an area in the tram compound to perform their repairs. The carpenters also have a carpentry area near the wooden roller coaster ride and some parts for rides are stored at the ride. The maintenance department managers deliver the paychecks of the maintenance employees to the department's employees at the maintenance shop. All of the maintenance employees have keys to the maintenance shop. Although King testified generally that some warehouse and park service employees also have keys to the maintenance shop, he was only able identify one specific park service employee that he was certain possessed a key.

Maintenance Department Meetings. When the Park is closed to the public in the winter season, the maintenance department holds daily meetings each morning that are attended by all maintenance employees. In addition, the department regularly holds safety meetings for maintenance employees. During the open season, daily meetings are held at different times among groups/crews of maintenance employees because of the varying employee work schedules. Employees from other departments do not regularly attend the departmental and safety meetings held by the maintenance department.

Logs and Work Orders. The maintenance department uses a computer work order system pursuant to which the various other departments enter work orders into the computer and the supervisors of the maintenance department access such orders and assign the work to be performed to the maintenance employees. Maintenance

employees are required to keep card logs on which they record the work they have performed. There is no evidence that employees in any other department use a similar work order or log system.

Transfers Involving the Maintenance Department. The only evidence in the record of a permanent or temporary transfer into or out of the maintenance department is the testimony of Maintenance Director King that one water treatment employee had left that maintenance department to become a mechanic and one seasonal entertainment tech had left to become a cart mechanic. However, the record does not disclose when these transfers occurred.

Functional Integration and Contact Among Employees. The record is replete with evidence that the maintenance department employees perform their maintenance work throughout the Park and come into daily contact with other Park employees. For example, maintenance employees are not allowed to enter wild animal enclosures without the presence of an animal trainer to assist for the safety of the employees and the animals. Maintenance employees often assist employees in other departments and vice versa in carrying out maintenance-type tasks, including building/repairing animal enclosures with the assistance of animal trainers; working on sound and lighting systems, painting signs and working on sets and props with production/entertainment show employees; and welding pipes and doing plumbing work on pumps, motors, pipes and valves in the Oceanarium area with the assistance of the water quality technicians.

The record reflects that certain employees in other departments have skills that overlap with those of the maintenance department employees. These include certain water quality technicians who are able to do welding and plumbing work in the Oceanarium department; and certain show production employees who are capable of performing carpentry, sound system and lighting work.

The record also reflects that certain employees in other departments perform maintenance tasks in their areas that do not require extensive skills. These tasks include cleaning and unclogging toilets, picking up litter, painting, changing electrical outlets and fixtures, and changing tires. In addition, the record reflects that when certain special events or emergencies occur, employees from various departments have assisted each other. In this regard, the record reflects that the Employer produces a special Halloween event for Park guests each year that involves construction work. For this event, employees from the maintenance department as well as several other departments assist in performing carpentry, painting and other tasks for this event. The record also discloses on one occasion, employees from several departments assisted in resolving a sewer problem at the Park's Blue Water Bay by lifting manholes in the direction of the backup. Also, twice a year, employees from several different departments assist in cleaning the lake surrounding the Park.

The record does not contain evidence to establish that employees in any other department must possess maintenance skills in order to be hired. Nor does the record contain evidence to establish that employees in any other department spend a significant part of their work time performing maintenance work as do the maintenance employees.

Hours of Work. During that portion of the year when the Park is closed to visitors, the maintenance department employees work from 7 a.m. to 3:30 p.m. During the open season, they typically work on shifts that commence at 5:30 a.m. and 2 p.m. The record does not disclose whether employees in other departments have a similar schedule. As noted above, the Employer's rules indicate that there are legal restrictions on the working hours and breaktimes of employees under 18 years of age.

Tools Used By Maintenance Employees. All maintenance department employees carry a two-way radio. Maintenance Director King testified that there are only about 100 such radios in the Park and that the other employees who carry them work with animals, filtration, marketing, security and ride operation. The record reflects that the welders use grinders (gas and arc) hammers, saws, shop smiths, and band saws; the plumbers use hack saws, saws, shovels, pipe threaders, torches, pipe wrenches, hammers and nails; and the carpenters use saws, levels, impact guns; and regular carpentry hand tools. The maintenance department employees also have larger mobile equipment which is similar to that used by employees in certain other departments, including forklifts, trucks, golf carts, picker/man lifts and tractors.

Uniforms. The record reflects that the Employer provides uniforms for maintenance department employees that consist of blue shirts and blue pants. The Employer also reimburses maintenance employees up to fifty dollars a year for the purchase of steel-toed shoes. The record does not disclose whether employees in other departments are provided with uniforms similar to those worn by the maintenance employees or whether other employees receive a similar allowance to purchase steel-toed shoes. All employees must wear badges imprinted with their names, which are color-coded based on their age; employees over 18 years of age have blue badges; employees between the ages of 15 and 17 have red badges; and fifteen year olds wear yellow badges.

Benefits. All full-time hourly Park employees receive many of the same benefits, including life insurance, a 401(k) plan, vacation, holidays, sick leave, bereavement leave, jury duty, military leave, disability leave, etc. Seasonal employees do not receive health, dental and vision insurance as do the maintenance employees who work year-round.

Wages. The record does not contain a listing of the wage rates of the various employee classifications. Included in the record is a document reflecting a listing of the grade levels for full-time employees with grade levels ranging from 4 to 10. This

document reflects that most of the employees in the maintenance department are concentrated in the higher wage levels, grades 7 through 10, including carpenters, carpenter leads, electricians, plumbers, vehicle maintenance employees, painters, HVAC technicians and ride mechanics 1. Only the classification of welder is included in a lower grade level, grade level 6. Also included in these higher-grade levels are such non-maintenance department positions as accounts payable clerk, payroll specialist, senior aquarist, senior diver, senior trainer, senior life support mechanic, senior life support operator, senior water quality tech, and senior trainer-tiger/elephant. Concentrated in the lower grade levels 4 and 5, are apprentice trainers, reservation clerks, security employees, accounts receivable clerks, aquarists, chemists, divers, life support operators, life support mechanics, vet assistants, and water quality technicians. In grade level 6 are trainer-tiger/elephant, vet tech and welder. Grade 10 includes the leads for grades 8 and 9.

Analysis. As indicated above, the Petitioner seeks to represent a unit comprised of the Employer's maintenance employees and the Employer takes the position that only a wall-to-wall unit is appropriate. For the reasons discussed below, I the petitioned-for unit to be an appropriate unit.

Section 9(b) of the Act provides that the Board "shall decide in each case whether the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof." In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate." *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board does not compel a petitioner to seek any particular appropriate unit. As the Board stated in *Overnite Transportation*, 322 NLRB 723 (1996), "The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective-bargaining." As stated by the Board in *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enf'd on other grounds, 190 F.2d 576 (7<sup>th</sup> Cir. 1971):

There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be "appropriate."

Thus, in *Overnite Transportation*, the Board noted that "[a] union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless "an appropriate unit compatible with that requested unit does not exist." *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963).

The factors considered by the Board to determine whether a petitioned-for group of employees shares a community of interest include: (1) differences or similarities in wages, compensation and benefits; (2) common supervision; (3) similar work hours; (4) differences or similarities in qualifications, training and job skills; (5) job functions; (6) frequency of contact with other employees; (7) functional integration and interchange with other employees; and (8) bargaining history. See *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988); *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

Wages, Compensation and Benefits. With regard to wages, compensation and benefits, the evidence establishes that the maintenance department employees are year-round employees, unlike most of the 1800 to 2000 employees who work for the Employer during its peak season in July. As a result, while all employees receive certain benefits, the maintenance department employees receive major benefits that the seasonal employees do not receive, including health, dental and vision insurance coverage. Second, while the pay rates of the maintenance employees overlap with those of employees in certain other non-maintenance classifications, this overlap is primarily confined to senior positions among animal trainers and Oceanarium employees and not with employees from other departments, which comprise most of the Park's employees, the one exception being the accounts payable clerk. In sum, it is clear that most maintenance employees are concentrated in the higher pay levels and that only employees from a few of the Employer's other departments have the same pay rates.

Supervision. With regard to supervision, the record shows that the maintenance employees are in a separate department with separate management and supervision from employees in other departments. The Employer presented evidence that there may be direction of maintenance employees by supervisors in other departments while they are doing maintenance work in those departments or by the maintenance supervisors of non-maintenance employees who are assisting maintenance employees in doing maintenance tasks. However, there is no showing that this has been a frequent occurrence or has resulted in the actual disciplining or taking of other personnel actions involving maintenance employees by managers and/or supervisors in other departments or vice versa.

Hours of Work. With regard to hours of work, the record shows that the maintenance department employees work the same schedule during the portion of the year that the Park is closed to visitors. There is no evidence that other employees work the same schedule. Second, the maintenance employees work on a staggered shift schedule during the open season and there is no evidence that other employees work a similar schedule.

Qualifications, Training and Job Skills. With regard to differences or similarities in qualifications, training and job skills between the maintenance department employees and employees in other departments, the record shows that while certifications are not required of applicants for maintenance jobs, there are at least a few maintenance employees who possess certifications in areas such as refrigeration and welding. Further, maintenance employees perform electrical, welding, plumbing and other work requiring skills that are generally not possessed by other employees. In addition, all maintenance department employees must be at least 18 years of age and have a valid driver's license unlike many of the Park's seasonal employees who are high school students.

The record further shows that while certain employees in other departments possess skills similar to those of maintenance department employees, such as the sound technicians and some water technicians, etc., most employees in the Park do not have the skills and abilities of maintenance department employees to weld, perform electrical work, repair vehicles, etc. Nor does the fact that other employees pick up trash or unclog sinks in their areas warrant the conclusion that they have similar skills as the maintenance department employees. The record contains no evidence in this regard that maintenance skills are required of other employees in order to be hired. Nor does it show that non-maintenance employees spend a significant portion of their work time performing maintenance tasks.

Job Functions. With regard to job functions, as with the training and qualifications factor, the evidence establishes that the maintenance department employees perform tasks that require skills such as plumbing, electrical and welding work. While the record indicates that certain employees who work in other departments may have skills overlapping those of certain maintenance department employees, such as water quality technicians and sound technicians, and that employees from various departments pick up trash and help unclog sinks and toilets, the evidence does not establish that non-maintenance department employees spend a significant portion of their work time performing plumbing, electrical, welding, and/or painting work.

Frequency of Contact Between Employees. The record shows that the maintenance employees have regular contact with employees in other departments in the course of performing their maintenance work throughout the Park. The record also shows that employees from other departments at times assist the maintenance employees in performing their jobs

Functional Integration and Interchange. With regard to functional integration, the record shows that the Park is highly integrated with regard to all employees being taught that they are part of the same team; being instructed

to act courteously; to keep the Park clean by picking up trash and other debris; and by working cooperatively to make the public's visit to the Park safe and satisfying. The record also shows that employees pitch in to help out when emergencies arise or when there are special events such as Fright Night. This assistance includes the maintenance employees being assisted by animal trainers when they work on animal enclosures and by employees in other areas where they are working. The record shows that the Park uses a computer work order system whereby supervisors from other departments can input work orders and the supervisors in the maintenance department can assign those work orders to be handled by maintenance employees.

On the other hand, the record shows that the maintenance department is a separate administrative division within the Park that is separately managed and supervised and that the maintenance employees have their own shop and departmental meetings and card log system which is unique to their department.

With regard to interchange, the record shows that there has been an insignificant degree of interchange as it shows only two transfers into or out of the maintenance department which is comprised of 26 employees. In addition, the significance of these two transfers is further diminished by the fact that the record does not disclose how recently they took place. Nor does the record show that employees in the maintenance department regularly substitute for employees in other departments on a temporary basis or vice versa.

Bargaining History. Finally, with regard to bargaining history, the Board generally accords substantial weight to a long-term history of collective bargaining in a particular unit, and the record herein shows that there has been a collective bargaining history for many years on a facility-wide basis. However, there are several factors which diminish the significance of this lengthy bargaining history. First, it has been at least three years since the Employer's employees have been represented in this unit. Local 3 apparently stopped representing the Employer's employees in 1999. This is evident by the fact that the Teamsters filed a petition to represent the Employer's employees on a facility-wide basis in January 2000, and Local 3 did not participate in that proceeding. As noted above, the Teamsters petition was subsequently withdrawn and no union currently seeks to represent employees at the Park on a facility-wide basis. In this regard, collective bargaining history is generally considered significant in making unit determinations because it is a factor which supports stable collective bargaining relationships. In the instant case, given the lapse of time since the unit was represented, and the lack of any labor organization seeking to represent the Employer's employees in a wall-to-wall unit, to give controlling weight to this

factor would appear to serve only to impede the ability of the Employer's employees to organize and be represented by a union if they so desire.

Moreover, as described above, substantial operational changes have taken place in the Park, commencing shortly after the Employer took over its operation and when the most recent representation of its employees ended in 1999. Thus, the Employer became a Six Flags park in October 1998, and thereafter expanded its operations significantly, adding many more rides, including several roller coasters, and other attractions, restaurants and shopping facilities. While the record does not disclose the effect of this expansion on the Employer's workforce, it is reasonable to assume that it has been significant, especially with regard to the creation of various jobs involving amusement rides that did not exist prior to 1998, and with regard to the size of the Employer's overall workforce, including seasonal employees. I note, for example, that the classification of ride operator that exists currently was not included in the unit description for the election held in Case 20-UD-415 in February, 1998.

Finally, the bargaining history in this case is counter-balanced by the separate supervision, lack of interchange, and other factors described herein which support a finding that a maintenance unit is an appropriate unit in this case. In these circumstances, I do not find that the bargaining history to be controlling.

In view of the foregoing, I find that a separate unit comprised of maintenance employees is an appropriate unit. This conclusion is based on several factors which demonstrate the substantial community of interest among the maintenance employees and their separate identity from other groups of employees at the Park. Thus, the maintenance employees are separately managed and supervised; the maintenance unit comports with an established administrative division within the Employer's operation; there is insignificant evidence of permanent or temporary interchange; and the maintenance employees are regular full-time year-round employees who tend to be higher paid and receive benefits that are not received by most other Park employees, including all of the seasonal employees, who comprise ninety percent of the Employer's workforce at its peak. In addition, I note that all of the maintenance employees must be at least 18 years of age and have a driver's license; they all have the same schedule; wear the same uniforms; use the same maintenance shop; and have regular meetings that are not attended by employees from other departments.

Although the evidence indicates that maintenance department employees have regular contact with employees in other departments, and that such employees provide assistance when maintenance department employees perform work in their areas, I do not find such evidence sufficient to overcome

the substantial community of interest among the maintenance department employees described above. Nor do I find that the history of collective bargaining warrants a different conclusion for the reasons discussed above.

Finally, the Employer, citing *Disneyland*, 308 NLRB 1040 (1992), argues that the industry practice supports a parkwide unit. However, the record contains no evidence regarding industry practice and the *Disneyland* case stands only for the ruling therein that the Board will not allow the severance of a merchandising unit from an existing facility-wide unit with 35 years of collective-bargaining history.

The Employer also relies on *The Westin Hotel*, 277 NLRB 1506 (1986), for its contention that only an Employer-wide unit is appropriate. However, the *Westin Hotel* case is distinguishable for two reasons. First, the Sixth Circuit had remanded the case to the Board, finding that the Regional Director had erred regarding his conclusion that there was a paucity of evidence of an area-wide pattern of bargaining on a broader basis than the maintenance department unit found appropriate therein. No similar evidence was introduced in the instant case. Second, in *Westin Hotel*, the Sixth Circuit found that the evidence regarding separate supervision was not strong. In the instant case, the manager and supervisors of the maintenance department are stipulated to be statutory supervisors and there is no dispute that the maintenance department employees have separate management and supervision on a departmental level.

Accordingly, as I have found the petitioned-for unit to be an appropriate unit, I am directing that an election be held in that unit.

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